



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 29.10.2018
ORDERS PRONOUNCED ON : 31.10.2018

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.6776 of 2018
and
Crl.MP(MD)No.3250 of 2018

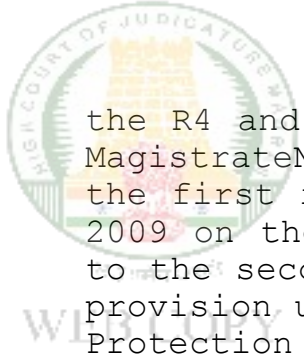
1.B.Srinivasan
2.S.Vinayagamoorthy
3.M.Kannan
4.S.Puspan
5.S.Chokammal
6.S.Venkteswari
7.K.Vijayabharathy
8.S.Rajkumar
9.K.Sivagurunathan
10.S.Amutha
11.M.Punitha
12.A.Kannan
13.K.Latha

...Petitioners

Vs

1.The Commissioner of Police,
Madurai City,
Madurai District.
2.The Superintendent of Police,
CBCID, Madurai.
3.The Inspector of Police (Crime),
E-2, Mathichiyam Police Station,
Madurai.
4.The Inspector of Police,
City Crime Branch,
Madurai.
5.Jose Mose Antony
6.Prabhakaran
7.Gurunathan

... Respondents



the R4 and taken on the as C.C.222 of 2010 on the file of Judicial Magistrate No.I, Madurai and set-aside the same and further direct the first respondent to conduct reinvestigation in Crime No.1633 of 2009 on the file of the fourth respondent by transferring the same to the second respondent and to file a final report by altering the provision under Sections 406, 420, 120(b) of IPC and 5 of Tamil Nadu Protection of Interest of Depositors (In Financial Establishments) Act 1977 and final report afresh before Special Court under Tamil Nadu Protection of Interest of Depositors (In Financial Establishments) Act, Madurai, within a stipulated period as may be fixed by this Court.

For Petitioners	: Mr.J.Jeyakumaran
For Respondents	: Mr.K.Suyambulinga Bharathi,
1 to 4	Government Advocate (Crl Side)
For Respondent No.5	: Mr.K.Sundaravel

ORDER

This petition has been filed before this Court seeking for reinvestigation in Crime No.1633 of 2009, on the file of the fourth respondent and to transfer the same to the CBCID.

2.When this matter came up for hearing on 29.08.2018, the following order was passed by this Court:

"This is a shocking case, where the accused persons have virtually looted and plundered money from the innocent general public and have cheated them by not returning back the money.

2.It is seen from the records that Jose Moses Antony has been shown as Accused No.1, Prabhakaran has been shown as Accused No.2 and Gurunathan has been shown as Accused No.3. The First Information Report was registered in Crime No.1633 of 2009 and the final report was filed on 18.07.2010 by the fourth respondent. The final report was filed as against all the three persons for the offences under Sections 406, 420 and 120(b) I.P.C. In the final report itself all the three accused have been shown as absconding accused.

3. Accused No.3 viz., Gurunathan surrendered before the Judicial Magistrate No.II, Madurai and filed a bail petition and he was released on bail by the Judicial Magistrate No.II, Madurai by an order dated 24.10.2009. Accused No.2, viz., Prabhakaran was granted anticipatory bail by this Court in Crl.O.P(MD).No.10832 of 2009, dated



4. In this case, Accused No.1, who was the main accused continued to be absconding and he filed a surrender petition before the Judicial Magistrate No.I, Madurai on 01.02.2018. Along with the surrender petition he has also filed the bail petition. In both petitions, it is totally silent as to why A1 did not surrender before the Court immediately and what was the reason for the delay in surrendering.

5.Unfortunately, the Inspector of City Crime Branch was not even made as a party in the bail petition. Instead, the said Jose Moses Antony added the Inspector of Police, Mathichiyam Police Station as the respondent. At the time, when the bail petition was filed, the said Mathichiyam Police Station had nothing to do with this case and the case was investigated by the fourth respondent. The final report was also filed by the fourth respondent. The Judicial Magistrate No.I, Madurai without any application of mind had mechanically passed an order granting bail to the said Jose Moses Antony, even without imposing any condition.

