

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 18.01.2019	Delivered on 22.01.2019
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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.7112 of 2017

Crl.M.P.Nos.5146 & 5147/2017 & 16479/2018

S.Nandhini ..Petitioner/2nd Accused

..Vs..

The State
Inspector of Police,
Economic Offence Wing-II,
Vellore. ..Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to quash the FIR dated 05.02.2015 in the Crime No.02/2015, pending on the file of Special Court for TNPID at Chennai.

For Petitioner : Mr.K.Mukund Rao

For Respondent : Mr.M.Mohamed Riyaz, APP

ORDER

This Criminal Original Petition has been filed seeking to quash the FIR in Crime No.2 of 2015, pending on the file of the respondent Police. The petitioner has been shown as A-2 in the FIR.

2. The case of the prosecution is that one Mayakrishnan had remitted a total sum of Rs.1,75,000/- to the Financial Establishment run by A-1 to A-4 in a name and style of Jalagandeswarar Auto Finance. The said Mayakrishnan came to know that the accused persons have collected various amounts from different depositors and have defaulted in repaying the deposits even after maturity. Therefore, he insisted the repayment of the amount remitted by him. Since it was not repaid, he gave a complaint to the respondent Police and the respondent Police have registered an FIR against four accused

persons for an offence under Section 120 b, 406, 420 IPC and Section 5 of the TNPID Act. [TNPID Act "hereinafter referred as 'the Act']

3. The learned counsel for the petitioner primarily submitted that Section 5 of the Act will not be attracted in this case since even as per the complainant, the amount was paid by him towards a chit transaction. The learned counsel submitted that the amount remitted in a chit transaction will not satisfy the requirements of Section 5 of the Act which talks about default in repayment of deposit and the amount paid towards a chit transaction is not a deposit. In order to substantiate his arguments, the learned counsel relied upon the judgment of this Court in P.Sukumar .Vs. The State of Tamil Nadu, rep. by the Superintendent of Police, Economic Offences Wing, Anna Nagar, Chennai-600 040 and others made in CrI.O.P.No.26826 of 2013 dt.27.04.2015.

4. The learned Additional Public Prosecutor vehemently opposed the petitioner and submitted that due to the pendency of the criminal original petition, the respondent Police is not able to proceed further with the investigation in a case where a large number of depositors have been cheated by the accused persons.

5. The learned Additional Public Prosecutor submitted that the accused persons have defaulted nearly to the tune of Rs.6,67,62,444/- and till now 403 complaints have been received by the respondent Police. The learned counsel would submit that A-1 to A-4 canvassed and induced the public to deposit their amount in the Finance Company run by the accused persons and the accused persons have converted the deposit amount and subscription received by them into immovable properties in their own names. The learned counsel further submitted that the accused persons have issued receipts and cards printed as "Sri Jalagandeswarar Auto Finance and Chits" with registration No.3 of 2000. When this was checked by the Police, it was found that this registration number does not pertain to the Company run by the accused persons and it belongs to one Ponnusamy who is running a business in the name and style of Long-O-Cool Drinks. The learned counsel therefore submitted that prima facie a fraud has been committed against the general public by exhibiting the false registration number which also requires investigation.

6. The learned Additional Public Prosecutor further refuted the submission made by the learned counsel for the petitioner to the effect that a chit transaction will not amount to a deposit under Section 5 of the Act, on the ground that the accused persons have collected lump sum amounts from the general public and issued receipts for the same, and therefore, the

amounts received by the accused persons clearly falls within the definition of deposit under Section 2(2) of the Act, 1997. Therefore, the learned counsel submitted that this Court should not interfere with the investigation, which is at a very crucial stage and already the Police have recorded the statements from more than 150 depositors. A detailed counter has also been filed by the Inspector of Police, EOW-II, explaining the entire details of the case and also the facts that got revealed during the course of investigation.

7. This Court has carefully considered the submissions made on either side. This Court is of the considered view that the complaint as well as the materials placed on record, clearly makes out a prima facie offence under Section 120 b, 406, 420 IPC and Section 5 of the Act. This is the case which involves the interest of more than 400 depositors and the defaulted amount runs to the tune of more than six crores. It is also seen that the respondent Police have taken steps to attach the properties belonging to the accused persons by virtue of G.O.M.S.No.912 dated 08.12.2017, issued by the Government.

8. It will be relevant to ponder into the judgment cited by the learned counsel for the petitioner in P. Sukumar referred supra, the relevant portions of the judgment is extracted hereunder:

"The petitioner herein is arrayed as A21 in Cr.No.3/2009, on the file of the Deputy Superintendent of Police, Economic Offences Wing-II, Chennai-40, culminated as CC.No.17/2013 on the file of the Special Judge, TNPID Court, Chennai, for the offences under sections 420, 406, 409 r/w 120B IPC and section 5 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1997 (hereinafter shortly referred to as TNPID Act) and Sections 4 and 5 of the Chit Funds Act r/w Section 58(B) of the RBI Act.

24. Next legal objection raised by the petitioner herein is that no deposit was collected by M/s.Suprabath Chits and Investments Private Ltd and the transaction carried on by the company is only chit transaction and the default in repayment of chit amount, if any, can only be the subject matter of enquiry before the Registrar under section 64 and the same do attract the penal provision under section 76 of the Chit Funds Act and the director of the company for such

offence, can be tried under section 79 of the Chit Funds Act and the same is outside the purview of TNPID Act.

