BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD) Nos.947 of 2017 & 1 of 2018
and
Crl.M.P.(MD) Nos.11579 of 2017 & 17 of 2018 respectively

P.Rajasekar ... Petitioner / Petitioner / A3 in Crl.R.C.(MD) No.947 of 2017

P.Dinesh ... Petitioner / Petitioner / A4 in Crl.R.C.(MD) No.1 of 2018

vs.

State rep.by
The Inspector of Police
Economic Offence Wing-II
Virudhunagar
(Crime No.2 of 2010) ... Respondent / Respondent / Complainant in both Crl.R.Cs.

PRAYER (Crl.R.C.(MD) No.947 of 2017): Criminal revision filed, under Section 397 r/w 401 Cr.P.C., to call for the records relating to the order, dated 08.11.2017 made in Crl.M.P.No.4046 of 2017 in C.C.No.10 of 2014, on the file of the Special Court under TNPID (in Financial Establishment) Act, 1997, Madurai and to set aside the same.

PRAYER (Crl.R.C.(MD) No.1 of 2018): Criminal revision filed, under Section 397 r/w 401 Cr.P.C., to call for the records relating to the order, dated 08.11.2017 made in Crl.M.P.No.4046 of 2017 in C.C.No.10 of 2014, on the file of the Special Court under TNPID (in Financial Establishment) Act, 1997, Madurai and to set aside the same.

For Petitioner (in both Crl.R.Cs.)	:	Mr.K.P.Anantha Krishnan
For Respondent (in both Crl.R.Cs.)	:	Mr.M.Asokan Government Advocate (Crl.Side)

C O M M O N   O R D E R

On the complaint lodged by one Ravi Raja alleging that he had made deposit with Star Vision Innovative Marketing Pvt. Ltd. / A1 (hereinafter, referred to as "the Financial Establishment") and that on the maturity of the deposit amount, the Financial Establishment had failed to return the amount, the respondent – Police registered a case in Crime No.2 of 2010, on 31.03.2010, under Sections 406, 420, 120(b) r/w 34 I.P.C., and Section 5 of the Tamilnadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (hereinafter, referred to as "TNPID) Act. Thereafter, 238 depositors came up with similar complaints. The respondent - Police completed the investigation and filed a charge sheet in C.C.No.10 of 2014, before the Special Court for TNPID Act Cases, Madurai, against the Financial Establishment and the persons, who were responsible for it's management affairs, including the petitioners herein, who were shown as A3 and A4. From 2014, the accused were prolonging the proceedings before the Trial Court by filing discharge applications one after the other. The petitioners, namely, A3 and A4 filed a discharge application in Cr.M.P.No.4046 of 2016 in C.C.No.10 of 2014, under Section 239 Cr.P.C., which has been dismissed by the Trial Court, by the impugned order dated 08.11.2017. Challenging the same, A3 has filed Crl.R.C.(MD) No.947 of 2017 and A4 has filed Crl.R.C.(MD) No.1 of 2018.

2. Heard Mr.K.P.Anantha Krishnan, learned counsel for the accused and Mr.M.Asokan, learned Government Advocate (Criminal Side) for the respondent – Police in both criminal revision petitions and perused the materials filed in the form of typed set.

3. Mr.K.P.Anantha Krishnan, learned counsel for the petitioners / accused submitted Rajasekar / A3 founded the Company on 30.04.2009, but he had resigned on 01.08.2009 from the Management of the Financial Establishment. The learned counsel for the petitioners / accused further contended that Dinesh / A4, who was also one of the Directors of the Company, had resigned on 01.08.2009 and that their names were not shown in the F.I.R., and therefore, they cannot be held liable for the said offence.

4. Per contra, Mr.M.Asokan, learned Government Advocate (Criminal Side) refuted the contentions of the learned counsel for the petitioners / accused.

5. This Court gave its anxious consideration to the rival submissions.

6. It is a trite that under Section 239 Cr.P.C., the accused can be discharged only if the accusation is groundless. Under

Section 240 Cr.P.C., if there is a ground for presuming that the accused has committed the offence, the Court shall frame a charge.