6.This Court is satisfied that the said Jose Moses Antony has played a fraud on the Court and obtained the bail. The City Crime Branch which had investigated the case and filed the final report was not even made as a party in the bail petition and the Judicial Magistrate No.I, Madurai without even conducting any enquiry and without even giving any notice to the City Crime Branch, Madurai had granted bail to the said Jose Moses Antony

7.Where the fraud is manifest, even the solemn of proceedings will get vitiated and the order passed by playing fraud upon the Court will make the very order, non est. The said Jose Moses Antony had cheated the general public. Many have fallen victim by investing the hard earned money.

8.It is submitted by the learned counsel for the petitioners that more than 5000 persons have been cheated to the tune of more than Rs.100/- crores. The magnitude is humongous and the Judicial Magistrate No.I, Madurai has passed an order without any application of mind and in a mechanical fashion. An order has been obtained by the said Jose Moses Antony by playing fraud on the Court.

9.Considering the magnitude of the situation and also taking into consideration of the interest of 5000 depositors, this Court in exercise of its power under Section 482 Cr.P.C is taking cognizance of the order passed by the Judicial Magistrate No.I, Madurai in



Crl.M.P.No.245 of 2018, dated 01.02.2018.

10. Notice is issued to Jose Moses Antony through the fourth respondent returnable by 05.09.2018, calling upon Jose Moses Antony to explain as to why the bail granted in Crl.M.P.No.245 of 2018, dated 01.02.2018 on the file of the Judicial Magistrate No.I, Madurai should not be cancelled. The fourth respondent is directed to produce the said Jose Moses Antony before this Court on 05.09.2018 at 2.15 p.m without fail."

3. Accordingly, the above said John Moses Antony was produced before this Court by the respondent Police and he appeared through his Counsel. The learned Counsel representing Jose Moses Antony submitted that the said person did not swindle any money nor had he gained any money in any unfair manner. The learned Counsel also submitted that he gave employment for more than fifteen persons and paid them salaries. He was only running an organization called as Credit Advert Solutions and it was only an advertising company and not a company, which collected money from customers. As per the business model, the advertising slot is purchased by the customers by payment of money through demand drafts and there was no question of any deposits or misappropriation made by the said John Moses Antony.

4. This Court was not convinced with the answers given by the above said John Moses Antony and therefore, passed the following order on 27.09.2018:

"The fourth respondent has filed a status report before this Court detailing various steps taken by the fourth respondent in getting the particulars of the persons who have deposited money and also the particulars of the payments made by the fifth respondent. The fourth respondent has sought for time in order to verify the various Bank statements, wherein the fifth respondent claims to have repaid certain amounts to the depositors.

2. Post the matter on 25.10.2018 at 4.00pm. In the mean time the respondent Police is directed to complete the entire process and file a report before this Court."

5. Pursuant to the above said order, the respondent Police filed a status report before the Court on 29.10.2018. It will be relevant to extract the portions of the status report:

"The process of investigation is given in nutshell as below:-

<https://hcservices.ecourts.gov.in/hcservices/>

a. The then Investigation Officer, Thiru Palanisamy who took up the investigation, examined the de-facto



Complainant, Karthikeyan and arrested the 3rd accused Gurunathan on 22.10.2009 and produced him before the Learned Judicial Magistrate No.2, Madurai and sent him for remand.

b. As per the orders of the Deputy Commissioner of Police (Crime) Madurai City vide C.No. 253/Camp/DC-Crime/MC/2009 dated 27.10.2009, the case was transferred to the Madurai City Central Crime Branch and investigation was taken up by Thiru Nethaji, the then Inspector of Police. He examined the following witnesses who were all victims of the massive fraud committed by the accused and recorded their statements under section 161(3) of the Code of Criminal Procedure, 1973 on the dates noted against their names:-

Sl. No.	Date	Name of witnesses
1.	02.11.2009	1. Tmt. Latha. 2. A. Manohar 3. T. Mani 4. K. Sivasubramanian 5. C. Beula Santhakumari 6. R. Nirmala 7. S. Sundaram 8. R.M.M. Abubacker 9. S. Ponnuchamy
2.	03.11.2009	10. Tmt. R. Dheepa 11. M. Rafiya Begum 12. S. Gurusamy 13. N. Rajendran 14. K. Shiek Fareeth 15. A. Nataraj 16. M. Aravalli 17. Sivabackiam 18. N. Ramathal 19. N. Gunasekaran
3.	04.11.2009	20. M. Ponmani 21. V. Sunilkumar 22. A. Natarajan 23. R. Sivasamy 24. R. Murugiah Servai 25. V. Sivakumar 26. M. Sivakumar 27. V. Nagarajan 28. Velliangiri 29. A. Thangamani



