

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.11.2018

PRONOUNCED ON : 15.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH
Criminal Original Petition Nos.25696 and 25751 of 2018
and CrI.M.P.Nos.14647, 14653, 14745 and 14746 of 2018

M.E.Venu ... Petitioner in both CrI.O.Ps.

Vs.

- 1 The Director General of Police
Tamil Nadu
No.1 Kamarajar Salai
Mylapore
Chennai 600 004.
- 2 The Director General of Police
Puducherry Union Territory
Puducherry 605 001
- 3 State of Tamil Nadu
Rep. by the Inspector of Police
Economic Offences Wing
HQRS, Guindy
Chennai
- 4 Gayathri ... Respondents in CrI.O.P.25696/2018
- 1 The Director General of Police
Puducherry Union Territory
Puducherry 605 001
- 2 The State of Puducherry
Rep. by the Inspector of Police
CBCID Police Station
Puducherry
- 3 A.Aridoss ... Respondents in CrI.O.P.25751 /2018

CrI.O.P.No.25696 of 2018 filed under Section 482 Cr.P.C.,
to call for the records in Cr.No.12 of 2017 on the file of the
1st respondent and quash the same by invoking the inherent
jurisdiction under Section 482 Cr.P.C.

Crl.O.P.No.25751 of 2018 filed under Section 482 Cr.P.C. to call for the records in Cr.No.08 of 2018 on the file of the 2nd respondent and quash the same by invoking the inherent jurisdiction under Section 482 Cr.P.C.

For Petitioner : Mr.S.Sathiaseelan
(in both Crl.O.Ps.)

For R1 and R3 : Mrs.M.Prabhavathi
(in Crl.O.P.25696/2018) Additional Public Prosecutor

For R2
(in Crl.O.P.25696/2018): Mr.R.Bharatha Chakravarthy
& For R1 and R2 Public Prosecutor (Puducherry)
(in Crl.O.P.25751/2018)

C O M M O N O R D E R

On the complaint lodged by Gayathri, the Economic Offences Wing, Chennai registered a case in Cr.No.12 of 2017 on 17.11.2017 under Sections 420, 406 and 120-B IPC and Section 5 of the Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997 [for short, "the TNPID Act"] against Thripura Chits Private Ltd. and 7 others, for quashing which, Venu [A4] has filed Crl.O.P.No.25696 of 2018.

2. On the complaint lodged by Aridoss, the CID, Puducherry have registered a case in Cr.No.8 of 2018 on 09.07.2018 under Section 420 r/w 34 IPC against Thripura Chits Private Ltd. and its officials of the Puducherry Branch, for quashing which, Venu has filed Crl.O.P.No.25751 of 2018.

3. Heard Mr.Sathiaseelan, learned counsel for the accused Venu, Mrs.M.Prabhavathi, learned Additional Public Prosecutor for the State of Tamil Nadu and Mr.R.Bharatha Chakravarthy, learned Public Prosecutor for Puducherry.

4. Before advertng to the submissions made by Mr.Sathiaseelan, it may be necessary to give a precis of the FIR allegations.

EOW Cr.No.12 of 2017:

5. It is the case of Gayathri that she is into catering business; she joined in two deposit schemes in Vadapalani Branch of Thripura Chits Private Ltd.; in the first scheme, she was required to deposit Rs.1,750/- per day for 25 months, which would amount to Rs.13,12,500/-, for which, she was assured payment of Rs.15 lakhs; in the second scheme, she was required

to deposit Rs.2,000/- per day for 25 months, after which, she was assured a minimum of Rs.15 lakhs even after discounting the loan availed by her; towards the two schemes, she has paid a total sum of Rs.19,60,300/-; when she went to the Vadapalani Branch on 07.11.2017 to make payment, she found a crowd of depositors thronging there and the Branch was not opened. On enquiries, she learnt that all the branches, including the Head Office, have been closed. Hence, the complaint and the FIR.

