

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.07.2019
C O R A M
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.Nos.839 and 840 of 2011

1. Sheeba Soundararajan

2. P.Soundararajan

... Appellants/Accused 2 & 3 in both the Appeals
-Vs-

State by
Inspector of Police,
Economic Offences Wing II,
Chennai.

.... Respondents/Complainant in both the Appeals

Prayer in Crl.A.No.839/2011:-

Criminal Appeal filed under Section 11 of the Tamil Nadu Protection of Interests of Deposits Act, praying to set aside the order dated 14.12.2011 passed in Crl.M.P.No.1880 of 2011 in C.C.No.10 of 2009 on the file of the Special Court under TNPID Act, Chennai-104.

Prayer in Crl.A.No.840/2011:-

Criminal Appeal filed under Section 11 of the Tamil Nadu Protection of Interests of Deposits Act, praying to set aside the order dated 14.12.2011 passed in C.C.No.10 of 2009 on the file of the Special Court under TNPID Act, Chennai-104.

For Appellants(in both) : Mr.V.V.Sairam

For Respondent (in both): Mr.T.Shanmuga Rajeswaran
Government Advocate (Crl.Side)

COMMON JUDGMENT

These appeals are arising out of the orders dated 14.12.2011 made in Crl.M.P.No.1880 of 2011 in C.C.No.10 of 2009 and C.C.No.10 of 2009 respectively passed by the learned Special Judge, Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, Chennai.

2. It is seen from the records that the respondent police registered a case for the offence under Section 5 of Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (herein after referred to as TNPID

Act) against the appellants and after investigation, laid a charge sheet. Since it is the case regarding the financial fraud, the Special Court has dealt with the matter in C.C.No.10 of 2009. The learned Special Judge framed charge against the appellants for the offence under Section 5 of TNPID Act. After framing the charges, the appellants filed a petition in CrI.M.P.No.1880 of 2011 under Section 216 of Cr.P.C for altering the charges framed against the petitioners 2 & 3/A2 & A3 either by including the proper person Ranikuppan to represent A1/Deepavali Fund or otherwise remove the name of Deepavali Fund/A1. After enquiry, the learned Special Judge discharged both the appellants from the charges framed against them on 14.12.2011. Based on the order passed in CrI.MP.No.1880/2011, the appellants/A2 & A3 were discharged from C.C.No.10/2009 on 14.12.2011. Challenging the above orders, A1 & A2 filed the present appeals before this Court.

3. The learned counsel appearing for the appellants would submit that the Special Court while discharging the appellants/A2 & A3 in CrI.MP.No.1880/2011 on the ground that the matter has been compounded and the reason assigned by the Special Court is not correct. The appellants had not filed any compounding petition to compound the offence and they have not filed any compromise memo stating that they are compounding the offence. Further, the learned counsel would submit that at the time of investigation, the appellants/A2 & A3 filed petitions seeking bail viz., CrI.M.P.3033 & 2193 of 2005 respectively. While granting bail to the appellants/A2 & A3, the Special Court imposed conditions on them to deposit a sum of Rs.20,000/- and Rs.17,800/- respectively. Pursuant to the order passed by the learned Special Judge, the appellants have also deposited the said amount before the Special Court. During the pendency of C.C.No.10 of 2009, the respondent herein filed a petition in CrI.M.P.No.4534 of 2005 under Section 451 of Cr.P.C to disburse the deposited amount to the beneficiaries. The said petition was allowed on 30.11.2005 and the amount was also disbursed to the beneficiaries. Mere depositing the amount to comply the condition of the order of the Court in the bail application will not amount to either compounding the offence or to accept the guilty. The learned Special Judge failed to consider the fact that the amount deposited only for compliance of the conditions imposed on them at the time of granting bail. The learned Special judge also stated the reason in the order that the offence was already compounded and the appellants/A2 & A3 are discharged against the proposition of law, which is liable to be set aside since the appellants/A2 & A3 are ready to go for trial and prove their innocence.

