

Bail Slip.

The Petitioner/Accused viz, Ananthakrishnan @ Arunkumar S/o.R.Balaraman was directed to be released on bail as per order of this court dated 11.02.2013 in M.P. No. 1/2013 in CrI.A.No.95 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :03.04.2019

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.95 of 2012

Ananthakrishnan @ Arunkumar ... Appellant/Accused

/versus/

The State rep.by  
The Sub Inspector of Police,  
Economic Offences Wing-II,  
Admiralty House,  
Chennai 600 002. ... Respondent/Complainant

Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code praying to set aside the judgment passed against the appellant on 31.01.2012 in C.C.No.46 of 2007 on the file of the learned Special Judge, TNPID Court, Chennai.

For Appellant : Mr.K.Shanmugam  
Legal Aid Counsel

For Respondent : Mrs.Kritika Kamal.P  
Government Advocate (CrI.side)

J U D G M E N T

The learned counsel for the appellant was appointed by the Legal Services Authority, since the learned counsel preferred the appeal on behalf of the appellant has withdrawn his appearance.

2. It is a case arising from the judgment of the Special Court under TNPID Act, Chennai, based on the complaint given by Murali [PW.1] and Balamurugan [PW.2] that they have deposited a sum of Rs.2,50,000/- and Rs.1,50,000/- respectively with the

accused persons namely, Ananthakrishnan and Balaraman, who were running a financial institution and after receiving the deposit they have failed to repay the agreed interest as well as the Principal, the case was registered by EOW on 08.02.2005.

3. Before the trial Court, the prosecution has marked 6 Exhibits through 5 witnesses as PW.1 to PW.5. In defence, the accused has examined 2 witnesses as DW.1 and DW.2.

4. The specific case of the prosecution is that in the year 2004, both the accused canvassed the public to deposit the money with them and promised to pay the interest at the rate of 18% per annum. Believing the words, Murali [PW.1] and Balamurugan [PW.2] deposited their money. According to the prosecution Murali deposited Rs.2.50,000/- on 21.02.2004 and Balamurugan deposited Rs.1.50,000/- on 19.02.2004. The accused issued two deposit receipts to them for the money received. Since they defaulted payment of principal and interest, they were charged for offence under Section 5 (2 counts) of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997.

5. To prove the charges, Murali [PW.1] and Balamurugan [PW.2] both the investors in whose name the receipts were issued, were examined. To corroborate the evidence, one Elangovan was examined as PW.3. He is none other than the brother of PW.1 and nephew of PW.2. One Prakash who is a witness to the deposit receipts, which were marked as Ex.P1 and Ex.P3, was examined as PW.4. The Investigating Officer John Rose was examined as PW.5. Before the trial Court, the accused has examined two witnesses to prove that the alleged transaction was false.

6. Elangovan [PW.3] and A1 were carrying on stationary business at Chinthadripet. Due to some difference of opinion, they parted away. Under the pressure of police, the documents were extracted from the accused persons and misused as if they have committed the offence under TNPID Act. It is also contended before the trial Court that the alleged offence will not attract Section 5 TNPID Act. The prosecution has failed to prove that the accused persons were running any financial institution and they collected deposits under scheme or arrangements. The trial Court after considering rival submissions has found A1 guilty, since the deposit receipts were issued by him and convicted him to undergo sentence for a term of 5 years and fine of Rs.25,000/-(2 counts) and acquitted A2, since the prosecution has failed to prove the guilty beyond reasonable doubt.

7. In this appeal, the appellant/A1 specifically contends that the evidence of prosecution does not prove the ingredient of Section 5 of TNPID Act. The Investigating Officer John Rose [PW.5] has not carried on the investigation to find out whether there was any financial establishment run by the accused. Except a vague reference of collection of Deepavali deposit by PW.4, who is only a witness for deposit receipts, the investors are not spoken about the alleged business establishment.

8. The learned counsel appearing for the appellant pointing out the tenure of deposit receipts Ex.P1 and Ex.P3 as well as the alleged complaint marked as Ex.P2 and Ex.P4 would submit that it is a clear case of abuse of law by the respondent police by illegally detaining the appellant and his father. They have extracted signature in blank documents which was later used to foist the case as if the appellant and his father were running a financial institution and pursuant to the arrangement, they collected deposit from PW.1 and PW.3.

