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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 21.03.2018

DELIVERED ON: 07.06.2018

CORAM:

THE HON'BLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. (MD) No. 841 of 2011

G. Sheik Mohaideen

Petitioner/Complainant

vs.

S. Deivendran

Respondent/Accused

Criminal Revision Case filed under Section 397 read with Section 401 Cr.P.C. to call for the entire records pertaining to the order passed by the Judge of the Special Court for TNPID Act Cases, Madurai, Madurai District in C.C. No.46 of 2010 vide order dated 06.05.2011 and set aside the same and consequently, direct the Special Court for TNPID Act Cases, Madurai, Madurai District, to take cognizance of the private complaint and to try the respondent for the offence charged in the said complaint and further direct the said Court to dispose of the same in accordance with law.

For petitioner

Mr. R. Anand

Mr. K.K. Ramakrishnan

Addl. Public Prosecutor

Mr. N. Ananthapadmanabhan &
Mr. K. Samidurai

Amici Curiae

ORDER

P.N. PRAKASH, J.

This Criminal Revision Case has been preferred seeking to call for the entire records pertaining to the order passed by the Special Court for TNPID Act Cases, Madurai, Madurai District (for brevity "the TNPID Court") in C.C.No.46 of 2010 vide order dated 06.05.2011 and set aside the same and consequently, direct the TNPID Court to take cognizance of the private complaint and to try the respondent for the offence charged in the said complaint and further, direct the TNPID Court to dispose of the same in accordance with law.



2 On a complaint lodged by Deivendran (the respondent herein) the Central Crime Branch, Madurai City, registered a case in Cr. No.28 of 2010 for the alleged offences under Sections 406, 420 read with 120-B IPC and Section 5 of the Tamil Nadu Protection of Interests of Depositors (in financial establishments) Act, 1997 (for brevity "the TNPID Act") against Sheik Mohaideen (the petitioner herein and others). As a counterblast, Sheik Mohaideen filed a private complaint against Deivendran before the TNPID Court for an alleged offence under Section 211 IPC alleging that the complaint given by Deivendran to the police was false. The said private complaint was taken on file as C.C. No.46 of 2010 by the TNPID Court and it was dismissed on 06.05.2011 under Section 203 Cr.P.C., aggrieved by which, Sheik Mohaideen filed the present revision petition, which came up for disposal before Mr. Justice P.R. Shivakumar (since retired). While hearing the revision petition, it was brought to the notice of Shivakumar, J. that Mr. Justice S. Nagamuthu (since retired) has held in **Antony and 3 others vs. the State represented by Inspector of Police, Economic Offences Wing-II, Nagercoil, Kanyakumari District [2011 2 L.W. (Cr1.) 298]** that an appeal from an order of conviction and sentence of less than seven years imposed by the TNPID Court would lie only to the Sessions Court and not to the High Court. Shivakumar, J. did not agree with the said proposition of law and he, therefore, formulated a question of law and referred the matter to the Hon'ble Chief Justice for constituting a Division Bench to decide the issue. Pursuant to the orders of the Hon'ble Chief Justice, this Division Bench has been constituted.

3 Heard Mr. R. Anand, learned counsel for the revision petitioner, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor and M/s.N.Ananthapadmanabhan and K. Samidurai, learned amici curiae.

4 Before proceeding further, it may be apposite to extract the reference formulated by Shivakumar, J.:

"10. In the light of the divergent views taken by myself and by Hon'ble Mr. Justice S. Nagamuthu regarding the forum in which an appeal will lie from an order of the TNPID Court passed on the criminal side, I am of the considered view that the issue "whether an appeal shall lie to the High Court under Section 11 of the TNPID Act against an order passed by the Special Court under the TNPID Act on the Criminal Side or such an appeal shall lie to the Court of Session as held by Hon'ble Mr. Justice S. Nagamuthu in *Antony and others vs. The State* reported in 2011 - 2 L.W. (Cr1.) 298", shall be referred to a larger Bench. Accordingly, the Registry is directed to place the matter before My Lord



the Hon'ble the Chief Justice for placing it before a Larger Bench."