4. The learned Government Advocate (Crl. Side) appearing for the respondent would submit that even in the year 2005 itself the appellants deposited the entire amount of Rs.37,800/- in the Court deposit, thereafter, the respondent filed a petition under Section 451 of Cr.P.C for disbursing the amount to the beneficiaries. In that petition, the appellants have appeared through their counsel. Despite Court has given sufficient opportunities, the appellants have not filed any objections and therefore, the Court allowed the respondent herein to withdraw the amount and disburse the same to the beneficiaries and accordingly, the amount has been disbursed to the beneficiaries. This order has not been challenged by the appellants herein and they cannot say that they have not compounded the offence. Since the appellants have not filed any objection for withdrawing the amount, they cannot say that they wanted to contest the case. The Special Court after considering the above facts, under impression that the offence has been compounded and discharged the appellants/A2 & A3. There is no reason to interfere with the orders passed by the Special Court.

5. Heard the learned counsel appearing for the appellants and the learned Government Advocate (Crl. Side) and also perused the entire materials available on record.

6. It is the case of the prosecution that the appellants are running unregistered chit fund viz., Deepavali Chit Fund, F38, Block, II Cross Street, Thanikachalam Nagar, Chennai-110 and advertised to pay a monthly subscription of Rs.150/- each for a period of 12 months from 22.12.2003 to 22.12.2004 in the A1 financial establishment and promised to give 4 grams gold, sweets or crackers and silver articles. Thus, A2 and A3 had collected chit amounts in the name of A1 from the depositors and thereafter, they have defaulted to a sum of Rs.37,800/- from 3 depositors out of 21 depositors, and hence, they have committed the offence under Section 5 of the TNPID Act. The respondent police registered a case and after completing the investigation, laid a charge sheet in CC.No.10 of 2009 before the Special Court under the TNPID Act, Chennai. During the pendency of the same, the Special Court framed charges against the appellants for the offence under Section 5 of the TNPID Act. At that stage, the appellants/A2 & A3 filed a petition in Crl.MP.No.1880 of 2011 under Section 216 of Cr.P.C for altering the charges framed against the appellants/A2 & A3 either by including the proper person Ranikuppan to represent A1/Deepavali Fund or deleting the name of A1. During the pendency of the said petition, the appellants/A2 & A3 filed a petition in Crl.OP.No.28821 of 2011 under Section 482 of Cr.P.C seeking a direction to dispose of the case in C.C.No.10 of 2009 expeditiously. In that petition, the appellants/A2 & A3 have stated that they are innocents and

they are ready to prove their innocence before the Court below. On 07.12.2011, this Court directed the trial Court to dispose of the case in C.C.No.10 of 2009 as expeditiously as possible. In view of the order of this Court, the learned Special Judge, on 14.12.2011 passed the following order:-

".....
.....

So from this it is very clear that if the Judge considers that there is no sufficient ground for proceeding further as against the accused, he shall discharge the accused and record his reason for so doing. So because the charges framed as against the accused it does not mean that the trial should be proceeded even after brought to the knowledge of this Court that no purpose in proceeding further in the matter. Hence, this Special Court has to see whether the accused has cheated the depositors and any default in repayment as per promise or agreement made between them. But in this case as we have already discussed in detail the records are very clear that the entire amount has been deposited by the accused and it is also received by the defaulters without any objection. As such there is no purpose is proceeding further. Now it has been brought to the knowledge of this Court that as per the order of this Court, and as per the order of the Hon'ble High Court in CrI.O.P.No.18659 of 2009 the amount has been deposited by the accused before the Competent Authority. The depositors have also accepted the amount without any objection. The Competent Authority has also filed a report and the matter has been compounded. Hence, considering all these aspects this Court comes to the conclusion that there is no purpose in keeping the matter as pending and conducting the trial. Since as per the provision of Section 5A(1) of TNPID Act, the matter has also been compounded. Hence, considering all these aspects even though this petition is filed under Section 216 of Cr.P.C, this Court passed an order under Section 227 of Cr.P.C and the accused are discharged from this case. Finally, the accused are discharged from all the charges.

When the order was about to be pronounced in the open Court, the counsel for the accused filed a memo stating that our Hon'ble High Court was pleased to pass an order in CrI.O.P.No.28821/2011 dated 7.12.2011 directing this Hon'ble Court to expedite the trial. Taking into consideration and with due respect to the facts stated in the memo regarding the order passed by the Hon'ble High Court, this

order is pronounced. Because the Hon'ble High Court itself in the above said order has directed this Court to expedite the trial and to dispose of the case. Hence, considering that aspect also, this order is pronounced.