25. The learned counsel for the petitioner in support of his contention as above stated, has relied on the relevant provisions of law under the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 (hereinafter shortly referred to as 'TNPID Act') and Chit Funds Act. The relevant provisions of TNPID Act are as follows:

Section 2(2) defines deposit, which means the deposit of money either in one lump sum or by instalments made with the Financial Establishment for a fixed period, for interest or for return in any kind or for any service.

Section 2(3) explains Financial Establishment, which means an individual, an association of individuals, a firm or a company registered under the Companies Act, 1956 (Central Act 1 of 1956) carrying on the business of receiving deposits under any scheme or arrangement or in any other manner, but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined in section 5(c) of the Banking Regulation Act, 1949 (Central Act X of 1949).

Section 3 provides for attachment of properties on default of return of deposits.

Under section 4, the Government shall appoint a competent authority to exercise control over the properties attached by the Government under section 3.

Section 5 is the penal provision for default in repayment of deposits and interests by the Financial Establishment.

Section 5A provides for compounding of offence by the competent authority with the permission of the Special Court, on payment of the entire amount due to the depositors with or without interest.

Section 6 empowers the Government to constitute one or more Special Courts in the

cadre of a District and Sessions Judge, for trying any offence under the Act.

Under section 11, appeal remedy is available before the High court against any order of the Special court, within 30 days from the date of order.

Section 12 empowers the Government to appoint a Special Public Prosecutor for each of the Special Court for the purpose of conducting the cases in the Special Court.

Section 13 lays down the procedure and powers of the Special Court regarding offences, as per which, the Special Court shall follow the procedure prescribed in the Code of Criminal Procedure, 1973, for the trial of warrant cases by Magistrates.

The relevant provisions of the Chit Funds Act are sub sections to Section 2 and Sections 64 to 72, 76, 79 and 80, which are extracted hereunder:

26. The combined appreciation of the definitions of 'deposit' and 'Financial Establishment' under TNPID Act and 'chit' and 'chit amount' under Chit Funds Act and other relevant provisions regarding the remedies available in case of default in repayment of deposits and interests and the competent authority under the Act to do various acts for any default in repayment of deposits and interests by the Financial Establishment and the nature of the proceedings to be initiated in case of default in repayment of deposits and period of limitation provided under the TNPID Act and the nature of dispute arising out of the chit transaction, the manner of settlement and disposal of the same, period of limitation for the same and the competent authority to deal with the disputes, the penalty provision under the Chit Funds Act and the constitution of the Special Court in the cadre of a District and Sessions Judge as Presiding Officer of the same for trying any offence under the TNPID Act and the appointment of competent authority to try the offence under the Chit Funds Act and different appellate authority for entertaining the

appeal against the order of the Special Court under TNPID Act and against the order of the Registrar or nominee under the Chit Funds Act as explained above would undoubtedly go to show that the chit transaction is different transaction and is not covered under the definition of 'deposit' under TNPID Act. The definitions of 'deposit' and 'chit amount' are totally different. While the deposit means the deposit of money with the Financial Establishment for a fixed period for interest or for return in any kind or for any service, 'chit' means the transaction, under which a person enters into an agreement with a specified number of persons that everyone of them shall subscribe a certain sum of money by way of periodical installments over a definite period and that each subscriber shall, in his turn as determined by lot or by auction or by tender or in such other manner, as may specified in the chit agreement, be entitled to the prize amount. Both the Acts provide for different mechanism and different terms and conditions for commencing and conducting such business and different authority to deal with the matters in relation to the business and different courts and different procedure to deal with the disputes arising out of such business and different appellate authority and different period of limitation for filing such appeals. As a matter of fact, while the business of receiving deposits as defined under TNPID Act under any scheme or arrangement or in any other manner is different, Section 12 of the Chit Funds Act prohibits transacting business other than chit business by a company, except with the general or special permission of the State Government. When the two Acts deal with two different nature of transactions and when it is nobody's case that M/s.Suprabath Chits and Investments Private Limited, where the petitioner/A21 is said to be nominated as director, is collecting deposits in addition to chit business, no prosecution can be allowed to go on against the petitioner herein before the Special Court for any alleged act of default or defraud of deposits as director of A1 company.

27. Insofar as Section 58-B of the Reserve Bank of India Act is concerned, it provides for penalty for making any willfully false statement, while canvassing deposits of money from public. Here again, the same does not fall under the Chit Funds Act.

30. To sum up, the petitioner, who is arrayed as A21 is neither director nor partner in either of A2 to A5 financial institutions and his nomination as director in M/s.Suprabath Chits and Investments Pvt. Ltd. which is A1/financial institution, is legally not valid and is only a paper document and is legally not acted upon and he is not shown to have participated in either management or administration of either of the financial establishments. Further, any dispute touching the chit transaction can be the subject matter of the Registrar only and the acts complained of in respect of A1 chit company do attract only the penal provision of the Chit Funds Act and the contravention of the provisions of the Chit Funds Act is cognizable by the concerned Judicial Magistrate and the offences arising out of Chit Funds Act are out side the purview of TNPID Act and the same cannot be clubbed with the proceedings initiated for the offences under TNPID Act.

