

**BAIL SLIP**

Laila Christobel, Appellant / Accused No.3 is released on Bail, vide court order dated 24.04.2015, made in MP(MD)No.1 of 2015 in Crl.A. (MD)No.119 of 2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
22.11.2019	28.11.2019

CORAM**THE HONOURABLE MR. JUSTICE V.PARTHIBAN****CRL.A.[MD]No.119 of 2015**

Laila Christobel : Appellant / Accused No.3

- Vs -

State Rep. by the Inspector of Police,
Economic Offences Wing-II,
Nagercoil,
Kanyakumari District.
Crime No.7 of 2005.

: Respondent/ Respondent

PRAYER: Appeal filed u/s 374 of the Code of Criminal Procedure, praying to call for the records of the learned Special District and Sessions Judge (TANPID Act cases), Madurai in C.C.No.91 of 2008 by the order dated 31.03.2015 and set aside the conviction and sentence order dated 31.03.2015 by acquitting the appellant herein.

For Appellant : Mr.S.C.Herold Singh

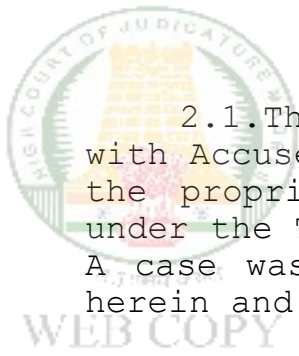
For Respondent : Mr.V.Neelakandan

Additional Public Prosecutor

JUDGMENT

The appeal is filed against the order and judgment of the Special District and Sessions Judge (TANPID Act cases), Madurai in C.C.No.91 of 2008, dated 31.03.2015, convicting the appellant / Accused No.3 for the offences under Section 5 of the Tamil Nadu Protection of Interests (In Financial Establishments) Act, 1997, [hereinafter referred to as 'TNPID Act' (38 counts) and sentenced to undergo imprisonment for six [6] months to each count and also pay a fine of Rs.500/- to each count in default to undergo simple imprisonment for a period of two months for each count. All the sentences were directed to run concurrently.

2.The facts which gave rise to the filing of the present appeal are briefly stated hereunder:



2.1.The appellant herein is Accused No.3. She was charged along with Accused No.2, her husband and A1 is the proprietary concern and the proprietor being A2. The appellants were proceeded against under the TNPID Act, for cheating the depositors numbering about 45. A case was registered against the accused including the appellant herein and after investigation, a charge sheet was filed.

2.2.The trial Court namely Special Judge constituted under the TNPID Act, after observing the usual formalities, has set the trial in motion. On behalf of the prosecution, 48 witnesses were examined namely, P.W.1 to P.W.48 and 129 documents were filed as Ex.P.1 to Ex.P.129. On behalf of the defence side, two witnesses were examined as D.W.1 and D.W.2 and three documents were marked as Ex.D.1 to Ex.D.3. No material objects were marked.

2.3.The case of the prosecution was that the first accused known as the proprietary concern, the second accused being the sole proprietor and the third accused who is the appellant herein is the wife of the second accused was also incharge of the day-to-day administration of the proprietary concern along with her husband who was the sole proprietor of the first accused concern, have received deposits from 45 customers promising them exorbitant interest on such deposits. The depositors have deposited various amounts believing the promise meted out by the accused including the appellant herein.

2.4.However, the accused did not keep up their promise which gave rise to the filing of complaints from various depositors. Ultimately, the police investigated the complaint and a report was filed on the basis of which the Special Court has taken cognizance of the offences and examined the witnesses. After adverting to the various materials placed on record as well as the evidences placed on record, the trial Court has come to the conclusion that A1 to A3 were guilty of offence under Section 5 of the TNPID Act and sentenced to undergo rigorous imprisonment for 38 counts for six months to each count. The said sentences imposed to A3 is the subject matter of the present appeal.

3.Mr.S.C.Herold Singh, learned Counsel appearing for the appellant / Accused No.3 would at the outset submit that the appellant herein was merely a wife of the second accused who alone was the proprietor and she was never incharge of the concern at any point of time and she was roped in only because of the fact that she was the wife of the second accused. In the absence of any proof that she was incharge of the day-to-day administration of the firm, both oral and documentary, the conviction recorded by the trial Court stands vitiated. In this case, according to the learned Counsel, there was no clinching oral evidence or any documentary evidence to show that the appellant herein was involved in the business of the



4. In any event, during trial, the entire deposit to the tune of Rs.86,46,663/- was deposited along with interest and 38 depositors out of 45 had received their deposits willingly. Only 7 depositors have not received the deposit but however, their deposits are still lying in deposit to the credit of the trial Court to the tune of Rs.35,00,000/-. This fact that the entire deposit amount has been settled by the accused has also been acknowledged by the learned Additional Public Prosecutor appearing for the respondent.

