BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD)No.910 of 2017
and
Crl.M.P.(MD)Nos.11137 and 11344 of 2017

V.Umamaheswari :Revision Petitioner/Petitioner/A-9

Vs.

1.State rep. by
The Inspector of Police,
Economic Offence Wing -II,
Virudhunagar,
Virudhunagar District.
(Crime No.2 of 2016) :1st Respondent/Respondent/complainant

2.S.Somasundaram
[R-2 impleaded as per the order of this Court dated 11.01.2018 made in Crl.M.P.(MD)No.37 of 2018] :2nd Respondent

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to take this revision petition on file, call for records, hear arguments and may be pleased to allow the revision petition by setting aside the impugned orders passed by the learned Special Judge (TNPID Act Cases), Madurai, in Cr.M.P.No.2958 of 2017 in C.C.No.4 of 2017, dated 08.11.2017 and to discharge the petitioner from the above charges in C.C.No.4 of 2017 pending on the file of learned Special Judge (TNPID Act Cases), Madurai.

For Petitioner : Mr.G.Mariappan
For Respondent No.1 : Mr.M.Asokan, Government Advocate (Crl.side)
For Respondent No.2 : Mr.Angusamy, For Mr.G.Padmanaban

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ORDER
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The petitioner, who is A-9, is facing prosecution in C.C.No.4 of 2017 before the Special Court for TNPID Act Cases, Madurai along with nine other accused for the offences under Sections 406, 420, 120-B of the Indian Penal Code and Section 5 of the Tamil Nadu Protection of Interest of Depositors (In Financial Establishments) Act, 1997 and Sections 4 and 5(a) of the Prize Chit and Money Circulation Schemes (Banning Act), 1978. It is the case of the prosecution that the accused were running Gayathri Chits (A-1) and

Selvam Finance (A-2) and they had collected deposits from about 37 persons to the tune of Rs.1,06,91,632/- and had defaulted in making the payment. Hence, on the complaint of one of the depositors, First Information Report was registered in Crime No.2 of 2016 and after completing the investigation, the police have filed the final report as stated above. While so, the petitioner/A-9 filed Cr.M.P.No.2958 of 2017 in C.C.No.4 of 2017 under Section 239 of the Code of Criminal Procedure for discharge and also filed a Miscellaneous Application in Cr.M.P.No.3790 of 2017 for raising additional grounds. The Trial Court, by the impugned order dated 08.11.2017, has dismissed the discharge application, aggrieved by which, the petitioner/A-9 is before this Court.

2. Heard the learned counsel for the petitioner/A-9, the learned Government Advocate (Criminal side) for the first respondent and the learned counsel for the second respondent.

3. The learned counsel for the petitioner/A-9 contended that she became a Partner in Selvam Finance (A-2) after the death of her husband and that she was not actively involved in the affairs of the Financial Establishment. However, the Trial Court has rejected her contention by holding that witnesses Somasundaram (LW-1), Shankara Pandian (LW-2), Gurusamy (LW-3), Padma (LW-4), Jothimani (LW-5) and Anbu Salomi (LW-37) have spoken about the involvement of the petitioner (A-9) in the affairs of the Financial Establishment. In the teeth of such material, it cannot be stated that there are no prima facie materials as against the petitioner/A-9 for framing a charge. Under Section 239 Cr.P.C., an accused can be discharged only if the accusation is groundless. Under Section 240 Cr.P.C., if there is ground for presuming that the accused has committed an offence, charge can be framed. Thus, in this case, there are sufficient materials available on record as against the petitioner/A-9 and hence, the petitioner/A-9 cannot be completely discharged from the prosecution. That apart, disputed questions of fact as to whether the petitioner/A-9 was a sleeping partner or an active partner cannot be gone into at this stage.

4. The learned counsel for the petitioner/A-9 submitted that in the charge sheet, Gayathri Chits (A-1) and Selvam Finance (A-2) have been shown as being represented by all its partners, namely A-3 to A-10, which is in violation of Section 305 Cr.P.C., and, therefore, the prosecution should be quashed.

5. In the opinion of this Court, violation of the provisions of Section 305 Cr.P.C., cannot entail quashment of the charges as it is purely procedural in nature. Section 305 Cr.P.C., reads as follows:

> "305. Procedure when corporation or registered society is an accused.-
>
> (1) In this section, "corporation" means an incorporated company or other body corporate, and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).

(2) Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation.

(3) Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined.

(4) Where a representative of a corporation does not appear, any such requirement as is referred to in sub-section (3) shall not apply.

(5) Where a statement in writing purporting to be signed by the managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section, is filed, the Court shall, unless the contrary is proved, presume that such person has been so appointed.