9. The same view has been taken by another learned Judge of this court in M.C.Ravikumar .Vs. The Commissioner of Police, Chennai and another, in Crl.O.P.No. 22506 of 2015, dated 11.02.2016.

10.It will be useful to take note of some of the Judgments of the Hon'ble Supreme Court which tested the constitutional validity of the Act and also similar enactments which were brought into force in the states of Andhra Pradesh and Maharashtra and Union Territory of Pondicherry.

(i) K.K.Baskaran .Vs. State rep. by its Secretary, Tamil Nadu and Others reported in 2011(3) SCC 793. The relevant portions of the judgment is extracted hereunder:

"28. In the case of the Tamil Nadu Act, the attachment of properties is intended to provide an effective and speedy remedy to the aggrieved depositors for the realisation of

their dues. The offences dealt with in the impugned Act are unique and have been enacted to deal with the economic and social disorder in society, caused by the fraudulent activities of such financial establishments.

31. We fail to see how there is any violation of Articles 14, 19(1)(g) or 21 of the Constitution. The Act is a salutary measure to remedy a great social evil. A systematic conspiracy was effected by certain fraudulent financial establishments which not only committed fraud on the depositors, but also siphoned off or diverted the depositor's funds mala fide. We are of the opinion that the act of the financiers in exploiting the depositors is a notorious abuse of faith of the depositors who innocently deposited their money with the former for higher rate of interest. These depositors were often given a small pass book as a token of acknowledgment of their deposit, which they considered as a passport of their children for higher education or wedding of their daughters or as a policy of medical insurance in the case of most of the aged depositors, but in reality in all cases it was an unsecured promise executed on a waste paper. The senior citizens above 80 years, senior citizens between 60 and 80 years, widows, handicapped, driven out by wards, retired government servants and pensioners and persons living below the poverty line constituted the bulk of the depositors. Without the aid of the impugned Act, it would have been impossible to recover their deposits and interest thereon.

32. The conventional legal proceedings incurring huge expenses of court fees, advocates' fees, apart from other inconveniences involved and the long delay in disposal of cases due to docket explosion in courts, would not have made it possible for the depositors to recover their money, leave alone the interest thereon. Hence, in our opinion the impugned Act has rightly been enacted to enable the depositors to recover their money speedily by taking strong steps in this connection.

33. The State being the custodian of the welfare of the citizens as parens patriae cannot be a silent spectator without finding a solution for this malady. The financial swindlers, who are nothing but cheats and charlatans having no social responsibility, but only a lust for easy money by making false promise of attractive returns for the gullible investors, had to be dealt with strongly. The small amounts collected from a substantial number of individual depositors culminated into huge amounts of money. These collections were diverted in the name of third parties and finally one day the fraudulent financiers closed their financial establishments leaving the innocent depositors in the lurch.

(ii) State of Maharashtra .Vs. Vijay C.Puljal and Others, reported in 2012 (10) SCC 599. The relevant portions of the judgment is extracted hereunder:

"2. We have passed our judgment dated 4-3-2011 in K.K Baskaran v. State 2011 3 SCC 793 by which we have upheld the constitutional validity of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (for short "the Tamil Nadu Act"). Subsequently, by our order dated 9-5-2011 passed in Sonal Hemant Joshi v. State of Maharashtra 2012 10 SCC 601 we have also upheld the constitutional validity of the Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999 (for short "the Maharashtra Act").

3. We are not permitting any further arguments on the constitutional validity of the Maharashtra Act and the Tamil Nadu Act as we have already upheld their constitutional validity.

4. The large-scale fraud was played on the innocent public who deposited their hard-earned money with certain unscrupulous persons. We have held that the Maharashtra Act and the Tamil Nadu Act to deal with this

situation are covered by Entry 1 of List II (the State List) of the Seventh Schedule to the Constitution because this is likely to disturb the public order. However, if any party wishes to submit that it is not covered by the Maharashtra Act or the Tamil Nadu Act (as the case may be), it is open to it to take independent proceedings before the forum concerned.

(iii) New Horizon Sugar Mills Limited .Vs. Government of Pondicherry, reported in 2012 (10) SCC 575. The relevant portions of the judgment is extracted hereunder:

"13. Apart from the submissions relating to Section 25-FF of the Industrial Disputes Act, 1947, what we are really concerned with in these appeals is with regard to the validity of the Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004 (1 of 2005) and GOMS No. 12 dated 18-2-2006 issued by the Department of Revenue and Disaster Management.

14. As indicated herein before, the object of the Act was to protect the interests of depositors in financial establishments in the Union Territory of Pondicherry. The Division Bench of the High Court [New Horizon Sugar Mills Ltd. v. Govt. of Pondicherry, Writ Appeal No. 1144 of 2006, decided on 27-3-2007 (Mad)] observed that, inasmuch as, the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, were in pari materia with the provisions of the Pondicherry Act of 2005 and the provisions of the Tamil Nadu Act had been upheld, nothing further was required to be gone into in that regard. However, after the decision of a Full Bench of the Bombay High Court in Vijay C. Puljal v. State of Maharashtra [(2005) 4 CTC 705 (Bom)], by which the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, was struck down, a batch of writ petitions came to be filed before the Madras High Court challenging the provisions of the Tamil Nadu Act. Department of Revenue and Disaster Management.