5. Learned Counsel in support of his contention drew the attention of this Court to Page No.76, Ex.P.129, which was a communication issued by the local Tahsildar which shows that the proprietor of the pawnbroker business run by the second respondent was only the second accused and the third accused name was never mentioned as one of the proprietors. He would further draw the attention of this Court to Page No.93, wherein the accused was questioned by the trial Court and the appellant herein categorically denied having committed any offence at all and the learned Counsel would submit that during the examination of the appellant herein, she categorically said that she had nothing to do with the business of the first accused firm. He would therefore, submit that in the absence of contra evidence either oral or documentary to prove the active involvement of the appellant herein in the day-to-day business of the first accused, her conviction under the provisions of the Act is unsustainable.

6. In support of his contention, learned Counsel would rely on a decision of this Court in the case of **Prasannadevi Vs. State of Tamil Nadu** reported in (2010) 1 MLJ (Cr1) 742. Learned Counsel drew the attention of this Court to paragraph Nos.12 to 16 which are extracted hereunder:

"12. The fact remains that the petitioner was not a partner of the partnership firm charged in this case under Section 5 of the TNPID Act. The only allegation levelled by the witnesses examined on the side of the prosecuting agency is that the petitioner canvassed for deposits for the financial institution. To invoke the penal provision under Section 5 of the TNPID Act, one should shoulder the responsibility of managing the affairs of the financial firm or company. I find that the provision under Section 5 of the TNPID Act has been drafted very carefully. A person who merely manages the affairs of a firm or a company viz., Clerks, Accountants, Office Assistants, who are just paid servants would not be responsible for the management in the sense that they are not answerable to the claim made against the financial firm. In other



words, a person, who simply manages the affairs of a firm, cannot be said to have taken the responsibility of answering the allegation of mis-management of the affairs of the firm. The Clerks, Accountants and Office Assistants come under the said category. They have been given a role to manage the affairs of the partnership firm, but they are not responsible for the mis-management of the firm when the same is under challenge by a third party. All the persons who manage the affairs of the financial institution need not necessarily be responsible for the management of the affairs of the institution. What is required under Section 5 of the TNPID Act is that the person charged should have been responsible for the management of the affairs of the institution. The persons who simply manages the affairs of the financial institution as paid servant fall out of the ambit and scope of the aforesaid provision of law.

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 of the firm. A canvassing agent gives a rosy picture about the firm to mobilise the deposit. It is only the depositors who shall verify the veracity of such embellished version regarding 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.

14.Sometimes, all family members, who have nothing to do with the financial bungling of the institution are roped in on the mere allegation that they started canvassing for deposit for the financial institution. Such a practice should be stopped forthwith as otherwise innocent victims just because they happened to be the relatives of the mis-managed financial institution would be roped in and they have to undergo the ordeal of criminal trial.

15.In view of the above facts and circumstances, the Court having deprecated the practice of



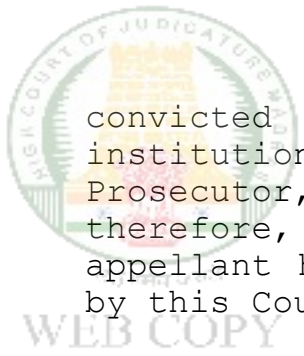
implicating the innocent relatives of the persons who are responsible for the management of the affairs of the firm, it is held that the Clerks, Accountants and Office Assistants who are working in the financial institution as well as the canvassing agents shall not be prosecuted for the offence under Section 5 of the TNPID Act as they do not shoulder the responsibility for the management or mismanagement of the affairs of the firm or company. The Trial Court has improperly dismissed the plea of the petitioner for discharge on the ground that there are allegations in the statements recorded by the investigating agency from the witnesses that the petitioner did canvass for the deposit for the financial institution.

16. Therefore, the order passed by the Special Judge, Chennai under TNPID Act, 1997 stands set aside and the petitioner is discharged from the criminal proceedings in C.C.No.47 of 2006 and as a consequence, the criminal revision case stands allowed. The connected miscellaneous petition stands closed."

7. In the above case, this Court found that the accused therein was not a partner in the partnership firm and he merely canvassed for deposit in the financial institution. The High Court has held that to invoke penal provision under Section 5 of the TNPID Act, one should shoulder responsibility of managing the affairs of the financial firm or company. Therefore, learned Counsel would submit that unless such factum is established beyond doubt, conviction is impermissible. Therefore, he submits that the record of conviction by the trial Court is unsustainable.