PUDUCHERRY CID Cr.No. 8 of 2018:

6. It is the case of Aridoss that he is into cattle feed business; in October 2016, he joined the monthly deposit scheme in Puducherry Branch of Thripura Chits, under which, he deposited Rs.1,600/- per day from 15.10.2016 to 30.11.2017 amounting to Rs.6,37,800/-; since he lost confidence in the Company, he demanded return of the amount, for which, he was given a cheque of Rs.2 lakhs, which was dishonoured; hence, the complaint and the consequent FIR.

7. Assailing the FIRs, Mr.Sathiaseelan, made the following submissions:

[a] Thripura Chits Private Ltd. is not a Financial Establishment within the meaning of the expression "Financial Establishment" as defined under the TNPID Act and that it is a chit company registered under the Chit Fund Act, 1982 and therefore, the remedy available to the complainants is only under Chapter VI of the Chit Fund Act, 1982 by raising a dispute before the Registrar of Chits and for resolution of the same by arbitration.

[b] When there is a conflict between the Central Act [Chit Fund Act, 1982] and the State Act [TNPID Act], the provisions of the Central Act will prevail over the State Act, vide Article 254 of the Constitution of India.

The aforesaid arguments simply overlook the fact that there is absolutely no conflict between the provisions of the Chit Fund Act and the TNPID Act.

8. A depositor with Thripura Chits Private Ltd. can initiate arbitration proceedings under Chapter VI of the Chit Fund Act only if the latter is available for resolution of the dispute. When Thripura Chits Private Ltd. has downed their shutters and had gone with the loot gained from the public by floating various schemes, it will be ludicrous to call them for arbitration.

9. Mr.Sathiaseelan advanced a very specious argument by contending that Gayathri had not completed payment of daily dues

towards her scheme and therefore, she has no locus standi to lodge a complaint. In other words, Mr.Sathiaselan wants Gayathri to somehow or the other open the Vadapalani Branch and go to the police only after having paid the entire period of 25 months. This argument is obviously ludicrous and is opposed to basic common sense.

10. Like the TNPID Act in the State of Tamil Nadu, Puducherry also has the Puducherry Protection of Interests of Depositors in Financial Establishments Act, 2004. The definition of the word "Financial Establishment" in both the Acts do not exclude an entity registered under the Chit Fund Act, 1982. If a chit fund were to accept deposits under any scheme or arrangement or in any other manner, its activity will fall within the definition of the expression "Financial Establishment" as defined in those two Acts. When once there is a failure to repay the depositor, the penal provision will stand attracted. In this case, both Gayathri and Aridoss joined the scheme, under which, they were required to make daily payments and were assured a certain amount after expiry of certain period. Even before the culmination of the period, the establishment closed down its business and its promoters became scarce.

11. Learned Public Prosecutor, Puducherry submitted that around 4,000 depositors in Chennai alone have been left high and dry by Thripura Chits Private Ltd.

12. A Full Bench of this Court, in S.Bagavathy vs. State of Tamil Nadu [2007 (2) CTC 207], has gone into the constitutional validity of the TNPID Act and has upheld the same. The Supreme Court in K.K.Baskaran vs. State of Tamil Nadu [(2011) 3 SCC 793], New Horizon Sugar Mills Limited vs. Government of Pondicherry [(2012) 10 SCC 575] and Soma Suresh Kumar vs. Government of Andhra Pradesh [(2013) 10 SCC 677] has gone into the legislative powers of the State Assembly and have upheld the constitutional vires of the Act. Therefore, it is too late in the day to place reliance on Article 254 of the Constitution of India and assail the FIR.

13. Lastly, Mr.Sathiaselan contended that Venu was merely an employee and was not a Director in Thripura Chits Private Ltd. In support of this contention, he placed reliance upon a certificate issued by Thripura Chits Private Ltd. dated 17.08.2008 purportedly to the effect that Venu is a permanent employee and drawing a salary of Rs.90,726/- per month. However, on a perusal of the said certificate, his designation has been shown as Director. Thus, the document relied on by Mr. Sathiaselan appears to be self contradictory. When this was pointed out to Mr.Sathiaselan, he placed reliance on the Income

tax returns of Venu and submitted that from the quantum of tax paid by him, he cannot be regarded as a Director in Thripura Chits Private Ltd.