15. Since the provisions of the Maharashtra Act had been struck down by a Full Bench of the Bombay High Court, the writ petitions were also contested before a Full Bench [S. Bagavathy v. State of T.N., (2007) 1 LW 892 (Mad)] , which considered the contentions relating to the jurisdiction of the State Government, with reference to various entries in the Seventh Schedule to the Constitution, provisions of the Companies Act, the Reserve Bank of India Act and the Maharashtra Act and after examining the challenge thrown to the vires of the Act, came to the conclusion [S. Bagavathy v. State of T.N., (2007) 1 LW 892 (Mad)] that the Tamil Nadu Act did not suffer from any legislative incompetency, nor was it arbitrary, unreasonable, or violative of the principles of natural justice. The writ petitions were, accordingly, dismissed. The Division Bench [New Horizon Sugar Mills Ltd. v. Govt. of Pondicherry, Writ Appeal No. 1144 of 2006, decided on 27-3-2007 (Mad)] after considering the pronouncement of the Full Bench [S. Bagavathy v. State of T.N., (2007) 1 LW 892 (Mad)] in regard to the Tamil Nadu Act and finding that the entire provisions of the Pondicherry Act 1 of 2005 were in pari materia with the provisions of the Tamil Nadu Act, held that the challenge to the legislative competency and jurisdiction of the Government of Pondicherry in enacting the impugned Act, was liable to be rejected.

16. A question of considerable importance also came up for consideration in the appeal filed by the Government of Pondicherry with regard to the observations of the learned Single Judge in Writ Petition No. 1897 of 2006, wherein the learned Single Judge while upholding the validity of the enactment, went on to observe that the impugned enactment was made only in relation to unincorporated trade establishments and the State Legislature of Pondicherry had legislative competence to legislate in respect of unincorporated financial establishments only. In this regard, a submission was made on behalf of the

Government of Pondicherry to the effect that Schedule VII List II Entry 32 to the Constitution was only a residue of Entry 42 in the Union List and that Entry 32 also covered incorporated companies. It was submitted that the learned Single Judge had erroneously held that Pondicherry Act 1 of 2005 only governed unincorporated trade establishments.

46. From the case made out on behalf of the appellant Mill and the submissions in support thereof, what emerges for decision is:

46.1. Whether the subject-matter covered by the Pondicherry Act is relatable to Entries 43, 44, 45 and 97 of the Union List or to Entries 1, 30 and 32 of the State List?

46.2. Coupled with the aforesaid question is the other question as to whether the decision of this Court in K.K. Baskaran case [(2011) 3 SCC 793 : (2011) 2 SCC (Civ) 90] , upholding the validity of the Tamil Nadu Act, would also be applicable for determining the validity of the Pondicherry Act, having particular regard to Mr Ganguli's submissions that there were major differences in the two enactments?

59. The decision in K.K. Baskaran case [(2011) 3 SCC 793 : (2011) 2 SCC (Civ) 90] so far as it relates to protection of interests of depositors, cannot be ignored. In our view the decision rendered by the Madras High Court [Ed.: The decision of the High Court has been reported as S. Bagavathy v. State of T.N., (2007) 1 LW 892 (Mad) and upheld in K.K. Baskaran v. State, (2011) 3 SCC 793 : (2011) 2 SCC (Civ) 90.] in K.K. Baskaran case [(2011) 3 SCC 793 : (2011) 2 SCC (Civ) 90] would be equally applicable to the facts of this case. We have to bear in mind that the validity of the Tamil Nadu Act and the Maharashtra Act have been upheld by the Madras High Court [S. Bagavathy v. State of T.N., (2007) 1 LW 892 (Mad)] and this Court [(2011) 3 SCC 793 : (2011) 2 SCC (Civ) 90] , [Sonal Hemant Joshi v. State of Maharashtra, (2012) 10 SCC 601] , [State of Maharashtra v. Vijay C. Puljal,

(2012) 10 SCC 599] . The objects of the Tamil Nadu Act, the Maharashtra Act and the Pondicherry Act being the same and/or similar in nature, and since the validity of the Tamil Nadu Act and the Maharashtra Act have been upheld, the decision of the Madras High Court [New Horizon Sugar Mills Ltd. v. Govt. of Pondicherry, Writ Appeal No. 1144 of 2006, decided on 27-3-2007 (Mad)] in upholding the validity of the Pondicherry Act must also be affirmed. We have to keep in mind the beneficial nature of the three legislations which is to protect the interests of small depositors, who invest their life's earnings and savings in schemes for making profit floated by unscrupulous individuals and companies, both incorporated and unincorporated. More often than not, the investors end up losing their entire deposits. We cannot help but observe that in the instant case although an attempt has been made on behalf of the appellant to state that it was not the appellant Company which had accepted the deposits, but M/s PNL Nidhi Ltd., which had changed its name five times, such an argument is one of desperation and cannot prima facie be accepted. This appears to be one of such cases where funds have been collected from the gullible public to invest in projects other than those indicated by the front company. It is in fact the specific case of the respondents that the funds collected by way of deposits were diverted to create the assets of the appellant Mill.