5 It is common knowledge that the constitutional validity of the TNPID Act was upheld by a Full Bench of this Court in **S. Bagavathy vs. State of Tamil Nadu, represented by its Secretary, Law Department, Fort St. George, Chennai - 9 and another [2007 (2) CTC 207]** and was confirmed by the Supreme Court in **K.K. Baskaran vs. State represented by its Secretary, Tamil Nadu and others [2011 (2) CTC 887]**. The circumstances under which the TNPID Act came into being can be best explained by extracting the statement of objects and reasons of the said Act.

"There is mushroom growth of Financial Establishments not covered by the Reserve Bank of India Act, 1934 (Central Act II of 1934) in the State in the recent past with the sole object of grabbing money received as deposits from the public, mostly middle class and poor, on the promise of unprecedented high rates of interest and without any obligation to refund the deposits to the investors on maturity. Many of these Financial Establishments have defaulted to return the deposits on maturity to the public running to crores of rupees and thereby, inviting public the resentment, which created law and order problems in the State. The Government have, therefore, decided to undertake suitable legislation, in the public interest, in order to regulate the activities of such Financial Establishments, other than those covered by the Reserve Bank of India Act, 1934 (Central Act II of 1934).

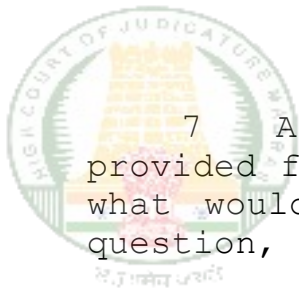
2. The Bill seeks to give effect to the above decision."

Bearing in mind the aforesaid will of the Legislature, we propose to deal with the legal question at hand on the first principles of criminal adjectival law.

6 Section 5 of the TNPID Act creates a substantive offence and prescribes a punishment for it. It may not be necessary to describe the offence, however, the punishment prescribed by Section 5 of the TNPID Act is indeed relevant and the same may be usefully extracted as under:

Section 5:

". . . . 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."



7 Assuming for a moment that the Legislature had not provided for the constitution of a Special Court in the TNPID Act, what would have been the procedure for trial? To answer this question, it may be necessary to extract Section 26(b) Cr.P.C. :

"26 Courts by which offences are triable:

Subject to the other provisions of this Code,--

(a)

(b) any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no Court is so mentioned, may be tried by--

(i) the High Court or

(ii) any other Court by which such offence is shown in the First Schedule to be triable."

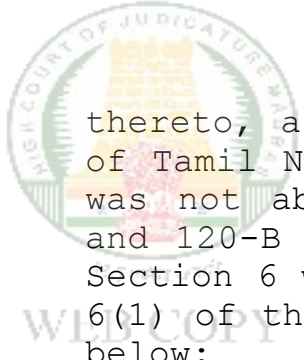
(emphasis supplied)

8 A reading of the above provision shows that an offence under Section 5 of the TNPID Act can be tried by the High Court or any other Court by which the said offence is shown in the First Schedule of the Code. The Second Division of Schedule I deals with classification of offences against other laws. Since Section 5 of the TNPID Act prescribes a maximum sentence of ten years imprisonment, it will fall within Entry I of the Second Division of Schedule I, by virtue of which, the offence under Section 5 stands classified as cognizable, non-bailable and triable by a Court of Session.

9 Axiomatically, after completing the investigation of the offence under Section 5 of the TNPID Act, the police will be required to file a final report under Section 173(2) Cr.P.C. before the jurisdictional Magistrate, who will, in turn, commit the case under Section 209 Cr.P.C. to the Court of Sessions. Similarly, if a private complainant wants to initiate a prosecution for an offence under Section 5 of the TNPID Act, he will be required to file a complaint before the jurisdictional Magistrate and after adopting the procedure adumbrated under Sections 200, 202 and 208 Cr.P.C., the case may be committed to the Court of Sessions for trial. The very object of the TNPID Act is to secure speedy justice for the depositors and therefore, in consonance with the object of the legislation, the Legislature thought it fit to constitute a Special Court for trying the offence.