WEB COPY

4.	05.11.2009	30. E. Sornalatha 31. B. Nellaiappar 32. S. Rathnavel 33. S. Vetrivel 34. B. Rajadurai 35. Padmini Priyadarshini 36. A. Senthilkumar 37. V. Isakkibabu 38. Shanmugasundaram 39. S. Muruganandam
5.	06.11.2009	40. A. Umameshwari 41. S.A. Nagalakshmi 42. S. Periyachi Devi 43. P. Mahendran 44. M. Krishnakumari 45. Anburaj
6.	08.11.2009	46. M. Janakiraman 47. Venkatesh 48. R. Davidraj 49. Natarajan 50. M. Krishnakumari 51. Velu 52. Bose 53. Murugan
7.	09.11.2009	54. P.X. Nathan 55. Sriram 56. S. Yuvaraj 57. V. Ramu 58. M. Babu 59. U. Rajasekar 60. T. Subbiah 61. Jayanthi 62. Puthiaraj 63. D. Saravanan
8	10.11.2009	64. N. Sripathi 65. Karuthal 66. Sebastin 67. Z. Barook 68. N. Jithendra Booker 69. N. Ragupathy 70. R. Paramaramakrishnan 71. Muthupandi 72. Arumugam
9.	11.11.2009	73. Balanagammal 74. Annammal 75. K.M. Sureshbabu 76. K.L. Gopal 77. S. Zinnah



WEB COPY

10.	12.11.2009	78. Ramakrishnaya 79. A. Amutha 80. Anees Mohammed 81. N.M. Boopathirajan 82. R. Rengasamy 83. S. Arusamy 84. R. Alliammal 85. G. Maheswari 86. R. Suresh 87. B. Shiek Dawood 88. S. Annamalaisamy 89 P. Balanagamalai 90. K.M.Sureshbabu
11.	13.11.2009	91. M. Palaniappan 92. T. Senthilkumar 93. Raja 94. K. Philavendran 95. K. Balachandran 96. P. Sivakumar 97. S. Roselin 98. S. Jayasingh Ponraj 99. G.Ramakrishnan 100. S. Murugan
12.	14.11.2009	101. J. Jayaraj 102. S. Sujathaleediyan 103. R. Muthulakshmi 104. Sureshkumar 105. P.Muthuselvam 106.T. Jegadeeswaran 107. Jayasingkanakaran 108. R. Rajan 109. R.G.W. Karthick
13.	15.11.2009	110. A. Muthukumar 111. Jegadeesh 112. Jayasudha 113. A. Muthukumar 114. Jegadeesh 115. Jayasudha 116. C. Nesamony 117. S. Selvan 118. C. Ramanathan 119. A. Vaijee 120. G. Solyaar



WEB COPY

14.	16.11.2009	121. G. Geetha 122. C. Ayyappan 123. K. Fathima 124. Dhanapal Gandhi 125. C. Vijayakumar 126. J. Revathi 127. M. Nalinadevi 128. Dr.M. Jayapandi 129. D. Sankar 130. A. Ponsingh
15.	17.11.2009	131. Manikandan 132. T. Dhanasekaran 133. M. Pandi 134. S. Poyyamani 135. Kathirvel 136. T. Kalidoss 137. Gopalakrishnan 138. P. Devamani 139. M. Dhanalakshmi 140. M. Chandrasekar
15.	18.11.2009	141. S. Arockiaraj 142. R. Muthukumar 143. T. Sakunthala 144. D. Guruprakash 145. V. Pandiselvi 146. M. Gothandababu 147. T. Vinegarraj 148. S. Murugan 149. A. Athilakshmi 150. K. Banumathi
16.	19.11.2009	157. S. Ganasundaram 158. S. Dhineshbabu 159. R. Santhi 160. M. Kathirvel
17.	20.11.2009	161. Sankarasubbia 162. M. Boominathan 163. M. Karuppiah 164. Sekar 165. G.S.K. Jayasathiri 166. S. Karpagavalli 167. D. Jegan 168. M. Arifaha 169. D. Radhakrishnan 170. S. Madurarani