60. In such circumstances, we are not inclined to accept the submissions made by Mr Ganguli, since in our view there is little difference between the provisions of the Tamil Nadu Act and the Pondicherry Act, which is to protect the interests of depositors who stand to lose their investments on account of the diversion of the funds collected by M/s PNL Nidhi Ltd. for the benefit of the appellant Mill, which is privately owned by Shri V. Kannan and Shri V. Baskaran, who are also Directors of M/s PNL Nidhi Ltd.

(iv) Soma Suresh Kumar .Vs. Government of Andhra Pradesh and Others, reported in 2013(10) SCC 677. The relevant portions of the judgment is extracted hereunder:

"1. The petitioners, who were erstwhile Directors of Vasavi Cooperative Urban Bank Limited, have approached this Court seeking a declaration that Sections 3, 5, 8 and 9 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (in short "the Andhra Act") are unconstitutional and violative of fundamental rights guaranteed to them under Articles 14 and 21 of the Constitution of India and also other consequential reliefs.

2. The petitioners were Directors of the above-mentioned bank during the period from 1996 to 2002. Large number of complaints were received from the depositors stating that the Board of Directors of the bank had swindled away the money of the depositors by creating false documents, amounting to crores of rupees. On receipt of the complaints, enquiry was conducted and, ultimately, Joint Registrar of Cooperative Societies and Chief Executive Officer of the bank registered Crime No.8 of 2003 on the file of the CID, Police Station under Section 120(b), 420, 409, 468, 477(A), Indian Penal Code and under Section 5 of the Andhra Act. Criminal case was later investigated by the Deputy Superintendent of Police, STD-II, CID Hyderabad and charge-sheet was filed against several persons, including the petitioners. The Charge-sheet was registered as C.C. No.4 of 2003 before the Special Court-cum-Metropolitan Sessions Judge, Hyderabad. It is at this juncture, the petitioners have approached this Court seeking the above-mentioned reliefs and also for a writ of certiorari to quash all proceedings or orders passed by the competent authority and by the Special Court constituted under the Andhra Act. Petitioners have also sought for a writ of mandamus directing the respondents not to arrest the petitioners or to attach their properties for the offences alleged to have been committed by them under Sections 3 and 5 of Andhra Act.

7. Vasavi Cooperative Bank was registered as a cooperative society on 29.05.1982. The bank was issued a licence to carry on the business on June 16, 1982 and was accorded the Scheduled Status in the Banking Regulations Act w.e.f. May 22, 1999. The Bank was placed under the directive of Section 35A of the Banking Regulations Act, 1949 with effect from the close of business on March 7, 2003. The Bank is having 17 branches all over the State of Andhra Pradesh.

8. We notice that the State of Andhra Pradesh was contemplating a legislation similar to one enacted in the State of Tamil Nadu, for a long time. On many occasions, the State's attention was drawn, to the large scale diversion of money by many financial institutions in the State, by cheating the depositors of their hard-earned savings, misappropriating the same and then later vanishing from the scene. Several cases were booked against the persons responsible for the same, but the presence of a comprehensive legislation to curb such unfair practice was lacking. This was the reason for the State of Andhra Pradesh to enact the Andhra Act.

11. The petitioners have raised an objection that the State Legislature does not have the competence to enact the Andhra Act since the subject "banking" is covered under Entry 45 of List I of Seventh Schedule. Hence, only the Central Government is entitled to enact the law relating to subject "accepting of deposit from the public and repayment of the same on demand".

12. Referring to the judgment of this Court in R.C. Cooper's case (supra), it was contended that the scope, ambit and definition of the term "banking" under Entry 45 List I of the Seventh Schedule appended to Article 246 would include all activities falling under Section 5(b) of the Banking Regulation Act, 1949. Consequently, only the Parliament alone

has the power to frame the law relating to acceptance of deposits or its return or making the same as an offence. Further, it was pointed out that the powers conferred on State Legislature to legislate "corporate societies" as falling under Entry 32 List II of the Seventh Schedule appended to Article 246 of the Constitution can be confined to incorporation, registration, administration, amalgamation, winding-up of the cooperative societies. Further, it was pointed out that the power under that Entry can be stretched to encompass all the activities of banking under Entry 45 of List I of the Seventh Schedule. It was pointed out that under the guise of legislation with respect to Entry 32 of List I, the State Legislature cannot legislate with respect to the matters falling under Entry 45 of List I of the Seventh Schedule. Consequently, it was submitted that the Andhra Act is constitutionally invalid. Reference was also made to the judgment of this Court in Greater Bombay Cooperative Bank & Ors. Vs. United Yarn Tex (P) Ltd. & Ors., (2007) 7 SCC 236.

13. We notice that the question of law raised in this case had come up for consideration before this Court while challenging the constitutional validity of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (for short "the Tamil Nadu Act"), the Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999 (for short "the Maharashtra Act") as well as the Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004 (for short "the Pondicherry Act").

16. We notice in New Horizon Sugar Mills Ltd.'s case (supra), this Court held that the objects of the Tamil Nadu Act, Maharashtra Act and the Pondicherry Act are the same and/or of similar nature. In our view, the object and purpose as well as the provisions of the Andhra Act are pari materia with that of Tamil Nadu, Maharashtra and Pondicherry Acts, the

constitutional validity of those legislation has already been upheld. We also fully concur with the views expressed by this Court in those Judgments and uphold the constitutional validity of the Andhra Act.