In the result, the accused are discharged from all the charges."

7. On a perusal of the orders of the trial Court, it is not clear that on what basis the trial Court has come to the conclusion that the appellants/A2 & A3 have compounded the offence. There is no material to show that the appellants/A2 & A3 have compounded the offence or they have filed any memo for compromise. The reason stated by the learned Special Judge for discharging the appellants/A2 & A3 are not based on any material. Therefore, the orders of the Special Judge is liable to be set aside. However, the amount was disbursed even in the year 2005 itself, the appellants/A2 & A3 have also not challenged the said order and therefore, they are not entitled to any reimbursement of the amount deposited by them.

8. In view of the above, these Criminal Appeals are allowed. The orders dated 14.12.2011 in Crl.M.P.No.1880 of 2011 in C.C.No.10 of 2009 and C.C.No.10 of 2009 respectively passed by the learned Special Judge, Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, Chennai, are hereby set aside and the Crl.M.P.No.1880 of 2011 in C.C.No.10 of 2009 and C.C.No.10 of 2009 are remitted back to the learned Special Judge under TNPID Act, Chennai for afresh consideration and disposal in accordance with law. The learned Special Judge is directed to dispose the case as expeditiously as possible as directed by this Court in Crl.O.P.No.28821 of 2011 dated 07.12.2011.

Sd/-

सत्यमेव जयते Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

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

2. The Inspector of Police,
Economic Offences Wing II,
Chennai.

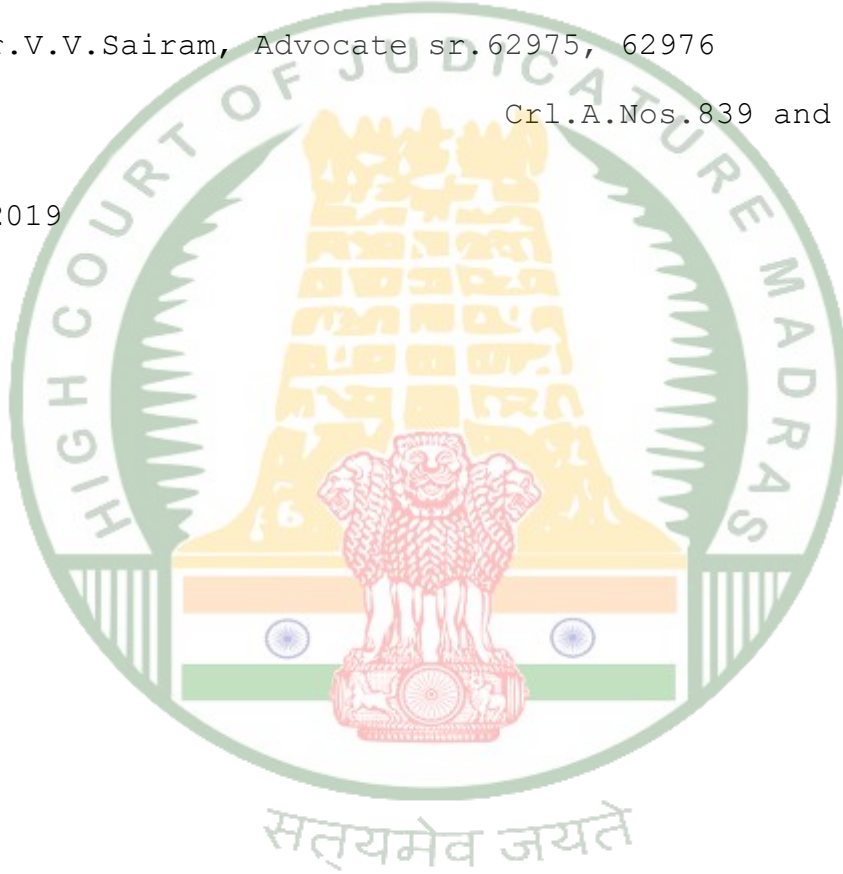
3. The Public Prosecutor,
High Court,
Chennai-104.

4. The Section Officer,
Criminal Section,
High Court, Madras-600 104.

+2cc to Mr.V.V.Sairam, Advocate sr.62975, 62976

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