



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2018

CORAM :

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

**CRL.RC. (MD)No.482 of 2015
and MP(MD)No.1 of 2015**

V.Jayalakshmi .. Petitioner / Petitioner / Accused No.5

Vs.

The State represented by,
The Inspector of Police,
Economic Offences Wing - II,
Tirunelveli District.
(Crime No.4 of 2006)

.. Respondent / Respondent/Complainant

PRAYER: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for the entire records pertaining to the order passed by the learned Special Judge for Tamil Nadu Protection of Interest of Depositors Act Cases, Madurai in Cr.M.P.No.172 of 2014 in C.C.No.40 of 2013 vide its order dated 18.04.2015 and set aside the same and thereby the petitioner may be discharged from the charges leveled in the above said case.

For Petitioner : Mr.R.Anand

For Respondent : Mr.C.Mayil Vahana Rajendran
Additional Public Prosecutor

ORDER

On the complaint lodged by N.Kanthasamy, the respondent Police registered a case in Crime No.4 of 2006 on 02.08.2006, under Section 420 of the Indian Penal Code and Section 5 of TNPID Act, against a Financial Establishment called the Fund of Thanjavur Limited and its Directors, namely, Charles Solomon, Johnson Ponsingh, Tmt.Selvi Kokila, Charles Asirwatham, Peter and Tmt.V.Jeyalakshmi.

2. After registration of the FIR, Tmt.Selvi Kokila filed Crl.O.P.(MD)No.586 of 2008 under Section 482 of Code of Criminal Procedure for quashing the FIR and this Court admitted the case and granted stay in M.P.(MD)No.1 of 200 of the investigation in Crime No.4 of 2006.



3. However, the Police proceeded with the investigation, recorded the statements of victim and after completing the investigation, have filed a final report in C.C.No.40 of 2013, before the Special Court for TNPID Act cases, Madurai, against the Fund of Thanjavur Limited (A1), Charles Solomon (A2), Johnson Ponsingh (A3), Peter (A4) - Died, Charles Asirwatham (A5) and Tmt.V.Jeyalakshmi (A6), for the offences under Sections 120(B), 406, 420 IPC and Section 5 of TNPID Act. The Special Judge took cognizance of the offence and issued process to the accused for their appearance. The accused appeared before the Special Court and Jeyalakshmi (A5) has filed the present quash application for quashing the prosecution in C.C.No.40 of 2013.

4. Heard Mr.Anand, learned Counsel appearing for the petitioner/accused and Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor appearing for the state.

5. Mr.Anand, learned Counsel appearing for the petitioner submitted that the final report that has been filed, is an incomplete final report and therefore, the Special Court ought not to have taken cognizance of the offences based on such a report. He contended that the Investigating Officer has not included Tmt.Selvi Kokila as an offender, but has stated in the body of the final report that he has completed the investigation vis-a-vis the other accused and that after the disposal of CrI.O.P(MD)No.586 of 2008, he would file a separate final report depending upon the outcome. In support of his contention that cognizance cannot be taken on incomplete final report, Mr.Anand, learned Counsel placed strong reliance upon the decision reported in **2014 - 2- L.W. (CrI.) 482 - PMC. Mercantile Private Limited, Madurai & Others Vs. The Deputy Superintendent of Police, Economic Offences Wing - II, Madurai & Others (Decided on 31.07.2014, in CrI.R.C. (MD)No.231 of 2013).**

6. Per contra, Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor, refuted the above contentions.

7. This Court gave its anxious consideration to the rival submissions. This Court has no quarrel with the proposition that cognizance cannot be taken on incomplete final report. However, it has to be seen whether the final report in this case is an incomplete one or not.