8. Per contra, learned Additional Public Prosecutor would submit that the trial Court has clearly concluded that the second accused being the husband of the third accused did not deny the involvement of his wife in the functioning of A1 financial institution. The finding of the trial Court was during the cross examination, wherein the defence side has not even put any question that the appellant herein was not involved in the day-to-day functioning of the first accused financial institution. In the said circumstances, the trial Court was left with no option except to conclude that A3 was also guilty for the offences under the provisions of TNPID Act.

9. Even otherwise, learned Additional Public Prosecutor would submit that the appellant herein was involved in canvassing for deposit and had given receipts for collection of amounts from various customers. Therefore, her involvement is also to be noted in collecting the deposit. Therefore, the trial Court has rightly



convicted her along with her husband A2 and the financial institution namely A1. According to the learned Additional Public Prosecutor, it was an open and shut case for the prosecution and therefore, the learned trial Court was right in convicting the appellant herein and the said order does not call for interference by this Court.

10.This Court considered the submissions of the learned Counsel for the appellant as well as for the prosecution and perused the pleadings and the materials placed on record.

11.As contended by the learned Counsel for the appellant / accused, this Court does not find any material whatsoever to show that the appellant herein was involved in the day-to-day administration of the first accused concern. The conclusion reached by the trial Court that only on the premise that the involvement of the appellant was not denied by her husband himself cannot be a valid conclusion in the eye of law. Unless or until the factum of active involvement of the appellant in managing the affairs of the financial institution is established, she cannot be an accused for the offences under Section 5 of the TNPID Act. In fact, reliance placed by the learned Counsel for the appellant in the decision of this Court and the ratio as decided by this Court which is extracted above would clearly clinch the case in favour of the accused.

12.The decision of this Court cited supra would squarely apply to the factual matrix of this case. None of the witnesses who were examined by the prosecution has deposed about the involvement of the appellant herein in day-to-day functioning of the first accused firm. No document was marked to show her involvement in the running of the concern. In the absence of such proof or evidence, the trial Court has erred in convicting the appellant herein for the offence under Section 5 of the TNPID Act. The trial Court's conclusion on this aspect is completely misplaced and misconceived and such a conclusion reached by the trial Court cannot be countenanced in law or on facts.

13.Moreover, this Court finds that during trial, the entire deposits due to the depositors had been settled except 7 depositors and whose deposits are still lying in deposit to the credit of the trial Court. Once the entire amount due to the public at large namely the depositors had been settled, the offence become compoundable under the provisions of the Act. Nevertheless, as far as the present case on hand is concerned, not only the entire deposits have been returned to the depositors except the 7 who are yet to claim their deposits though their amounts are also lying to the credit of the trial Court, the very fact of the participation of the appellant herein in managing the affairs of the first respondent firm is doubtful. Cumulatively, if all these facts are taken together, this Court is of the view that the trial Court's conviction and sentencing the appellant herein cannot



stand the test of proper judicial scrutiny and therefore, the same is to be interfered with.

14.The Trial Court while convicting the appellant herein has not delved into the aspect as to whether what was the role of the appellant herein in managing the affairs of the accused firm. The trial Court had not spared any efforts to go into those aspects which are very crucial for convicting the persons under the provision of the TNPID Act. Unfortunately, the trial Court has overlooked such crucial aspects but on very fragile premise has found that the appellant herein was involved in managing the affairs of the first respondent firm on the reasoning that such involvement was not denied by her husband A2. The conclusion on such basis is completely flawed in the opinion of this Court. As rightly held by this Court that there must be a clinching proof and evidence to show that there was an active involvement in managing the affairs are not canvassing.

15.For the above reasons, this Criminal Appeal is allowed. The conviction recorded by the learned Special District and Sessions Judge (TANPID Act cases), Madurai in C.C.No.91 of 2008 dated 31.03.2015 under the provisions of the TNPID Act is hereby set aside. The appellant / A3 herein is acquitted of all the charges. Bail bonds, if any, executed by the appellant shall stand cancelled. Fine amounts, if any, paid by the appellant shall stand refunded.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

MR

To

1.The Special District and Sessions Judge
(TANPID Act cases), Madurai.

2.The Inspector of Police,
State of Tamil Nadu,
Economic Offences Wing-II,
Nagercoil,Kanyakumari District.

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

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-102481[F] dated 29/11/2019)

PRE-DELIVERY JUDGMENT MADE IN

CRL.A. [MD]No.119 of 2015

28.11.2019

SMA/16/12/19/7P/5C