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10 When the TNPID Act was passed in 1997, Section 6 of the said Act envisaged the creation of "a Special Court". Pursuant



thereto, a Special Court was constituted in Chennai for the State of Tamil Nadu. However, it was soon found that the Special Court was not able to try sister offences under Sections 420, 467, 468 and 120-B IPC along with Section 5 of the TNPID Act. Therefore, Section 6 was amended, and for deciding the issue at hand, Section 6(1) of the TNPID Act alone is relevant and the same is extracted below:

"6. Special Court:

(1) For the purpose of this Act, the Government may, with the concurrence of the Chief Justice of the High Court, by notification, constitute one or more Special Courts for such area or areas or such case or cases as may be specified in the notification in the cadre of a District and Sessions Judge."

(emphasis supplied)

The underlined portion is the only material change that was introduced by Act 30 of 2003 to Section 6 (1) of the TNPID Act. In other words, from its inception, Section 6 (1) of the TNPID Act envisaged the constitution of a Special Court with the concurrence of the Chief Justice of the High Court to be manned by an officer of the cadre of a District and Sessions Judge. Had the Legislature left it at that, without anything more, committal proceedings would have been inevitable resulting in further delay which would have defeated the very purpose of the TNPID Act. In order to get over the bottleneck resulting from committal proceedings, Section 13(1) was engrafted in the TNPID Act. Section 13(1) of the TNPID Act reads as under:

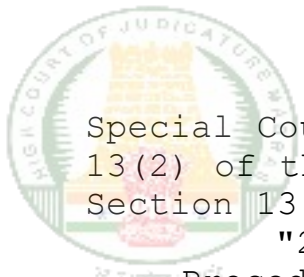
"13 Procedure and powers of Special Court regarding offences:

(1) The Special Court may take cognizance of the offence without the accused being committed to it for trial and in trying the accused person, shall follow the procedure prescribed in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) for the trial of warrant cases by Magistrates." (emphasis supplied)

11 A conjoint reading of Sections 6(1) and 13(1) of the TNPID Act makes it limpid that a Sessions Judge will preside over the Special Court and consequently, he could take cognizance of the offence without committal proceedings. To put it differently, the Special Court is a Sessions Court of original jurisdiction, but, with powers to try the offender under Chapter XIX and not under Chapter XVIII Cr.P.C. Therefore, an appeal from conviction or acquittal by the Special Court will lie only to the High Court, irrespective of the quantum of sentence.

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12 What then had prompted *Nagamuthu, J.* to hold that the



Special Court is a Court of a Magistrate? It appears that Section 13(2) of the TNPID Act had persuaded the learned Judge to hold so. Section 13(2) of the TNPID Act reads as under:

"2. The provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) shall, so far as may be, apply to the proceedings before a Special Court and for the purpose of the said provisions, a Special Court shall be deemed to be a Magistrate."

13 After considering the constitution and powers of Special Courts in other enactments and comparing them with Sections 6(1) and 13(2) of the TNPID Act, *Nagamuthu, J.*, in **Antony** (supra), has held as follows:

"14. A careful reading of the provisions of the various enactments extracted above would make it explicit that in these enactments, a Sessions Court in existence is specified by means of a notification as a Special Court. Because such a Sessions Court is specified as a Special Court, yet the said Special Court shall not lose its character as Sessions Court. Undoubtedly, it still continues to be a Court of Sessions.

15. But, in Section 6 of the TANPID Act, it is not as though a Sessions Court is specified as a Special Court, instead, it only states that the Special Court to be constituted shall be presided over by an officer in the cadre of a District and Sessions Judge. Thus, what is prescribed in Section 6 of the Act is only the qualification of the Judge who will preside over the Special Court. The said court never partakes the character of a Court of Sessions as in the case of the Special Courts constituted under the other enactments referred to above.

23. But, in the TANPID Act, the law makers have consciously intended to have the Special Court constituted under the Act only as a Court of Magistrate which is evident from Section 13 (2) of the Act which states that the Special Court for the purpose of the said provisions shall be deemed to be a Magistrate. Therefore, the Special Court constituted under the TANPID Act does not enjoy the powers of a Court of Session though it is presided over by a Judge who is in the cadre of the District and Sessions Judge. By means of the deemed clause referred to above, he exercises the original jurisdiction of only a Magistrate.

