

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.09.2018

Pronounced on : 03.10.2018

CORAM

THE HON'BLE MR.JUSTICE. P.VELMURUGAN

Crl.R.C.No.919 of 2014

P.R.Ramesh

.. Petitioner/Defacto
Complainant

Versus

1.M/s.Kasi Finance & Business Company,
Plot No.91 & 92, Kasi Theatre Complex,
Jawaharlal Nehru Salai,
Ashok Nagar,Chennai - 600 083.

2.M/s.Kasi Housing & Business Company,
Plot No.91 & 92, Kasi Theatre Complex,
Jawaharlal Nehru Salai,
Ashok Nagar,Chennai - 600 083.

3.M/s.Kasi Housing & Development Limited,
Plot No.91 & 92, Kasi Theatre Complex,
Jawaharlal Nehru Salai,
Ashok Nagar,Chennai - 600 083.

4.M/s.Kasi Finance & Business Corporation,
Plot No.91 & 92, Kasi Theatre Complex,
Jawaharlal Nehru Salai,
Ashok Nagar,Chennai - 600 083.

5.M/s.M.K.Mathivathanan

6.M.K.Mathivathanan,
S/o Kasi Nadar,
Chairman and Managing Director,
Kasi Group of Companies,
Plot No.91 & 92, Kasi Theatre Complex,
Jawaharlal Nehru Salai,
Ashok Nagar,Chennai - 600 083.

7.K.M.Vidyasagar,
S/o M.K.Mathivathanan,
Executive Director,
Kasi Group of Companies,
Plot No.91 & 92, Kasi Theatre Complex,
Jawaharlal Nehru Salai,
Ashok Nagar,
Chennai - 600 083.

..Respondents 1-7/Petitioner-1-7/
Accused 1-7

8.State rep.by
Deputy Superintendent of Police,
Economic Offences Wing-II,
Anna Nagar,
Chennai- 40

..8th Respondent/Complainant

Criminal Revision Petition filed under Section 397 read with 401 of the Code of Criminal Procedure, to set aside the order dated 23.06.2014 made in Crl.MP.No.145 of 2014 in C.C.No.21 of 2013 before the learned Special Judge, under TNPID Act, Chennai, and allow the above Criminal Revision Case.

For Petitioner : Ms. R. Shase
For R1 to R5 & R7 : Mr.R.Dhanapal Raj
For R6 : Mr.Rameshkumar

O R D E R

The 8th respondent/Police have registered a case against the respondents 1 to 7 in Crime No.7 of 2007 and filed a final report before the learned Special Judge, under TNPID, Act alleging commission of offence punishable under Section 409, 420 read with Section 120 (b) of Indian Penal Code and Section 5 of the Tamil Nadu Protection of Interest of Depositors (TNPID) Act. The Special Court has taken the charge sheet on file in C.C.No.21 of 2013.

2. When the matter was pending before the learned Special Judge under TNPID, Act, the respondents 1 to 7 have filed a petition under Section 239 of CrPC for discharging them from the prosecution for the offence under Sections 409, 420 r/w 120-B of IPC & Section 5 of TNPID Act in Crl.MP.No.145 of 2014.

3. The learned Special Judge, after giving an opportunity to both sides, after receiving the counter and hearing the case of other side found that no charge has been made out against the respondent 1 to 7 herein, allowed the Crl.MP.No.145 of 2014 in C.C.No.21 of 2013 on 23.06.2014 and discharged the respondents 1 to 7 from the above said offence. Aggrieved against the order passed by the learned Special Judge under TNPID, Act, the de-facto complainant /revision petitioner, who had originally filed the complaint before the 8th respondent/Police against the respondents 1 to 7 has come forward with this Criminal Revision Case.