9. Heard the learned counsel for the appellant and the learned Government Advocate (Crl.side).

10. The case of the prosecution is that on complaint by Murali and Balamurugan, First Information Report was registered by them on 08.02.2005. The complaint of Murali [PW.1] is marked as Ex.P1. It is in the typed format, wherein, the complainant Murali has affixed his signature on 12.11.2004. The complaint of Balamurugan [PW.2] is also dated 12.11.2004. In both the complaints the appellant Ananthakrishnan name alone is found placed. It is alleged that Ananthakrishnan has received deposits promising 18% interest. However, after registering the First Information Report, the Investigating Officer has proceeded not only against Ananthakrishnan, who is the signatory of deposit receipts but also against Balaraman. On going to the deposition of PW.5 investigating Officer, this Court is unable to find under what basis the acquitted accused Balaraman was arrayed as accused and on what reasonable belief that the prosecution came to the conclusion that the accused persons were running financial establishment. He admits that he is not aware of the name of the financial establishment run by the accused. He has not recovered any documents in the course of investigation in connection with the financial institution run by the accused. Except PW.1 and PW.2, no one has given any complaint against the appellant regarding running of financial establishment or collection of deposit or failure to repay the deposit. He admits that in his investigation, he came to know that PW.1, PW.2 and PW.3 are close relatives. PW.4 Prakash in his evidence has admitted that he is the friend of other 3 witnesses.

11. In the light of the above facts, from the scrutiny of the alleged deposit certificates which is marked as Ex.P1 and Ex.P3, surprisingly, this Court finds that except the signature of A1, the recital of the deposit does not disclose anything about the A1 or his financial establishment. The documents Ex.P1 and Ex.P3 on the face of it, the manner in which the signature of A1 and the signature of PW.4 Prakash affixed clearly gives impression that it is not a document prepared in the normal course. Section 2, 3 of the TNPID Act defines what is financial establishment. Only if individual or association of individual firm or company is carrying on business of receiving deposit under the scheme or arrangement default in payment, this Act will apply. Therefore, to prosecute any individual or association of individual firm or company, prima facie it should be established that they carry on business of receiving deposit. Such as (i) receipt of deposit must be under any scheme or arrangement or any other manner. (ii) There must be a default in repay the deposit or interest.

12. The evidence before this Court lacks the following details. Whether the appellant was carrying on business of receiving deposits. Except PW.1 and PW.2 who claims that the appellant received deposit from them and the evidence of PW.4 who says that he has receiving deposit from public under Deepavali scheme, there is no other evidence to substantiate or corroborate the claim. As pointed out earlier, even in the complaint of PW.1 and PW.3, there is no whisper about the Deepavali deposit scheme which is spoken by PW.4 in his deposition. The same is only an embellishment in order to attract the appellant under the purview of TNPID Act. Next when the prosecution has failed that the appellant was carried on business of receiving deposits and has failed to establish that such receipt of deposit was under the scheme or arrangement or any other manner, the ingredients of Section 5 of Act under which the appellant been convicted is not attracted.

13. Strangely in this case, the respondent has received the complaint from PW.1 and PW.2 on 12.11.2004 based on two deposit certificates executed by the appellants on 21.02.2004, has waited for nearly two months to register the First Information Report. But in these two months, the Investigating Officer has not made any preliminary enquiry about the complaint and whether the same will fall within the purview of TNPID Act.

14. In such circumstances, this Court finds that the prosecution of the appellant under the TNPID Act based on the complaint Ex.P2 and Ex.P4 and the receipts Ex.P1 and E.P3 is illegal and liable to be set aside.

15. Accordingly, the appeal is allowed. Judgment of

conviction and sentence passed by the trial Court in C.C.No.46 of 2007 dated 31.01.2012 is set aside. The appellant is set at liberty. Bail bond if any executed by the appellant shall be cancelled. Fine amount if any paid by the appellant shall be refunded to him. This Court appreciates Mr.Mr.K.Shanmugam, legal aid counsel, who assisted the Court to arrive at a right decision by applying the correct legal position involved in this case.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.The Special Judge, TNPID Court, Chennai.

2.The Sub Inspector of Police,  
Economic Offences Wing-II,  
Admiralty House,  
Chennai 600 002.

3.The Public Prosecutor, High Court, Madras.

4. The Superintendent, Central Prison, Puzhal, Chennai.

5. The Member Secretary  
Legal services Authority  
High Court, Madras 104.

copy to

The Section Officer  
Criminal Section  
High Court, Madras 104.

+1 CC to Mr.K.Shanmugam, Legal Aid Counsel, sr 33147

CrI.A.No.95 of 2012

PA(CO)  
SP(11/04/2019)