25. Nextly, referring to Section 13(1) of the



TANPID Act which states that the Special Court may take cognizance of an offence without the accused being committed to it for trial, it may be argued that the intention of the legislature is, therefore, only to have the Special Court as a Court of Session. This contention cannot be countenanced at all, because the said provision is not inconsistent with Section 190 of the Code. As a matter of fact, it is only complementary or in the nature of clarificatory to Section 190 of the Code."

14 We have answered the issue under reference in paragraph 11, *supra*, on the first principles of procedural law. *Nagamuthu, J.*'s conclusion does not indicate the pigeon hole to which the Special Court stands fitted, i.e., as to whether as a Chief Judicial Magistrate or Judicial Magistrate First Class or Metropolitan Magistrate or Judicial Magistrate Second Class. If one were to go by the literal interpretation given by *Nagamuthu, J.* to Section 13(2) of the TNPID Act, the Special Court will be deemed to be a Court of Judicial Magistrate First Class. We are saying so because, Section 13(2) of the TNPID Act uses the expression "Magistrate" simpliciter. It does not say that it shall be deemed to be a Court of a "Chief Judicial Magistrate". Section 29 Cr.P.C. reads as under:

"29 Sentences which Magistrates may pass:

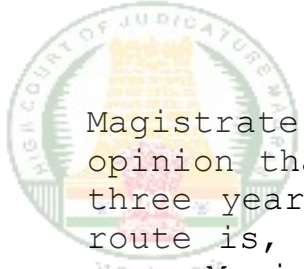
(1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

(2) The Court of Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years or of fine not exceeding ten thousand rupees or of both.

(3) The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding five thousand rupees or of both.

(4) The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class."

Section 29 Cr.P.C. bars a Chief Judicial Magistrate from sentencing a person for a term exceeding seven years and also bars a First Class Magistrate from sentencing a person for a term exceeding three years, whereas, Section 5 of the TNPID Act prescribes a maximum sentence of ten years imprisonment. We are conscious of the fact that Section 326 IPC prescribes imprisonment for life or imprisonment for ten years and it is triable by a



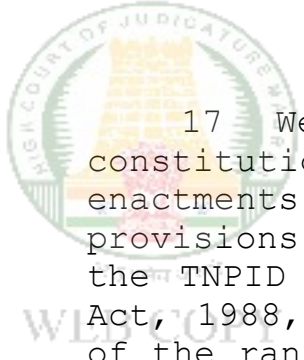
Magistrate of the first class. If the Magistrate is of the opinion that the accused should be awarded a sentence of more than three years, Section 325 Cr.P.C. provides a route for that. This route is, however, not available, if the TNPID Court is construed as a Magistrate of first class. In other words, we will have to strain the language of the statute and hold that the Judge of the TNPID Court, though of a Sessions Judge cadre, is subordinate to the Chief Judicial Magistrate. Supposing we are to hold that the Special Court has the powers of a Chief Judicial Magistrate, then, the Special Judge will not be able to impose a sentence exceeding seven years though Section 5 of the TNPID Act empowers him to pass a sentence upto ten years. *Nagamuthu, J.* had failed to consider the impact of Section 29 Cr.P.C. on the powers of a Special Judge to impose a sentence exceeding three years if he were an ordinary Magistrate or exceeding seven years if he were a Chief Judicial Magistrate/Chief Metropolitan Magistrate. For example, Section 138 of the Negotiable Instruments Act, 1881 (for short "the NI Act") envisaged a punishment of fine exceeding twice the amount of the cheque. In **Pankajbhai Nagjibhai Patel vs. State of Gujarat and another [(2001) 2 SCC 595]**, a question as to whether a Magistrate can impose a fine exceeding Rs.5,000/- while convicting an offender under Section 138 of the NI Act, arose for consideration before the Supreme Court. The Supreme Court answered in the negative and held that the power of the Magistrate is limited to Rs.5,000/- in view of Section 29(2) Cr.P.C. pursuant to which, Section 143 of the NI Act was amended to obviate this difficulty.

