Bail Slip

Petitioners/Appellants/Accused 3,5&6 viz., Saraswathi, Gurugopinath and Bhuvaneswari were released on bail vide this Court order dated 11.12.2014 in MP(MD)No.1/2014 in Crl.R.C(MD) No.482 of 2014.

Petitioners/Appellants/Accused 2nd & 4th viz.,M.Rajasekaran and R.Suseela were released on bail vide this Court order dated 19.03.2015 in MP(MD)No.1/2015 in Crl.R.C(MD)No.120 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.10.2019
CORAM:
THE HONOURABLE MR.JUSTICE B.PUGALENDHI
Crl.R.C.(MD)Nos.482 of 2014
and 120 of 2015

1.Saraswathi

2.Gurugopinath

3.Bhuvaneswari ... Petitioners/Appellants/Accused 3,5&6 in Crl.R.C.(MD).No.482 of 2014

1.M.Rajasekaran

2.R.Suseela ... Petitioners/Appellants/2nd & 4th Accused in Crl.R.C.(MD).No.120 of 2015

Vs.

The State represented by,
The Inspector of Police,
Dindigul District Crime Branch,
(In Charge) Theni. ... Respondent in both Crl.R.Cs.

PRAYER in Crl.R.C.(MD).No.482 of 2014: Criminal Revision case is filed under Section 397 r/w Section 401 of Cr.P.C., to set aside the judgment made in C.A.No.25 of 2011 by the Additional District & Sessions Judge, Theni at Periyakulam dated 25.04.2014 confirming the judgment made in C.C.No.23 of 2001 by the Judicial Magistrate, Uthamapalayam dated 27.07.2011.

PRAYER in Crl.R.C.(MD).No.120 of 2015: Criminal Revision case is filed under Section 397 r/w Section 401 of Cr.P.C., to call for the records to the Judgment dated 25.04.2014 in C.A.No.27 of 2011 passed by the learned Additional District and Sessions Judge, Periyakulam, which confirmed the judgment of conviction dated 27.07.2011 and sentence dated 03.08.2011 passed by the Judicial Magistrate, Uthamapalayam in C.C.No.23 of 2001 and set aside the same.

For Petitioners : Mr.M.P.Senthil
in Crl.R.C.(MD).No.482 of 2014

For Petitioners : M/s.L.P.Mauriya
in Crl.R.C.(MD).No.120 of 2015

For Respondent : Mrs.S.Bharathi
Government Advocate (Crl. Side)
in both Crl.RCs.)

C O M M O N O R D E R

These Criminal revision cases are arising out of the conviction and sentence imposed by Judicial Magistrate, Uthamapalayam in C.C.No.23 of 2001, dated 27.07.2011, as confirmed by the Additional District & Sessions Judge, Theni at Periyakulam in C.A.No.25 of 2011 and C.A.No.27 of 2011, dated 25.04.2014.

2.The learned trial Judge by order dated 27.07.2011 found the petitioners guilty for the offences punishable under Sections 120(b), 406 and 420 of IPC and convicted and sentenced them as follows:

Accused	Penal Provisions	Punishment
A2 to A6	120(b), 406 and 420 of IPC	(i)To undergo one year rigorous imprisonment with fine of Rs.1000/-, in default to undergo one month simple imprisonment under Section 120(b) IPC. (ii)To undergo one year rigorous imprisonment with fine of Rs.1000/-, in default to undergo one month simple imprisonment under Section 406 IPC.. (iii)To undergo two years rigorous imprisonment with fine of Rs.2000/-, in default to undergo one month simple imprisonment under Section 420 IPC..

3.As against the same, the accused 2 and 4 have preferred appeal in C.A.No.27 of 2011 and the accused 3, 5 and 6 have preferred appeal in C.A.No.25 of 2011 before the Additional District and Sessions Judge, Theni at Periyakulam and the same were dismissed by order dated 25.04.2014. Aggrieved over the conviction and sentence imposed by the Courts below, the present revision petitions have been filed.

4.These revision petitions are filed by the petitioners on the main ground that the chit fund was run by the Accused No.1, namely, Ramanathan and he was tried in C.C.No.23 of 2001 and also tried along with the accused in C.C.No.11 of 2001 on the file of the learned Sub Judge under TNPID Act, 1997, Chennai. The learned Sub Judge under TNPID Act, 1997, Chennai has found the accused No.1 alone guilty, whereas, the case in which the A1 and another petitioners were tried i.e., in C.C.No.23 of 2001 on the file of the Judicial Magistrate, Uthamapalayam, the trial Court found all the accused guilty and convicted them as stated supra.