17. Learned counsel for the petitioner raised a further contention that Vasavi Cooperative Bank Ltd. does not come within the definition of "financial establishment" under Section 2(c) of the Andhra Act. We find it difficult to accept that contention. What has been excluded from that definition is a Company registered under the Companies Act or a Corporation or a Cooperative Society owned and controlled by any State Government or the Central Government. The Society in question does not fall in that category. Consequently, the Co-operative Bank in question is also governed by the provisions of the Andhra Act.

11. In the above Judgments, apart from upholding the Constitutional validity of the enactments, the Hon'ble Supreme Court in very categorical terms has held that the moment a person or an entity falls within the definition of a "Financial Establishment" and the money collected by them falls within the definition of "Deposit", if any default is committed in repayment of deposits and interests honouring the commitment, the provisions of TNPID Act will automatically come into play.

12. The Chit Funds Act, 1982 was enacted pursuant to the recommendations of the Banking Commission (1972); report of the Study Group on Non-Banking Financial Intermediaries (1971); the report of the Study Group of Non-Banking Companies headed by the Chairman J.S. Raj (otherwise known as Raj Committee 1975). These reports gave an insight into the origin of Chit Fund business in the country, the mechanism of Chit Fund transactions, the benefits that accrued to the needy public who are not in a position to avail themselves of the credit facilities from the financing banks, the evils that flow from such Chit Fund transactions on account of the unscrupulous and unethical methods employed by persons who run and control Chit Fund business and need for a legislation in order to protect the interests of the subscribers to the Chit Funds from some of the unscrupulous promoters and foremen.

Section 2(b) defines a chit as a transaction whether called chit, chit fund, chitty, kuri or by any other name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of

periodical instalments over a definite period and that each such subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to the prize amount."

13. In *Union of India v. Margadarshi Chit Funds (P) Ltd.*, (2017) 13 SCC 806 : 2017 SCC OnLine SC 805 at page 827, the Hon'ble Supreme Court considered the mode and manner of chit transactions under the Act, and observed as under:

"27. We have already noted that there are two types of chits, namely, simple chits and business chits. This categorisation was given by the Study Group headed by Dr Bhabatosh Dutta constituted by the Banking Commission in 1970. The said description was given imprimatur by this Court in *RBI v. Peerless General Finance and Investment Co. Ltd.* [RBI v. Peerless General Finance and Investment Co. Ltd., (1987) 1 SCC 424 : AIR 1987 SC 1023] The said description along with the definition of the term "chit" contained in Section 2(b) of the Chit Funds Act gives a fair idea of the nature of fund business. A person (known as foreman) enters into agreement with specified number of persons where under all those persons agree to subscribe a certain sum of money by way of periodical instalment over a definite period. Say, for example, this kind of agreement is entered into with 20 persons. These 20 persons i.e. subscribers agree to subscribe Rs 5000 per month for 20 months. In this manner, every month Rs 1,00,000 are contributed by these 20 persons. Out of this amount, foreman deducts his commission, say, Rs 10,000 (which is regulated by the provisions of the Chit Funds Act). Remaining amount of Rs 90,000 would be the prize amount. This amount would be given to one of the subscribers as determined by lot or by auction or by tender or in such other manner as may be specified in chit agreement. If it is by auction, then the subscribers may give their bids offering the discount. The subscriber offering maximum discount shall be successful subscriber. It may be mentioned that there is a cap on such a discount which laid down in the Chit Funds Act and a subscriber cannot offer more discount than the maximum limit stipulated under the Chit Funds Act. If there are more than one subscribers

offering maximum discount, then the successful subscribers would be chosen by draw of lots. Successful subscriber would get the prize amount i.e. the amount after deduction of the discount offered by him. The amount of discount shall be distributed among all the subscribers. In a way, the said amount of discount which the successful bidder has foregone becomes the dividend which is to be distributed to all the subscribers after deducting a fixed amount representing the commission payable to the foreman. Foreman is a person who organises the auction and conducts the proceedings. From the aforesaid procedure in which this business is conducted it also becomes clear that those subscribers, who delay the bidding or do not bid, stand to gain and they receive maximum share in the discounts. If seen from this angle, the chit is somewhat like a recurring deposit with the bank. In fact, there is no bar on the foreman of the chit fund also to participate in the bidding, as a subscriber."

14. In *Shriram Chits and Investment (P) Ltd. v. Union of India*, 1993 Supp (4) SCC 226 at page 243, the Hon'ble Supreme Court examined the provisions of the Chit Funds Act, 1982 and observed as under :

18. Section 6 provides that the agreement shall be signed by each of the subscribers or by any person authorised by him in writing and the foreman and attested by at least two witnesses and the particulars that have to be stated in the said agreement have also been provided in Section 6 of the Act. This clearly shows that a contract has to be entered into between the subscribers and the foreman and in view of the definitions provided in Sections 2 (b), 2(c), 2(d), 2(e) and 2(j) enforceable contract comes into existence and the Act provides how the contract has to be implemented and acted upon by the parties to the contract. Therefore, it is a special form of contract contemplated by Entry 7 of List III of Seventh Schedule of the Constitution of India and it cannot be termed as money lending business. It is clear that the foreman does not lend his money to any of the subscribers. The foreman acts only as person to bring together the subscribers and certain

obligations are cast upon him with a view to protect the subscribers from the mischief and fraud committed by the foreman in view of his position. The amounts are paid to the subscribers as per the chit and in accordance with the provisions of the Act. It will not be correct to state that each subscriber lends money to the person who gets chit earlier. It cannot also be construed that the person who gets chit later should be treated as the moneylender. The agreement between the parties that is entered as per Section 6 of the Act, only provides for distribution of the chit amount. This agreement has to be treated as contract between the subscribers and the foreman and it is the foreman who brings the subscribers together and therefore, the Act provided for payment of commission for the services rendered by the foreman as he does not lend money belonging to him. The dominant purpose of the Act is to regulate the chit and control the activity of the foreman and protect the interests of the subscribers."