18.	21.11.2009	172. K.Krishnan 173. D. Santhanam 174. Nandakumar 175. A. Anthony Jesurajan 176. A. Kathrine Rosal 177. K. Chandrasekaran 178. A. Muthumani 179. M. Kumutha 180. K. Krishnan 181. S. Lalitha
19.	22.11.2009	182. Manoharan 183. Santhi 184. S. Balakrishnan 185. Vijayakamalakumari 186. Muralikrishnan 187. G. Muthuselvi 188. Gajendran 189. B. Meenakshi 190. Lalitha 191. M. Dearajan 192. A. Parthiban
20.	08.02.2010	193. Adikannan 194. Vasu 195. Rajendran 196. A. Saroja 197. S. Annapoornam
21.	15.03.2010	198. Umagomati 199. Thavasiappa 200. Adhilakshmi 201. Kanjana Devi 202. Kalaiselvi
22.	11.04.2010	203. Pandiammal 204. Devaki

c. The first accused Jose Moses Antony filed a criminal original petition in Crl.O.P. (MD) No. 8283 of 2009 seeking for anticipatory bail and conditional bail was granted to him dated 09.10.2009.

d. Thereafter one of the victim, Thiru Karthikeyan filed a writ petition in WP (MD) No. 11002 of 2009 seeking for transfer of investigation to CB CID and later the same was dismissed as withdrawn dated 10.11.2009.

e. One of the victim A. Vasu filed a criminal original petition in Crl.O.P. (MD) No. 4130 of 2010 for a direction to file final report and this Hon'ble Court by an order dated 09.04.2010 directed the Investigation Officer to file final report within a period of 4 months.



f. The then Investigation Officer, Thiru Nethaji on completion of investigation and on getting the advisory opinion from the concerned Law Officer prepared charge sheet by arraying Tvl. Karthikeyan, M. Kanan, K. Latha, P. Suresh; S. Hemalatha; S. Sornasuthandrarajan; K. Balamurugan; V. Vijayakumar; S. Athilakshmi; J. Keerthika; S. Thiruvadikannan; A. Vasu; R. Ravindran; A. Saroja; S. Annappoornam; P. Umagomathi; A. Thavsiappan; S. Athilakshmi; B. Kanchana; R. Kalaiselvi; J. Pandiammal; V. Devaki as witnesses and handed over to the same to the Mathichiyam (Crime) Police Station and the Inspector of Police lodged charge sheet against the accused before the Learned Judicial Magistrate No. II on 18.07.2010 and on proper application of mind the same was taken cognizance in C.C. No. 222/2010 and pending trial before the Learned Court.

g. In the meanwhile, the 1st accused, the 5th Respondent herein obtained anticipatory bail in CrI.M.P. No. 243/2018 on the file of the Learned Principal District and Sessions Judge, Madurai dated 18.01.2018. He surrendered before the Learned Judicial Magistrate, produced sureties and was enlarged on anticipatory bail.

h. On the criminal original petition filed by the victims Tvl. B. Srinivasan, S. Vinayagamoorthy, M. Kannan, S. Pushpam, S. Sokkammal, S. Venkateswari, K. Vijay Barathi, S. Rajkumar, K. Sivagurunathan, S. Amutha, M. Punitha, A. Kannan and Tmt. K. Latha in CrI.O.P. (MD) No. 6776 of 2018 and as ordered by this Hon'ble Court, the 1st accused was produced before this Hon'ble Court on 05.09.2018 and after enquiring the accused, the case stood adjourned to 12.09.2018 and this Hon'ble Court directed the 1st accused to settle all the outstanding dues to the victims and further directed the 1st accused to appear before the Hon'ble Court on 27.09.2018.

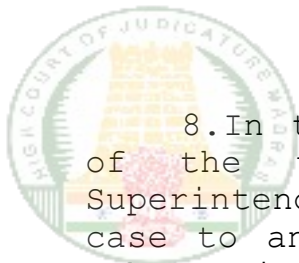
4. I humbly submit that the enquiry so far done revealed that the 1st accused with a clever and diabolic scheming solicited deposit for the Company which was not registered as a 'non banking financial institution' with the Register of Companies or with Reserve Bank of India. On a clever design he collected amount from the victims camouflaging the deposit as fees towards their appointment as agents and paid incentive rebate from <https://hcservices.com> through bank. But after collecting a huge amount closed the company and cheated the depositors. Though only about 220 depositors came forward to lodge