5.The accused No.1 has not challenged the order of the trial Court. The main ground raised by the revision petitioners is that there is no material or any other documents were produced by the prosecution showing that the chit fund was run by the Accused No.1. He also relied upon the judgment of this Court passed in Crl.R.C.No.413 of 2015 dated 15.05.2017, wherein, this Court at paragraphs 10-12 held as follows:

> *"10.Admittedly, the petitioner is neither a partner nor an employee of the accused financial institution and it is also admitted that the petitioner had only attested some of the pronotes issued by the accused financial institution. Apart from that there is no allegation against the petitioner that she collected deposits for the institution. Thus, this Court finds no material on record to show that the petitioner had participated in the day to day management of the affairs of the accused financial institution and that she has been roped in as an accused merely on the ground that she had also acknowledged the deposits received by the financial institution and she had also attested some of the pronotes.*
>
> *11.In a similar situation, this Court had an occasion to deal with the same set of facts in 2010 (1) MLJ (Criminal) 742 (Prasannadevi / Vs./ State of Tamilnadu) Wherein this Court has held as follows:*
>
> > *"13.The canvassing agents, as such, cannot be held responsible for the management of the affairs of the firm. A canvassing agent may contribute his mite by mobilising funds for the financial firm on contract basis for payment of brokerage or service charges. But, by no stretch of imagination, we can say that such a person shoulders the responsibility of the management of the affairs fo the firm. A canvassing agent gives a rosy picture about the firm to mobilise the deposit. It is only the depositors who shall the performance of a firm and the financial soundness thereof with the person who is responsible for the management of the firm and offer his deposit."*
>
> *13.In yet another judgment reported in 2013 (2) Law Weekly (Criminal) 212 (Arun & Others/ Vs. / State of Tamil Nadu and others) this Court has held as follows:*
>
> > *"In the present case, it is evident that the family members, who have nothing to do with the financial bungling of the institution, are roped in on the mere allegation that they canvassed for deposit for the financial institution. Such a practice should be stopped forthwith as otherwise innocent*

> *victims just because they happened to be relatives of the mis-managed financial institution would be roped in and they have to undergo the ordeal of criminal trial."*

6.Per contra, the learned Government Advocate (Crl. Side) appearing for the State would submit that the petitioners are the participants in the activities of A1 partnership firm and they are the real partners of the said firm. It is further submitted that the witnesses, examined by the respondent police during the course of investigation, have also spoken about the fact that the petitioners canvassed the depositors to deposit the amount in A1 firm and that canvassing for deposit for a financial institution would definitely amount to participation in the management of the affairs of the Firm and therefore, the petitioners cannot shrink their responsibility in the management of the firm lawfully and seek for discharge. Apart from the same, the learned Additional Public Prosecutor has also produced a letter of Deputy Superintendent of Police, District Crime Branch, Theni District stating that the entire amount that has been collected from P.W.1 to 18 have been disbursed by way of demand draft on 19.10.2019.

7.Heard the learned counsel on either side and also perused the records produced in this case.

8.The prosecution case is that the petitioners along with Accused No.1 have conducted a chit fund namely Sri Bhuvaneswari Chit Funds and Sri Gurudev Chits Private Limited, Uthamapalayam. During the course of their business, they have collected chit amount of Rs.3,27,000/- from P.Ws.1 to 17 and have not returned the said amount. The accused No.2 is the brother of the Accused No.1. The wife of the accused No.2 is arrayed as Accused No.4. The wife of the accused No.1 is arrayed as Accused No.3. The son-in-law and daughter of the accused No.1 have been arrayed as Accused No.5 and 6 respectively.

9.Admittedly, no documents have been filed in support of the prosecution that all the accused have jointly run the chit fund namely Sri Bhuvaneswari Chit Funds and Sri Gurudev Chits Private Limited, Uthamapalayam. Though P.W.18/Sub Registrar has produced documents with regard to the registration of chit funds bearing Registration P.S.O.Nos.144 and 312 of 1997, no documents have been placed before the trial Court that these petitioners have also run the chit fund along with Accused No.1 and they have been actively participated in the day-to-day affairs of the company. Moreover, it appears from the letter produced by the Deputy Superintendent of Police, District Crime Branch, Theni District, the entire chit amount collected from P.W.1 to P.W.18 have been disbursed in the presence of the Deputy Superintendent of Police, District Crime Branch, Theni District, on 19.10.2019. Moreover, the accused No.1 who run the chit fund has not filed any appeal as against the order passed by the Court below.

10.For the aforesaid reasons, this Court is of the considered view that there is no clinching evidence to prove the guilt of the accused and therefore, the conviction and sentence passed by the court below is liable to be set aside.

11.Hence, these criminal revision cases are allowed by setting aside the judgment of conviction and sentence imposed by the Judicial Magistrate, Uthamapalayam, in C.C.No.23 of 2001 dated 27.07.2011. The fine amount, if any, paid by them shall be refunded forthwith. The bail bond, if any, executed by the petitioners, shall stand cancelled.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

/ /2020
Sub Assistant Registrar(CS)

vsg

To

1.The Additional District
& Sessions Judge,
Theni.

2.The Principal Sessions Judge, Theni.

3.The Judicial Magistrate,
Uthamapalayam.

4.The Chief Judicial Magistrate, Theni.

5.The Inspector of Police,
Dindigul District Crime Branch (In Charge),
Theni.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

7.The Section Officer,-2 copies
Criminal Section Records,
Madurai Bench of Madras High Court,
Madurai.

Crl.R.C.(MD)Nos.482 of 2014
and 120 of 2015
21.10.2019

KM (06.08.2020) 7P 9C