



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2019

CORAM:

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.A.(MD)No.113 of 2013
and
M.P.(MD)No.1 of 2015
in
Crl.A(MD)No.113 of 2013

1. N.Sivasubramaniyam
2. A.Vijaya Sahaya Selvi .. Appellants

Vs.

1. K.Subburaj .. 1st Respondent/Accused
2. State through the Inspector of Police,
Economic Offences Wing II,
Virudhunagar District. .. 2nd Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 378 of Cr.P.C., to set aside the Judgment dated 03.09.2012 passed in C.C.No.8 of 2011 on the file of the Special Judge under TNPID Act Cases, Madurai, pending disposal of this above appeal.

For Appellants : Mr.G.Prabhu Rajadurai

For R-2 : Mrs.S.Bharathi,
Government Advocate
(Crl. Side).

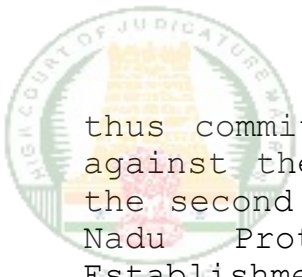
For R-1 : Mr.A.Jeyarama Chandran

J U D G M E N T

Heard the learned counsel on either side.

2. This third party appeal is directed against the Judgment dated 03.09.2012 made in C.C.No.8 of 2011 on the file of the Special Judge under TNPID Act Cases, Madurai.

3. The first respondent herein, namely, K.Subburaj was running a financial establishment in the name and style of "Rich India Marketing" at No.96-A, P.K.S.A. Road, Opp. Central Bank of India, Near Mariamman Kovil, Sivakasi. He had collected deposits from a number of people. He however failed to repay the same and



thus committed default. Hence, Crime No.1 of 2010 was registered against the first respondent and his son Mahendran on the file of the second respondent for the offences under Section 5 of the Tamil Nadu Protection of Interests of Depositors(In Financial Establishments) Act, 1997 and Sections 409 and 420 of I.P.C.

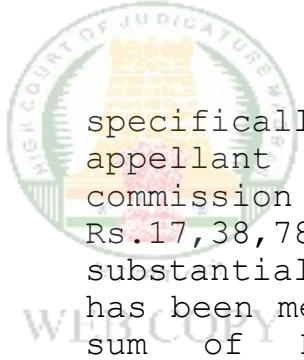
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4. The defacto complainant is the village administrative officer of Sivakasi. In the First Information Report, he stated that he had come to know that the first respondent and his son have been holding out a promise to the general public that if they deposited Rs.10,000/-, the same would be repaid with interest at Rs.49,600/- If during the deposit period the depositor met with an accident, a sum of Rs.3 Lakhs will be paid as insurance amount. The village administrative officer on enquiry came to know that the establishment run by the first respondent herein was without any proper registration. The complaint lodged by the village administrative officer was investigated and final report came to be laid before the learned Special Judge under TNPID Act Cases, Madurai. But in the final report, the investigation officer had dropped the son of the first respondent herein and it was confined only to the first respondent K.Subburaj.

5. Charges were framed on 11.07.2012. The first respondent pleaded not guilty and claimed to be tried. When the case was taken up for trial, as many as eight depositors were examined as P.W.1 to P.W.8. All of them turned hostile. They deposed that they had settled the matter with the accused. Some of them claimed that they have waived the interest amount and that they have received the money directly from the accused in the Court itself. The trial Judge by the impugned Judgment acquitted the first respondent on the ground that since the depositors have been settled and the depositors turned hostile. The trial Court came to the conclusion that the prosecution did not prove the case beyond reasonable doubt.

6. I can only express my shock and surprise over the manner in which the entire case has been conducted.

7. The appellants had placed materials before this Court indicating that they are also depositors. It is not as if the eight persons examined by the trial Court as P.W.1 to P.W.8 alone were the depositors in the financial establishment run by the first respondent herein. There are several more. In fact the investigation officer as well as the trial Judge were aware of it. Aggrieved by the deletion of Mahendran, the son of the first respondent from the array of accused, the first appellant Sivasubramaniyan filed CrI.M.P.No.1826 of 2012 seeking further investigation under Section 173(8) of Cr.P.C. In this petition, the first appellant herein had clearly stated that he had deposited a sum of Rs.20,000/- in Rich India Marketing. He had also stated that from 31.03.2010 no interest was paid to him. In his petition, the first appellant had also stated that there are other depositors who were also cheated likewise. The fairness of the investigation officer was also



specifically questioned by the first appellant herein. The first appellant had also indicated in his petition that when the commission amount paid by the accused K.Subburaj alone would come to Rs.17,38,783/-, the deposits collected by him should come to a very substantial figure. But in the final report filed by the police, it has been mentioned that the accused K.Subburaj had collected only a sum of Rs.90,278/- from the public. The first appellant Sivasubramaniyan pointedly contended that in order to create confusion, two cases were registered in Crime No.1 of 2010 and Crime No.4 of 2010. All the depositors ought to have been examined as witnesses in a single case. Even though such serious allegations were made, the Court below chose to dismiss the same on 03.07.2012. It appears that the order copy was not issued immediately. The first appellant Sivasubramaniyan filed Crl.R.C.(MD)No.469 of 2012, challenging the same. By the time, the criminal revision case came up for admission on 30.10.2012, C.C.No.8 of 2011 itself got disposed of. Therefore, the revision case was dismissed as infructuous.

8. The appellants' counsel would contend that in order to oblige the accused by raising the attachment effected in Crime No.1 of 2010, the case was confined only to a few depositors.

9. When the Special Judge knew that all the depositors have not been examined, he ought to have ordered further investigation. The trial Judge ought to have appreciated the statutory frame work of the Act. It is true that Section 5(A) of the Act provides for compounding of offence. But then it can be done only by the competent authority with the permission of the Court. The procedure set out in Section 5(A) of the Act was not at all followed in this case. The First Information Report was lodged by the village administrative officer; even he was not examined. The Act was brought in to protect the interest of the gullible depositors. The trial Judge has not even kept the statutory object in mind. The learned Judge had a duty to ensure that the investigation officer had collected all the records and details and ensure that all the depositors were examined. Even before the pronouncement of the Judgment, the first appellant Sivasubramaniyan had approached the trial Court. Thus the Special Judge did have knowledge that the investigation officer had acted in a fraudulent manner in this case and had obviously colluded with the accused. There has been a miscarriage of justice in this case. I therefore have no hesitation to set aside the impugned Judgment of acquittal and it is accordingly set aside.

10. The Inspector of Police, Economic Offences Wing II, Virudhunagar District, is directed to file a petition under Section 173(8) of Cr.P.C. for conducting further investigation. The learned Special Judge under TNPID Act Cases, Madurai, is directed to allow the same. It is open to the learned Special Judge to pass appropriate directions as she may deem fit. The first respondent will file a supplementary final report within a period of three months from the date of receipt of a copy of this order and the



learned Special Judge will ensure that the trial is also conducted speedily, thereafter.

11. With these directions, this criminal appeal stands allowed. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar(CS)

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To

1. The Special Judge under TNPID Act Cases,
Madurai.
2. The Inspector of Police,
Economic Offences Wing II,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai
4. The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

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