7. The learned counsel for the petitioners / accused, in support of his contentions, placed reliance upon the decision in ***Harshendra Kumar D vs. Rebatilata Koley Etc.***, reported in ***2011 Cri.L.J.1626***, wherein the Honourable Supreme Court has held as follows:

> *"A Director of Company whose resignation has been accepted by the company and that has been duly notified to the Registrar of Companies cannot be made accountable and fastened with liability for anything done by the company, after the acceptance of his resignation..."*

It is pertinent to note that the above cited decision was rendered in connection with Section 141 of the Negotiable Instruments Act, which envisages vicarious liability on the Director of a Company, whose resignation has been accepted by the Company. In this case, the petitioners are being charged for the offence under Sections 420 I.P.C. and 5 of TNPID Act.

8. At this stage, it would be more relevant to refer Section 5 of TNPID Act, which reads as follows:

> ***"5.Default in repayment of deposits and interests honouring the commitment.-*** *Notwithstanding anything contained in Chapter II, where any Financial Establishment defaults the return of the deposit or defaults the payment of interest on the deposit, [or fails to return in any kind, or fails to render service for which the deposit has been made], every person responsible for the management of the affairs of the Financial Establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one lakh of rupees and such Financial Establishment is also liable for fine which may extend to one lakh of rupees."*

9. Thus, the above cited decision relied upon by the learned counsel for the petitioners / accused may not be of much assistance in deciding a case under TNPID Act. In this case, there are overwhelming materials to show that both the petitioners / A3 and A4 were running the Financial Establishment and collected monies from various depositors. The records produced by the prosecution along with 173 Cr.P.C., report, clearly show that Rajasekar / A3 was the Managing Director of the Financial Establishment till 28.02.2010. Similarly, Dinesh / A4 was also the Director of the Financial Establishment during the offence period. That apart 238 depositors have been cheated to the tune of Rs.4,10,76,800/-. The 161(3) Cr.P.C., statements of the following depositors, namely, Murugan / L.W.106, Rathinam / L.W.107, Ponnuthai / L.W.108 and L.Ws.111 to 123 clearly speak about the involvement of Rajasekar / A3 in the offence. In fact, Rajasekar / A3 was the Managing Director of the Financial Establishment for a long time and Dinesh / A4 was a Director of the Financial Establishment during the offence period. To reiterate, the default period i.e., 2009-2010 and the overwhelming materials show that both Rajasekar / A3 and Dinesh / A4 were in-charge of the Financial Establishment at the relevant point of time. The deposit receipt relating to Shabina / L.W.9 is dated 13.09.2009, for Rs.20,000/-; the deposit receipt relating to L.W.16 / Dhanam, is dated 18.02.2009; the deposit receipts relating to Mahadevan are dated 31.10.2009, 08.11.2009 and 26.12.2009, for Rs.1,00,000/-, Rs.2,00,000/- and Rs.4,50,000/- respectively. All these documents cover the period between 2009 and 2010, during which period both the petitioners, namely, A3 and A4 were the Directors in the Financial Establishment. In such view of the matter, it cannot be said that there is no *prima facie* material against the petitioners / A3 and A4 for framing charges.

10. In the result, both the criminal revision petitions are devoid of merits and they are dismissed. Further, the Trial Court has noted in the impugned order that the co-accused / A6 had also filed a discharge application and after the dismissal of the discharge application filed by him, he had preferred revision in Crl.R.C.(MD) No.668 of 2017 before this Court and this Court dismissed the revision as early as on 28.08.2017, despite which the Trial Court has not been able to proceed with the framing of charges against the accused on the ground that the learned counsel for A6 made a representation before the Trial Court that they have approached the Honourable Supreme Court and therefore, the Trial Court is not able to proceed further.

11. In the considered opinion of this Court, such delaying tactics cannot be countenanced. The Trial Court is directed to proceed with the case further and if the accused do not co-operate, they can be remanded to custody, under Section 309 Cr.P.C., as laid down by the Honourable Supreme Court in ***State of U.P. vs. Shambu Nath Singh***, reported in ***2001 (4) SCC 667*** and if any of the accused abscond, a fresh F.I.R., can be registered against them under Section 229-A I.P.C., and they can be remanded to custody. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To:

1. The Special Judge under TNPID Act Cases,
   Madurai.

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

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

+ 1 cc TO Mr.G.Anbu Saravanan , Advocate in SR No. 42439

krk
AE/SKN RSK/SAR2/25.01.2018/5P/5C

Crl.R.C.(MD) Nos.947 of 2017 & 1 of 2018
and
Crl.M.P.(MD) Nos.11579 of 2017 & 17 of 2018 respectively

11.01.2018