4. The case of the revision petitioner is that the revision petitioner and his family members have deposited a sum of Rs.45,80,609/- in the chit company run by the respondents 1 to 5 on various dates in fixed deposit and the same had matured. The petitioner and his family members demanded the matured amount from the 6th and 7th respondent herein and they refused to pay the matured amount. However, they offered to allot three houses sites at Kasi garden, Thiruneermalai, Chennai in lieu of the deposit amount of Rs.15,94,600/- in the

name of mother and sister of the petitioner and for the remaining deposit amount they have offered to give two flats at Teynampet. However, due to the delay in completion of the project, the respondents did not get approval in respect of second floor flats from the competent authority and requested the petitioner and his family members to cancel the sale deed cum constructions agreements and in respect of that the respondents 6 and 7 have to give three flats at Jafferkhanpet in the name of petitioner and his family members and also offered a property situated at Ponpandi Village, Thiruthani Taluk, Thiruvallur District to the value of the deposited amount and executed the sale deed in favour of the petitioner and his family members to the extent of 5.5 acres of agricultural land situated at Ponpandi Village, Thiruthani Taluk. Subsequently, the petitioner came to know that the property executed by the 6th respondent is 1.9 acres out of 5.5 acres, which belongs to the 6th respondent and moreover the 6th respondent's lands to the extent of 29 cents belongs to Government Poramboke and the remaining land to the extent of 3.3 acres was in the name of one Venkatapathy, who had executed power of attorney in favour of the 6th respondent, but he was expired on 29.04.2004 before execution of sale deeds. Moreover the value of lands as per guideline value for the entire 5.5 acres is only Rs.2.75 lakhs and that the 6th & 7th respondents have never handed over the three constructed houses at Kasi gardens, Thiruneermalai to the petitioner's mother and sister and thereby, the 6th & 7th respondents cheated the revision petitioner and his family members. Immediately, the petitioner approached the 6th & 7th respondents to return the deposit amount instead of the property conveyed at Ponpandi Village, Thiruthani Taluk and three constructed houses at Thiruneermalai and the 6th & 7th respondents refused for the same. Therefore, the petitioner having no other option, lodged a police complaint before the Central Crime Branch, Chennai, which was subsequently transferred to the 8th respondent herein. After thorough investigation by the 8th respondent, charge sheet was filed before the learned Special Court and the same was taken on file in C.C.No.21 of 2013. However, after taking the charge sheet on file, the court below found that there is no proof made available to bring out the guilt of the respondents 1 to 7 herein and on the said ground discharged the respondents from the purview of prosecution.

5. According to the learned counsel for the revision petitioner, the learned Special Judge had failed to consider that while considering discharge petition filed under Section 239 of CrPC the averments in the complaint and the allegations levelled in the charge sheet alone are materials for considering as to whether prima facie case made out or not and not the defence taken by the accused / respondents 1 to 7 herein. The order of the learned Special Judge is against the well settled proposition of law, hence, the petitioner has preferred this present revision to set aside the order passed by the learned Special Judge.

6. The case of the respondents 1 to 7 is that the petitioner and his family members invested in the company of Accused 1 to 5 represented by the respondents 6 and 7. On 08.10.2003, the petitioner demanded the maturity amount of Rs.24,46,000/-. The respondents instead of refunding the maturity amount offered property in lieu thereof, the land at Ponpandi Village, Thiruthani Taluk and registered the sale deed in the name of petitioner and their family members. After execution of the sale deeds in favour of the petitioner on 27.04.2005 and 07.05.2005, the petitioner herein had issued two letters to the respondents 1 to 7 stating that the value of the land sold to them was very less and will not be equal to the sum of Rs.24,46,000/-, which was due to them under the fixed deposits. Thereafter, after due negotiation, on 26.05.2005 a memorandum of settlement was executed, wherein the petitioner herein had categorically agreed on his behalf as well as on behalf of other depositors that the sale of 100 grounds in Ponpandi Village, Thiruthani Taluk, was duly made and the value of the said land will adequate to cover the sum of Rs.24,46,000/-, which was due by the respondents 1 to 7 to the petitioner. The revision petitioner further undertook on 26.05.2005 that they would withdraw their notices and also they will withdraw any action pending before any forum, both civil and criminal against the respondents 1 to 7. After the memorandum of understanding the respondents 1 to 7 was under the impression that there will be no further claim from the revision petitioner. The sale deeds executed in favour of the revision petitioner for the property at Thiruthani have been duly executed in favour of the revision petitioner and after registration possession of the properties have been delivered to the revision petitioner as on date of sale. Notwithstanding the same, the revision petitioner lodged a complaint before the 8th respondent alleging that the respondents 1 to 7 have conveyed the property situated at Ponpandi Village, Thiruthani Taluk, as power agent of the principal, who died on 16.09.2004. On verification it was found that the principal was no longer alive, immediately the respondents approached the legal heirs of the principal and obtained an affidavit confirming the sale made in favour of the petitioner and agreed to ratify the sale. But the petitioner failed to get the ratification deed. Hence, the charges alleged against the respondents are groundless.