14. Section 5 of the TNPID Act clearly states that every person responsible for the management of the affairs of the defaulting Financial Establishment shall be liable. On a perusal of the case diary, evidence gathered by the police so far shows that Venu was in the management of the affairs of Thripura Chits Private Ltd. and it is too early to give him a clean chit and quash the FIRs.

In the result, these petitions are dismissed as being devoid of merits. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gms

To

1 The Director General of Police
Tamil Nadu
No.1 Kamarajar Salai
Mylapore
Chennai 600 004.

2 The Director General of Police
Puducherry Union Territory
Puducherry - 605 001

3 The Inspector of Police
Economic Offences Wing
HQRS, Guindy
Chennai

4 The Inspector of Police
CBCID Police Station
Puducherry

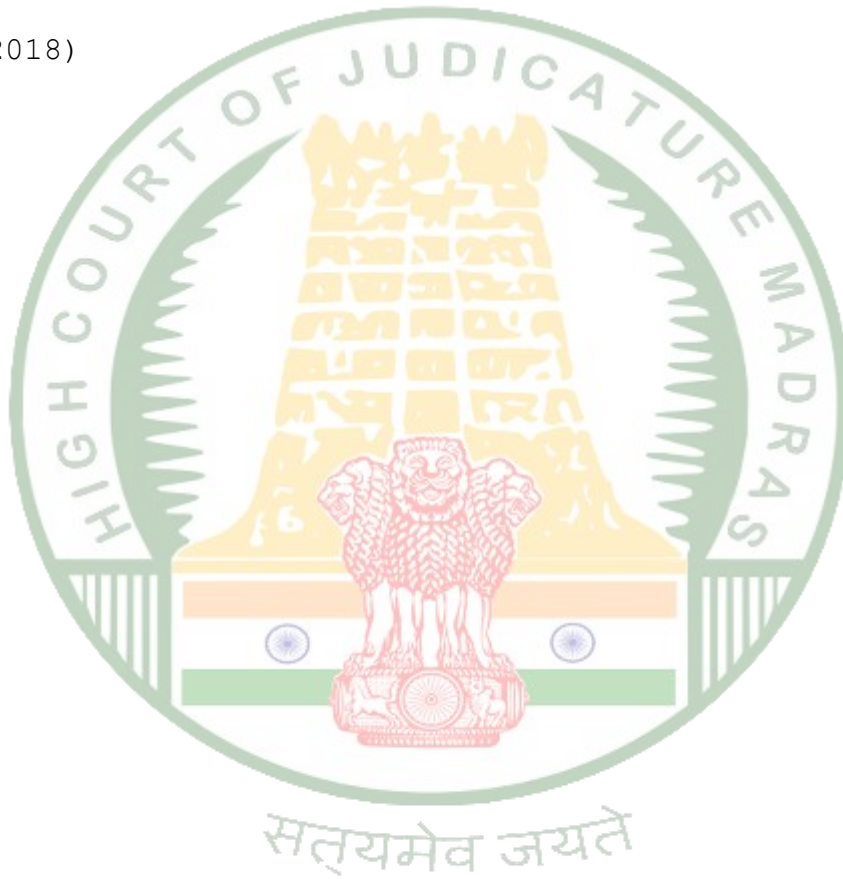
5 The Public Prosecutor
High Court, Madras.

6 The Public Prosecutor
Puducherry

+2cc to Mr.S.Sathiaseelan, Advocate, S.R.No. 78178, 78179
+1cc to Public Prosecutor(Puducherry), S.R.No. 78496

Cr1.O.P.Nos.25696 and 25751 of 2018

AD(CO)
GN(10/12/2018)



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