their complaints, it is only a tip of the iceberg and the number may increase to 1000. Since only criminal action has been initiated against the accused, the 1st accused with a clever scheming settled the amounts due to the victims who were cited as witnesses with an intention to make dent in the prosecution case which would enable him to go scot free. More-over in the present issue, the element of civil overture is involved and that the respondent police being the criminal investigation wing is not vested to go into aspects other than bringing the criminals to book under the provisions of the Indian Penal Code and it can not act as a adjudicating forum to decide the quantum of amount payable to each victim. In a similar instances, the Principal Bench of this Hon'ble Court in a case pertaining to one MRDT company, Madurai in WA (MD) No. 1264 of 2014 dated 14.03.2014, directed the Government to appoint a Commission consisting of high ranking officials of Economic Offences Wing, District Revenue Officers, Officers of SEBI etc. to ensure collecting money from with accused and ensure equitable distribution. In a similar manner, the victims pertaining to DISC ASSETS, Madurai, this Hon'ble Court in WP No. 8084 of 2017 appointed a Retired Hon'ble Judge of this Hon'ble Court to go into the wealth amassed by the Company out of the deposits garnered and equitable distribution to all the victims."

6.The status report clearly reveals the fact that the above said John Moses Antony has indulged in a large scale fraud. The entire case was lying in hibernation for more than nine years and some of the depositors have filed this petition for reinvestigation in the year 2018 and this Court was able to smell the rot, in the manner in which the investigation was conducted in this case. Taking advantage of lackadaisical manner, in which the police was investigating the case, the above said John Moses Antony managed to get bail before the Judicial Magistrate No.1 (FAC), Madurai, about which, reference has been made in the order passed by this Court on 29.08.2018.

7.This Court cannot turn a blind eye to a case of a this nature, where the interest of several depositors are involved. The latest status report filed by the fourth respondent clearly points out the fact that there will be several depositors, who have lost their money to the above said John Moses Antony. This Court is totally disappointed with the manner in which, this case has been investigated so far. This case needs to be further investigated by a Specialised Agency, in order to bring out the entire truth and to effectively proceed against the accused persons.



8. In the result, the investigation is transferred to the file of the Superintendent of Police, CBCID, Madurai. The Superintendent of Police, CBCID, Madurai is directed to allot this case to an Inspector of Police, who is well versed with online / cyber crimes, since the deposits have been received in this case by the accused person through online. The Inspector of Police, to whom this case is allotted, shall conduct further investigation in this case by examining all the witnesses / victims. It is also left open to the Police Officer to file an appropriate application for cancellation of bail against the above said accused person, if he finds that there are supervening circumstances and custody of the person is wanted for effective investigation of the case. The Inspector of Police, who is allotted the case, shall file a regular status report before the Superintendent of Police, CBCID, Madurai and the Superintendent of Police, CBCID, Madurai is directed to strictly monitor the investigation. The investigation shall be conducted effectively and shall be completed as expeditiously as possible. The concerned Police Officer shall identify the victims and shall take steps to attach the properties purchased through the ill gotten money and also take steps to disburse the money to the victims.

9. Further, the fourth respondent is directed to hand over the case diary to the Superintendent of Police, CBCID, Madurai within a period of one week from the date of receipt of copy of this order. Till further report is filed before the Court below, by the CBCID, the proceedings in CC No.222 of 2010 shall be kept in abeyance by the Court below.

10. With the above directions, this criminal original petition is disposed of. Consequently, CrI MP(MD) No.3250 of 2018 is closed.

Sd/

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Judicial Magistrate-I,
Madurai.

2. The Commissioner of Police,
Madurai City,
Madurai District.

<https://hcservices.ecourts.gov.in/hcservices/>
3. The Superintendent of Police,
CBCID, Madurai.



4. The Inspector of Police (Crime),
E-2, Mathichiyam Police Station,
Madurai.

5. The Inspector of Police,
City Crime Branch,
Madurai.

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 cc to Mr.K.Sundaravel, Advocate, SR.93451
+1 cc to Mr.J.Jeyakumaran, Advocate, SR.No.93718

dsk

SS/SKN/SAR 1/10.12.2018/13P/10C

order made in
Crl.O.P. (MD) No.6776 of 2018
31.10.2018