(6) If a question arises as to whether any person, appearing as the representative of a corporation in an inquiry or trial before a Court is or is not such representative, the question shall be determined by the Court."

6. Section 11 of the Indian Penal Code defines the word "person" as follows:

"The word "person" includes any Company or Association or body of persons, whether incorporated or not."

7. Thus, a person would include not only a Company or Association, but also, a body of individuals whether incorporated or not.

8. Section 2(y) of the Code of Criminal Procedure reads as follows:

"words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code."

9. From the above, the definition of the word "person" in Section 11 of the Indian Penal Code can be incorporated into the provisions of the Code of Criminal Procedure. In this case, there can be no cavil that Gayathri Chits (A-1) and Selvam Finance (A-2) fall within the definition of "person" as defined in Section 11 of

the Indian Penal Code. Therefore, they can be prosecuted for the offences under the Indian Penal Code as well for the offences under the TNPID Act. This issue is no more res integra, in the light of the law laid down by the Supreme Court in Iridium India Telecom Ltd. v. Motorola Incorporated & Ors. [2011(1) SCC 74].

10. The next question is who should represent Gayathri Chits (A-1) and Selvam Finance (A-2) before the Trial Court?

11. It is not the duty of the prosecution nor the Court to nominate the person to represent Gayathri Chits (A-1) and Selvam Finance (A-2). Section 305 Cr.P.C., clearly states that the accused Corporation may appoint a representative for the purpose of the inquiry or trial. Dictates of common sense demands that some human being must represent A-1 and A-2 to answer the charges, engage an advocate to defend them and answer the questions under Section 313 Cr.P.C., etc. Of course, the human agent appointed for the Corporation cannot be personally convicted and sentenced for the offence committed by the Corporation. Obviously, a sentence of imprisonment cannot be awarded to a juristic preson and only fine can be imposed. Therefore, it is open to Gayathri Chits (A-1) and Selvam Finance (A-2) to appoint anyone including one of the accused, namely A-3 to A-10 to represent them in the prosecution. If no arrangement is made by Gayathri Chits (A-1) and Selvam Finance (A-2), then they will have to suffer the consequences and cannot plead prejudice at a later point of time. Hence, liberty is given to Gayathri Chits (A-1) and Selvam Finance (A-2) to appoint anyone to represent them before the Trial Court and that can be one of the accused or an outsider also, but, with due authorization under the seal of Gayathri Chits (A-1) and Selvam Finance (A-2). However, this cannot be a ground for discharging the present petitioner/A-9 from the prosecution.

12. The learned counsel for the petitioner/A-9 submitted that the provisions of Section 219 Cr.P.C., will apply, inasmuch as for the transaction that is said to have taken place from 2006-2016, a single charge sheet has been filed. This Court is unable to agree with the submission of the learned counsel for the petitioner/A-9, in the light of the law laid down by the Supreme Court in State of Andhra Pradesh v. Ganeshwara Rao]AIR 1963 SC 1850]. That apart, when there is a charge of conspiracy under Section 120-B, all the persons will have to be tried in a single trial, as provided under Section 223 Cr.P.C., and, therefore, the provisions of Section 219 Cr.P.C., will not apply to the facts and circumstances of the present case.

13. In the result, this Criminal Revision Case is devoid of merits and hence, it is dismissed. Consequently, the connected miscellaneous petitions are closed.

14. At this juncture, the learned counsel for the petitioner/A-9 submitted that the presence of the petitioner/A-9 before the Trial Court may be dispensed with, since she being a lady.

15. Accepting the said submission, the petitioner/A-9 shall appear before the Trial Court to receive the copies under Section 207 Cr.P.C., at the time of framing charges, at the time of questioning under Section 313 Cr.P.C., and on the day of judgment. On all other dates, if the petitioner/A-9 files an application under Section 317 Cr.P.C., undertaking that she will not dispute her identity and that her counsel will cross-examine the prosecution witnesses in her absence without adopting dilatory tactics, the Trial Court may liberally consider and entertain the same. If the petitioner/A-9 adopts any dilatory tactics, it is open to the Trial Court to insist upon her presence.

16. It is made clear that whatever observed above is only for the purpose of deciding the discharge application and it is open to the petitioner/A-9 to raise all the grounds before the Trial Court after the charges are framed and during trial.

Sd/-
Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

1.The Special Judge (TNPID Act Cases),
Madurai.

2.The Inspector of Police,
Economic Offence Wing -II,
Virudhunagar,
Virudhunagar District.

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

+1CC to Mr.G.Mariappan, Advocate, SR.No. 41997
+1CC to Mr.V.Angusamy, Advocate, SR.No. 41884

Order made in
Crl.R.C.(MD)No.910 of 2017
Dated:-
11.01.2018

SML
AM/JC/SAR 4/31.01.2018/5P/6C