19..... The Andhra Pradesh High Court also, while dealing with the transaction of a chit fund organisation, in the matter of Dhoosa Narasimloo v. Yelala Rajanna [ILR 1958 AP 409 : (1958) 2 Andh WR 5] where the petitioner had filed a suit in the Court of the District Judge against the respondents on a promissory note executed by them for the amount they drew in a pool from a chit fund organisation and where the District Judge had dismissed the suit for want of a licence under Section 9(2) of the Hyderabad Money Lenders Act (Act V of 1349 F) and on revision, the question that came for consideration was whether the chit fund organisation could be regarded as a moneylender within the meaning of the said Act and whether its transactions partake the nature of a loan. Srinivasachari, J. speaking for the Court held that the amount drawn by a member of a chit fund who bid at the periodical auction giving the largest discount could not come within the definition of a loan within the meaning of the Money Lenders Act nor could such a transaction be regarded as a money lending transaction and in the circumstances Section 9 of the Hyderabad Money Lenders Act (V of 1349 F) could have no

application to such a case. At page 415 of the aforesaid report it has been observed "in our opinion there is nothing in the chit fund transaction which could be called the business of money lending. It is in essence an organisation for mutual benefit." It approved the decision of the Madras High Court in P.N. Raghavan Pattar v. S. Arumugham [(1934) 68 MLJ 283 : AIR 1935 Mad 385] . That was also a case of chit fund transaction and the question for decision was whether a provision in the bond for payment of the whole amount in default of any one instalment was in the nature of a penalty coming within Section 74, Illustration (g) of the Contract Act. The learned Judges ruled that a chit fund transaction was not a case of borrowing at all and it was entirely different from a loan transaction. The learned Judges further held that "a loan envisages the relationship of a creditor and a debtor insofar as the lender and the borrower are concerned. There cannot be the relationship of a creditor and debtor between the stake-holder and a subscriber, in a chit fund transaction. If the stake-holder advances any amount he advances only to one of the members, the funds of the whole body of the chit fund, as the funds belong to the whole lot of subscribers, the members, borrower is as much a creditor as a debtor. The amounts are in deposit with the stake-holder only as a trustee for the benefit of the members of the fund." Srinivasachari, J. noticed the observations of Srinivasa Iyengar, J. in Kudkanjee Timmarsa Pai v. Kanjarpane Subba Rao [AIR 1928 Mad 256 : 1927 MWN 721] where Srinivasa Iyengar, J. regarded the position of the Manager of a kuri chit as a trustee for all the subscribers of the chit fund."

15. The resultant position is that a) dealing in chits funds does not tantamount to money lending b) the chit transaction is akin to a recurring deposit in a bank and c) the foreman of the chit is a trustee of the funds paid into the chit by the subscribers.

16. Section 2(2) of the TNPID Act defines a "'deposit' means the deposit of a sum of money made with a Financial Establishment for a fixed period for interest or return in any kind"

In CIT v. Bazpur Coop. Sugar Factory Ltd., (1988) 3 SCC 553 : 1988 SCC (Tax) 468 at page 560, the Hon'ble Supreme Court held;

"The essence of a deposit is that there must be a liability to return it to the party by whom or on whose behalf it is made on the fulfillment of certain conditions."

17. This criteria is clearly satisfied as is seen from Section 42 of the Chit Funds Act, 1982 which mandates that every non-prized subscriber shall be entitled to get back his subscriptions at the termination of the Chit. The amounts due to the subscriber would be a first charge on the assets of the chit vide Section 43. Section 25 imposes a personal liability on the foreman for repayment of the dues of subscribers.

18. Section 2(3) of the Act defines a financial establishment as an entity "carrying on the business of receiving deposits under any scheme or arrangement or in any other manner." The words "in any other manner" are of the widest amplitude and would take within its fold any business, including chits, that accepts deposits from the public. The Supreme Court in Margadarshi Chit Funds (P) Ltd., (2017) 13 SCC 806 has already opined that a chit transaction is akin to a recurring deposit in a bank.

19. There are other clear pointers to the legislative intent in including chits within the meaning of Section 2(2) of the TNPID. Before the enactment of the TNPID, acceptance of deposits by NBFCs were regulated by Chapter IIIB of the RBI Act, 1934. Section 45-I (bb) of that Act defined the word "deposit" and specifically excluded chit funds under the Chit Funds Act, 1982 from the purview of Chapter IIIB. Many states have adopted this definition under their state Acts. For instance Section 2 (c) of the Maharashtra Protection of Interest of Depositors Act, 1999, Section 2(2) of the Karnataka Protection of Interest of Depositors Act. Section 2(2) of the TN PID, on the other hand, is a marked departure from Section 45-I (bb) of the RBI Act, 1934 in as much as the exceptions available in Section 45-I (bb) of the RBI Act has been specifically omitted in Section 2(2) of the TNPID.