15 To summarise, if we were to agree with *Nagamuthu, J.* that a Special Judge is a Magistrate, then, he will not be able to impose a sentence of imprisonment beyond three years and/or impose a fine exceeding Rs.5,000/-. If we hold that a Special Judge has the power of a Chief Judicial Magistrate, then, he will not be able to impose a sentence of imprisonment exceeding seven years. Such an interpretation will result in Section 5 of the TNPID Act getting obfuscated. *Nagamuthu, J.* has held that Section 13(1) of the TNPID Act is merely clarificatory in nature and it does not point to the fact the TNPID Court is a Court of Sessions. This conclusion overlooks the fact that the intention of Section 13(1) of the TNPID Act is not to clarify Section 190 of the Code, but, to remove the fetters imposed on the Sessions Court under Section 193 of the Code to try the offences as a Court of original jurisdiction without committal. The words "without the accused being committed to it" employed in Section 13(1) of the TNPID Act is of crucial importance, since the word "it" referred to therein obviously means a Court of Sessions since there is no question of any committal being made to a Court of a Magistrate. If *Nagamuthu, J.*'s interpretation is accepted, there would be no necessity for Section 13(1) of the TNPID Act at all, as a Magistrate has plenary jurisdiction under Section 190 Cr.P.C. to

take cognizance. When such is the position, Section 13(1) would be superfluous. There is a strong presumption against surplusage as was pointed out by the Supreme Court in **Sankar Ram & Co. v. Kasi Naicker [(2003) 11 SCC 699]** as under:

"7. It is a cardinal rule of construction that normally no word or provision should be considered redundant or superfluous in interpreting the provisions of a statute. In the field of interpretation of statutes, the courts always presume that the legislature inserted every part thereof with a purpose and the legislative intention is that every part of the statute should have effect. It may not be correct to say that a word or words used in a statute are either unnecessary or without any purpose to serve, unless there are compelling reasons to say so looking to the scheme of the statute and having regard to the object and purpose sought to be achieved by it."

16 Coming back to the discussion on Section 13(2) of the TNPID Act, we are constrained to lay emphasis on the expression "so far as may be" employed therein. If the Legislature had wanted the Special Judge to function only as a Magistrate, there would have been no necessity to have used the expression "so far as may be" in Section 13(2) of the TNPID Act. The Legislature could have easily said that the Special Court shall be deemed to be a Magistrate. Section 13(2) of the TNPID Act does not touch upon the jurisdiction of Criminal Courts under Sections 26, 28 and 29 Cr.P.C. It touches upon the procedural aspects of enquiries and trials before a Special Court. In other words, it only regulates the procedure to be followed by the Special Court while exercising its jurisdiction. The deeming fiction is limited to the manner of exercise of jurisdiction by the Special Court. We ask a question to ourselves as to why the Legislature did not use the deeming provision to telescope the Sessions jurisdiction into the Special Court. Since the Legislature had wanted the Special Court to be a Court of original jurisdiction, it was necessary to confer certain incidental / ancillary procedural powers of a Magistrate on the Special Court like remand, taking cognizance upon a private complaint, conducting trial under Chapter XIX Cr.P.C. *et al.* Under Section 13(1) of the TNPID Act, the Legislature has not stated that cognizance of the offence can be taken only on a police report. This means that a private complainant can also set the law into motion by approaching the Special Court and pray for taking cognizance of an offence of Section 5 of the TNPID Act under Section 190(1)(a) Cr.P.C. In such an eventuality, the trial will proceed under Chapter XIX-B "*Cases instituted otherwise than on police report*". The nature of the offence under the TNPID Act is such that a private citizen should have unhindered access to prosecute a person who has collected the money towards deposits and defaulted in repaying the investors.