7. The learned counsel for the respondents 1 to 7 would submit that Section 5 of TNPID Act would not get attracted against these respondents. Admittedly, these respondents have accepted the fact that after maturity of the deposit amounts deposited by the revision petitioner, they executed a sale cum construction agreement. Though the petitioner was not satisfied, subsequently, they entered into a memorandum of understanding with the revision petitioner and also they executed a sale deed in favour of the revision petitioner for the value equivalent to the matured amount. Even then, the revision petitioner was not satisfied and therefore, other sale deed was executed. Though the sale deed was executed by the power of attorney of the principal, it was alleged that the power of attorney is no longer valid as the principal died

prior to the execution of sale deed. After knowing the principal of power of attorney died, then they tried to rectify the mistake with the consent of the legal heirs of the deceased principal. The legal heirs have also agreed to rectify the mistake. However, the revision petitioner did not accept the same and therefore, it clearly shows that there is no intention on the part of the respondents 1 to 7 to cheat the revision petitioner. Therefore, once a sale deed has been executed for the value of the matured deposit amount the ingredients contained under Section 5 of the TNPID Act, will not get attracted. Considering the submissions made by the learned counsel for the respondents 1 to 7, the learned Special Court Judge found that the respondents 1 to 7 had no intention to cheat the revision petitioner and therefore discharged them and therefore, the learned counsel for the respondents prayed for dismissal of the Criminal Revision Case.

8. Heard the rival submissions made by the learned counsel for both sides and perused the records.

9. It is well settled proposition of law that for considering a petition for discharge under Section 239 of CrPC, the averments and documents filed under Section 173 of CrPC alone has to be considered and not defence that could be raised. In this case, admittedly the de-facto complainant/the revision petitioner lodged a complaint against the respondents 1 to 7 before the 8th respondent herein. The 8th respondent has also registered a case in Crime No.7 of 2007 against the respondents 1 to 7. After completion of investigation a final report was filed. On a perusal of all the records such as complaint filed by the revision petitioner, charge sheet filed by the 8th respondent together with the statements recorded and other documents also, there is a prima-facie case is made out against the respondents 1 to 7, which is sufficient to proceed against the respondents 1 to 7 to frame charges. Further, it is admitted fact that the revision petitioner and his family members made investments with respondents 1 to 7. The matured amounts were repaid. According to the respondents 1 to 7 they have executed sale deeds for the value of matured amount. According to the petitioner, they have cheated the petitioner and other investors. Therefore, at this stage this Court need not consider the defence of the respondents 1 to 7. Further, the probative value of the evidence and materials need not be gone into at this stage. Therefore at this stage the Special Court ought not to have discharged the respondents 1 to 7 from the purview of prosecution. Thus, on a perusal of the entire materials filed by the 8th respondent under Section 173 of CrPC before the Special Court, there is a prima facie case made out against the respondents 1 to 7 to proceed further. Therefore, in this case, the learned Special Court Judge, failed to consider the well settled proposition of law and erroneously considered the defence that the respondents 1 to 7 have no intention to cheat the revision petitioner. Therefore, the order passed by the learned Special Court Judge is against the well settled proposition of law, which warrants interference of this Court.

10. In the result the order passed by the learned Special Judge in C.C.No.21 of 2013 is set aside and the revision petition is allowed and the trial Court Judge is directed to frame charge against the accused and proceed the case further in accordance with law.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Deputy Superintendent of Police,
Economic Offences Wing-II,
Anna Nagar, Chennai- 40.

2. The Special Judge, TNPID Act, Chennai.

+ 1 cc to Mr.M. Guruprasad, Advocate Sr.68426

+ 1 cc to Mr.P. Ramesh Kumar, Advocate Sr.68322

Cr1.R.C.No.919 of 2014

VBA(CO)
EU(17/10/2018)

सत्यमेव जयते

WEB COPY