20. The judgement cited by the learned counsel for the petitioner and the subsequent Judgement in M.C.Ravikumar, referred Supra, does not take note of a crucial provision in the TNPID that completely dislodges the findings on the mutual exclusivity of the Act and the Chit Funds Act. This provision is the non-obstante clause contained in Section 14 of the TNPID which clearly provides that the Act shall have overriding effect over any other law. It may be pointed out that the Act has

received the assent of the President under Article 254(2) of the Constitution and will, therefore, prevail over any earlier law made by Parliament including the Chit Funds Act, 1982. Section 3 of the Chit Funds Act, 1982 also contains a non-obstante clause, but it is a settled law that where two enactments contain non-obstante clauses, the latter will prevail (See KSL & Industries Ltd. v. Arihant Threads Ltd., (2015) 1 SCC 166 : 2014 SCC OnLine SC 846 at page 183).

21. A similar distinction was sought to be made between the prosecutions under the Companies Act, and the TNPID and this Court had rejected the same in Viswapriya India Ltd .v. Govt of Tamil Nadu, reported in 2015 4 LW 33. The relevant portions of the judgment is extracted hereunder:

"29. The next contention by the learned counsel is that, the accused are companies incorporated under the Companies Act, 1956 and therefore, only the provisions of Section 74 of the Companies Act, 2013 can be made applicable to them and not the provisions of the TNPID Act.

30. There is no force in this argument in the light of Section 14 of TNPID Act, which states as follows:

"14. Act to override other laws.-- Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law."

31. Mr.Nithyaesh, learned counsel placed heavy reliance upon the non obstante clause used in Section 74(1)(a) of the Companies Act to drive home the point that, if a Company defaults in repaying the depositors, only the provisions of Section 74 can be invoked and not the TNPID Act. Section 74(1)(a) permits a Company to prepare a Scheme for repayment and the non obstante clause used therein would mean that, if any other law prescribes such a Scheme of repayment, then the provisions of Section 74 will supersede that law. Section 5 of the TNPID Act does not envisage preparation of any Scheme of repayment. It simply states that, if the financial establishment defaults in repaying a depositor, the offence is made out without

anything more. No mens rea is even required. May be it is draconian, but nevertheless, its constitutional validity has been upheld by a Full Bench of this Court and the Supreme Court and it is too late in the day to challenge the vires of the Act. The Supreme Court, in K.K.Baskaran vs. State of Tamil Nadu [(2011) 3 SCC 793], New Horizon Sugar Mills Limited v. Government of Pondicherry [(2012) 10 SCC 575] and Soma Suresh Kumar vs. Government of Andhra Pradesh [(2013) 10 SCC 677] have dealt with all these issues which cannot be re-opened now. The Companies Act is a Central Legislation and it applies throughout India. There are several States where no Act similar to TNPID is available. Though Companies Act also provides for a mechanism for repayment of deposits, provisions of the TNPID Act are in addition to the mechanism provided by the Companies Act, because TNPID Act was introduced from the stand point of protecting the interest of depositors and to instil fear in the mind of fly-by-night financial establishments. Therefore, the provisions of the Companies Act and the provisions of the TNPID Act operate in two different fields."

This judgment was confirmed by the Division Bench in W.A 1227 of 2015 (dated 28.08.2015) and by the Supreme Court in Criminal Appeal 1270 of 2015 (order dated 30.10.2015).

22. The judgments under reference seems to take a divergent view only on the ground that both the Acts provide for different mechanism and different terms and conditions for commencing and conducting such business and different authority to deal with the matters in relation to the business and different courts and different procedure to deal with the disputes arising out of such business and different appellate authority and different period of limitation for filing such appeals. The Act does not provide any terms and conditions for commencing and conducting business. All it does is to criminalize default in payment of deposits. Once the Supreme Court has held that the chit is in the form of a recurring deposit, the judgment cited by the learned counsel for the petitioner and the subsequent judgement in M.C.Ravikumar, referred Supra, with very great respect, will no more be the correct position of law.

23. The nature of transaction in this case involves deposits made by the general public. Deposits by its very nature creates an obligation to the person who receives it to return it to the person who made the deposit. The definition of the term deposit under Section 2(2) of the Act, will also take within its fold the amount received by any person or entity in the name of subscription for a chit transaction. If this subscription amount is not repaid and a default is committed, naturally it becomes an offence under Section 5 of the Act. The definition of the term deposit under Section 2(2) r/w Section 5 of the Act, clearly takes within its fold the subscription/deposits received in the name of a chit transaction and giving it a restricted meaning, will defeat the very object of the Act.

20. This Court does not find any merit in this criminal original petition, and as a result this Criminal Original Petition stands dismissed. The respondent Police is directed to proceed further with the investigation and file a Final Report within a period of six months from the date of receipt of a copy of the order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

KP

To

1. Inspector of Police, सत्यमेव जयते
Economic Offence Wing-II,
Vellore.

2. The Public Prosecutor,
High Court of Madras,
Madras.

+1cc to Mr.K.Mukund Rao, Advocate SR.No.4817

Cr1.OP No.7112 of 2017

VGI (CO)
GMY (05/02/2019)