17 We are of the view that the provisions relating to constitution/establishment of Special Courts envisaged in other enactments cannot be used as a determinative guide since such provisions are not *in pari materia* with Sections 6(1) and 13 of the TNPID Act. For example, under the Prevention of Corruption Act, 1988, Section 3 empowers the Government to appoint a person of the rank of a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge as a Special Judge. Thus, notifications under Section 3 of the Prevention of Corruption Act are issued in the name of the Judicial Officers and not by the post. Therefore, the inference drawn by *Nagamuthu, J.*'s in paragraph no.14 of the judgment in **Antony** (supra), extracted above, is not in consonance with the legal provisions.

18 In paragraph no.15 of the judgment in **Antony** (supra), *Nagamuthu, J.* holds as under:

"What is prescribed in Section 6 of the TNPID Act is only the qualification of the Judge who will preside over the Special Court."

He, therefore, concludes that the power of a Special Court is determined by Section 13(2) of the TNPID Act.

19 Section 6(1) of the TNPID Act contemplates:

(a) constitution of a Court; and

(b) that such Court should be headed by a Judicial Officer of the cadre of a District and Sessions Judge.

This indubitably means that the Presiding Officer of the Special Court can only be a person of the rank of a District and Sessions Judge.

20 Section 374(2) Cr.P.C. reads as under:

"374 Appeals from convictions:

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court."

(emphasis supplied)

Section 374(2) Cr.P.C. uses the expression "a Sessions Judge or an Additional Sessions Judge". Thus, the determinative factor is not the "Court", but, the "Judge". As stated above, a Special Court under the TNPID Act can be manned only by a person of the rank of a District and Sessions Judge. Thus, when a Judicial Officer of



the rank of a District and Sessions Judge passes an order of conviction and sentence, the appeal would lie only to the High Court under Section 374(2) Cr.P.C. To close our eyes to the rank of the Judicial Officer and to hold on to the expression "any other Court" in Section 374(2) Cr.P.C. and conclude that an appeal against a sentence of less than seven years by the Special Court should be to the Sessions Court, and that if it is more than seven years, the appeal should lie to the High Court, would amount to missing the wood for the trees. It is beyond cavil that an appeal against a conviction or acquittal by the Special Court under the TNPID Act will lie only to the High Court, irrespective of the quantum of sentence imposed by the Special Court.

21 Before parting with the matter, we are constrained to address yet another issue relating to Section 11 of the TNPID Act, which forms part of the reference made by *Shivakumar, J.* Section 11 of the TNPID Act reads as under:

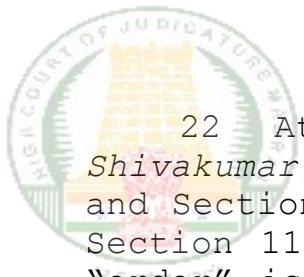
"11 Appeal:

Any person including the Competent Authority, if aggrieved by an order of the Special Court, may appeal to the High Court within thirty days from the date of order."

Nagamuthu, J.'s view on Section 11 of the TNPID finds place in paragraph no.5 of the judgment in **Antony** (supra) which is as under:

"5. Section 7 of the Act deals with the power of the Special Court regarding attachment, sale, realisation and distribution. Section 8 of the Act deals with attachment of property of *mala fide* transferees. Section 9 of the Act deals with security in lieu of attachment. Section 10 deals with administration of property attached. Section 11 of the Act deals with appeal against any order made by the Special Court. At this juncture , it may be misconstrued as though the appeals provided in Section 11 of the Act will include an appeal against conviction for an offence under Section 5 of the TANPID Act also. But, the scheme of the TANPID Act , more particularly, the arrangement of the provisions of the TANPID Act will make it clear beyond the pale of any doubt that the provision for appeal provided in Section 11 relates only to the orders passed by the Special Court under Sections 7 to 10 of the TANPID Act.. . . "

Shivakumar, J. has drawn inspiration from Section 11 of the TNPID Act to hold that an appeal will lie only to the High Court from an order of conviction or acquittal by a Special Court.