8. On a reading of the final report, the Investigating Officer has categorically stated as follows:

".....9. Investigation has revealed that the accused A2 to A6 of interest for the deposits made into the A1 Financial Establishment, and thereupon collected deposits to the tune of Rs.36,38,268/- from

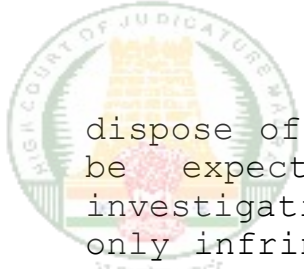


96 depositors but settled only to 54 depositors and defaulted to repay the same to the 42 depositors as promised by them to the tune of Rs.30,13,595/-. The accused A2 to A6 and accused P.T.Selvikogila are responsible for the management of the affairs of the Financial Establishment A1 and all are liable for default in repayment of Rs.30,13,595/- to 42 depositors. Hence the accused A1 to A6 and accused P.T.Selvikogila committed offence u/s.5 of TNPID Act 1997. The accused A4 Peter died on 30.10.2009 and the charge u/s.5 of TNPID Act 1997 against him is abated.

Thereby the accused A1 to A6 and accused P.T.Selvikogila have committed offences u/s.120(B), 420, 406 IPC and Section 5 of TNPID Act 1997 and substantive offences thereof as applicable to each.

Investigation revealed that the accused P.T.Selvikogila filed a petition in CrI.O.P.No.0586/2006 u/s.482 Cr.P.C prayed to quash the proceedings in Cr.No.4/2006 on the file of the Economic Offences Wing-II, Tirunelveli and in which the said accused P.T.Selvikogila filed an application in MP(MD)No.1/2008 prayed to stay all further proceedings in Cr.No.4/2006 the file of Economic Offences Wing-II, Tirunelveli before the Honourable High Court of Judicature of Madras at Madurai Branch. In the said application the Honourable High Court of Judicature of Madras at Madurai Branch pleased to order interim stay in respect of the accused P.T.Selvikogila herein and it is further ordered that the investigation found that the accused P.T.Selvikogila can proceed in accordance with law in respect of other accused in the said case. Since the said order is in force, even though the investigation found that the accused P.T.Selvikogila played role in the said crime proceeds. I reserve my rights to file a separate final report against the said accused P.T.Selvikogila after the final disposal of the main CrI.O.P.No.9586/2008 by the Honourable Madurai Bench of Madras High Court."

9. The fact remains that Tmt.Selvi Kokila has challenged the FIR in the year 2008 and for some reasons or the other, this Court has not been able to dispose of her quash application till 2015.



dispose of the petition filed in the year 2008, the Police cannot be expected to wait indefinitely, without conducting the investigation in respect of the other accused, as that would, not only infringe the Fundamental Right guaranteed under Article 21 of the Constitution of India for expeditious investigation, trial of the other accused, but would also affect the rights of the victims of the crime.

11. Therefore, the Investigating Officer was correct in holding that, in his opinion Tmt.Selvi Kokila is also an accused, but in obedience to the stay granted by this Court, he has not included her in the array of accused, as that would lead to contempt proceedings against him.

12. In the facts and circumstances of this case, it cannot be stated that the present final report is an incomplete final report and that the cognizance taken by the special Judge is bad in law.

13. In the result, this petition is dismissed as it is devoid of merits.

14. It is represented that this Court has disposed of the petition filed by Tmt.Selvi Kokila in CrI.O.P.(MD)No.586 of 2008, by order dated 02.12.2015.

15. At this juncture, Mr.Anand, learned Counsel, submitted that the presence of the petitioner before the Trial Court may be dispensed with.

16. The petitioner shall appear before the Trial Court for receiving copies under Section 207 Cr.P.C, for framing charges and for questioning under Section 313 Cr.P.C and on the date of judgment and on every hearing, if an application under Section 317 Cr.P.C is filed, the Trial Court is directed to liberally consider the same and dispense with the presence of the petitioner on condition that the petitioner will not dispute her identity and that her Counsel will cross examine the witnesses in her absence. On any other hearing date, if the presence of the petitioner before the Trial Court is essential, the Trial Court may inform the Counsel on record for the petitioner and the petitioner shall appear before the Trial Court on that date. The Trial Court shall dispose of the proceedings as expeditiously as possible. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar



To

1. The Special Court under the Tamil Nadu Protection of Interest of Depositors
(In Financial Establishment Act, 1997),
Madurai.

2. The Inspector of Police,
Economic Offences Wing - II,
Tirunelveli District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Rm/gk

AE/KKR/SAR1/31.01.2018/5P/4C

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