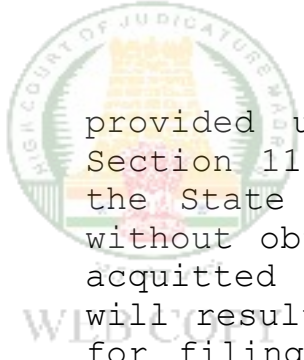


22 At first blush, we felt that the view expressed by *Shivakumar, J.* appeared correct in the light of Section 5 Cr.P.C. and Section 14 of the TNPID Act. However, on a closer scrutiny of Section 11 of the TNPID Act, it is seen that only the expression "order" is used and there is no reference to the word "judgment" therein. Of course, this, by itself, cannot lead to an inference in support of *Nagamuthu J.*'s view because the expression "order" has been used in the following provisions, viz., Sections 232, 248 (1) and 372 as well in the proviso to Section 372. The expression "order" used in the said sections would undoubtedly include judgment because Sections 353 and 354 clearly state as to how a Criminal Court should conduct the closing ceremony of a trial, be it acquittal or conviction. In ***Yakub Abdul Razak Memon vs. State of Maharashtra [(2013) 13 SCC 1]***, the Supreme Court, after relying upon ***Dr. Hori Ram Singh vs. Emperor [AIR 1939 FC 43]***, has held as follows in para 88:

"88. Judgment indicates the termination of the case by an order of conviction or acquittal of the accused and judgment is to be rendered in strict adherence to the provisions of Chapter XXVII of the Code. (Vide *Hori Ram Singh v. Crown [Hori Ram Singh v. Crown, (1939) 1 FCR 159 : AIR 1939 FC 43]* and *S. Kuppuswami Rao v. R. [(1947) 9 FCR 180 : AIR 1949 FC 1]*)"

Hence, we cannot say with impunity that the reference to the expression "order" in Section 11 of the TNPID Act would not include judgments of convictions and acquittals.

23 We would, therefore, have to interpret the expression "order" employed in Section 11 of the TNPID Act contextually. First, the scheme and arrangement of the sections show that Sections 6 to 10 that precede Section 11 of the TNPID Act give certain powers to the Special Court to pass several orders that are not connected with the actual trial of the offender. Secondly, if we were to agree with *Shivakumar, J.* and hold that Section 11 is the repository of appellate powers, then, a very anomalous situation would arise inasmuch as all orders, interlocutory or final, including remand orders, bail orders, return of property, issuance of non-bailable warrants, issuance of search warrants, orders dismissing private complaints under Section 203, discharge or refusal to discharge orders, *et al* will automatically become appealable to the High Court by virtue of Section 11 of the TNPID Act. This will become counter productive to the very object of constituting a Special Court. Thirdly, Section 11 of the TNPID Act provides for a special period of limitation which is lesser than the normal period of limitation available to a convicted accused to invoke the appellate jurisdiction of the High Court. To be more precise, an accused who has been convicted by the Sessions Judge may appeal to the High Court within sixty days as



provided under Article 115(b) of the Limitation Act, whereas, Section 11 of the TNPID Act limits it to thirty days. Fourthly, the State and the victim will get an automatic right of appeal without obtaining special leave in the event of the accused being acquitted by the TNPID Court. Fifthly, a very queer situation will result inasmuch as the State will have to seek special leave for filing an appeal against acquittal in respect of a murder / rape case accused, whereas, the State will have an unfettered right to move an appeal against acquittal of accused in a TNPID Act case. Of course, one may say that the appellate remedy is a creature of statute and the Legislature has the power to regulate it. However, if anomalous and absurd consequences were to ensue by literal interpretation of a statutory provision, it is the duty of the Court to interpret it in such a manner so as to subserve the intention of the Legislature by resorting to the Heydon's rule of interpretation. [See *R. vs. Heydon* (1584) 3 Co. Rep.7a: 76 ER 637].

24 Once it is held that Section 11 of the TNPID Act is not the source of power for filing an appeal against conviction/acquittal, then, we have to perforce trace the source of power to Chapter XXIX read with Section 4(2) Cr.P.C. In such view of the matter, we hold that Section 11 of the TNPID Act would only include orders passed by the Special Court under Sections 7 to 10 of the TNPID Act and under the Code of Civil Procedure, 1908.

25 In fine, we hold that:

- ➔ a Special Court constituted under the TNPID Act is not a Court of Magistrate. The Presiding Officer of the Special Court can only be a person of the cadre of a District and Sessions Judge. As a sequitur, we hold that appeals from judgments of convictions or acquittals passed by a Special Court under the TNPID Act would lie to the High Court under Chapter XXIX Cr.P.C., irrespective of the quantum of sentence.
- ➔ An appeal under Section 11 of the TNPID Act is confined to the orders passed by the Special Court under Sections 7 to 10 of the TNPID Act and under the Code of Civil Procedure, 1908 and will not include judgments of convictions or acquittals.
- ➔ The law laid down in **Antony** (supra) to the extent that it is inconsistent with the law laid down herein, will stand overruled.

26 Under normal circumstances, after having answered the issue under reference, this Court would place the matter to be decided by the Single Judge concerned. However, in this case, we <https://hcservices.courtsofmadras.gov.in/hcservices/> revision petition has been preferred in 2011 and it may not be appropriate to keep the proceedings lingering on indefinitely. Hence, instead of remitting the matter to the



learned Single Judge, we proceed to take up the Criminal Revision Case for disposal.

27 It is the grievance of the petitioner that the respondent had given a false complaint against him, on the basis of which, the police had registered a case in Cr. No.28 of 2010 and therefore, the respondent deserves to be punished under Section 211 I.P.C.

28 In the private complaint filed by the petitioner, he has averred that he is running a business in the name and style of "Paramount Marketing Corporation" through which he is selling Thirukkural books and that he is not into the business of receiving deposits on the promise of returning them with interest. In short, it is the contention of the petitioner that the nature of his business would not fall within the meaning of the expression "financial establishment" as defined under the TNPID Act and rather, that the nature of his business would attract only the Sale of Goods Act, 1930.

29 The sworn statement of the petitioner and four of his witnesses were recorded by the Special Court. On a perusal of the statements and materials produced by the petitioner, we find *prima facie* materials to show that the petitioner was engaged in a sort of multi level marketing by promising that if a person purchases 100 books at the rate of Rs.100/- per book, he will get Rs.1,000/- as commission for 36 months and on the 37th month, he would get Rs.10,000/-.

30 Therefore, the Trial Court was right in dismissing the petitioner's private complaint under Section 203 Cr.P.C. That apart, it is the further contention of the petitioner that the respondent was also a member of the scheme and on account of enmity, he had turned against the petitioner and had lodged a false complaint. It is common knowledge that motive is a double edged weapon. Further, previous enmity cannot be a good reason to hold that the complaint given by the respondent to the police, based on which, FIR has been registered and investigation taken up, is illegal. That apart, it is seen that after completing the investigation in Cr. No.28 of 2010, the police filed a final report before the TNPID Court against the petitioner and others on 23.01.2013, which was taken on file as C.C.No.10 of 2013. It appears that the petitioner had filed a petition under Section 482 Cr.P.C. before this Court for quashing the prosecution and this Court had allowed the quash application, challenging which, the State approached the Supreme Court. The Supreme Court has reversed the order passed by this Court and has directed the prosecution of the petitioner under the TNPID Act. Hence, the petitioner is now facing prosecution in C.C.No.3 of 2016 before the TNPID Court. When so much water has flown under the bridge, the contention of the petitioner that a false complaint has been lodged by the



respondent and therefore, the respondent should be prosecuted under Section 211 IPC cannot be countenanced.

In the result, we do not find any infirmity in the order dated 06.05.2011 passed by the TNPID Court dismissing the petitioner's complaint under Section 203 Cr.P.C. *Ex consequenti*, this Criminal Revision Case will stand dismissed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

- 1 The Special Judge, Special Court Under TNPID Act,
Madurai, Madurai District.
- 2 The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench Of Madras High Court,
Madurai. (2 copies)

cad

AE/SV MMS/SAR4/19.06.2018/15P/5C

order in
Crl.R.C. (MD) No. 841 of 2011
07.06.2018