



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

Crl.O.P(MD).No.14978 of 2015

and

M.P.(MD)Nos.1,2 and 3 of 2015

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1.M/s.Jeevan Emu Care India (P) Ltd,
Rep. by its Managing Director,
V.Rajapandi,
18, Society St,
Near Vani Vilas Signal,
Dindigul-624 001.

2.V.Rajapandi

3.V.Senthil Murugan

4.Banu

5.R.Mohan

6.S.Balakrishnan

7.Premalatha

8.K.Suresh

... Petitioners/Accused 1 to 8

Vs

1.The State of Tamil Nadu,
Rep. by its Deputy Superintendent of Police,
Economic Offence Wing-II,
Dindigul.
Crime No.1 of 2014.

...1st Respondent/Complainant

2.P.Eswaran

...2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records pertaining to the criminal case in C.C.No.3 of 2015, pending on the file of the Special Court for TNPID Cases, Madurai and to quash the same.

For Petitioners : Mr.K.P.S.Palanivel Rajan

For R1 : Mr.A.Robinson
Government Advocate (Crl. side)

For R2 : Mr.D.Selvaraj

ORDER

The petitioners are facing trial in C.C.No.3 of 2015, on the file of the Special Court for TNPID Cases, Madurai. The 1st petitioner is an incorporated company. It entered into buy back



agreement with the de-facto complainant and others. As per the scheme, the purchasers were to buy Emu Chicks for a certain sum. They have to purchase the birds and the fully grown birds will be purchased back by the first petitioner at the then prevailing rate. In this case, the de-facto complainant alleged that there was a commission of default in the performing his obligation by the first petitioner herein, leading to registration of Crime No.1 of 2014, on the file of the first respondent police, for the offences punishable under Sections 406, 420 r/w 34 of IPC and Section 5 of the TNPID Act, 1997. Investigation was taken up and the case was charge sheeted. Cognizance of the offences was taken and the case was taken up for trial in C.C.No.3 of 2015, on the file of the Special Court for TNPID Act, Madurai. The petitioners herein are figuring as A1 to A8 in the said case. To quash the same, this Criminal Original Petition has been filed.

2.Heard the learned counsel appearing for the petitioners, the learned Government Advocate (Crl. side) appearing for the first respondent and the learned counsel appearing for the second respondent.

3.I entertained a doubt as to whether the scheme will attract the provisions of TNPID Act. The petitioners' counsel fairly brought to my notice that a learned Judge of this Court in the decision reported in **(2014) 1 L.W. 775** (M/s.N.S.Agro Farm and Hatchery Vs. Competent Authority and District Revenue Officer) had held that collection of deposits from farmers for rearing of 'Emu' birds and promise of high returns would attract the provisions of TNPID Act.

4.Since there are *prima facie* materials, the learned counsel further stated that he would withdraw this petition as regards the petitioners 1 to 3 and would press this petition only as regards the remaining petitioners.

5.Recording the said submission, this petition stands dismissed as withdrawn as regards the petitioners 1 to 3. This Court has not gone into the merits of the matter and their contentions and defences are left open.

6.Petitioners 5 and 6, namely, R.Mohan and S.Balakrishnan have functioned as canvassing agents for the financial establishment. The question is whether they need to be made to undergo agony of trial. The petitioners' counsel drew my attention to a decision reported in **(2010) 1 MLJ (Cr1) 742** (Prasannadevi Vs. State of Tamil Nadu). It was held the said decision is as follows:-

"...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 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 mobilizing 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..."

7.I am of the view that the ratio laid down above would squarely apply to the petitioners 5 and 6 who had acted only as canvassing agents. However, the said petitioners had given undertaking before this Court that as and when they are called upon, they would testify as prosecution witnesses and they will fairly and frankly state as to the role played by them. This undertaking is recorded. If the petitioners go back on the undertaking, the prosecution would be at liberty to move this Court for taking action against them for breach of undertaking.

8.Recording the said undertaking, the impugned prosecution stands quashed as far as the petitioners 5 and 6 are concerned.

9.Petitioners 7 and 8 had worked as Farm Manager and Office Admin respectively. They had also signed in a number of such invoices and documents. I am of the view that they have discharged their role only as employees. They did not have any control over the running of the establishments. Therefore, the ratio laid down in ***Prasannadevi Vs. State of Tamil Nadu*** would come to their rescue also. The petitioners 7 and 8 give an undertaking on the same lines as that of petitioners 5 and 6. Recording the said undertaking, the impugned prosecution stands quashed as regards the petitioners 7 and 8 are concerned.

10.Then comes the case of the fourth petitioner/Banu; she is the wife of A2/Rajapandi. The petitioners' counsel would claim that she has been roped in as an accused only for the simple reason that she happens to be the wife of the main accused. He has submitted that the ratio laid down in ***Prasannadevi Vs. State of Tamil Nadu*** would apply to her case also.

11.I am not persuaded the above said submission. The learned Government counsel brings to my notice that the said Banu had figured in the memorandum of assurance and the other official records as the Director of the Company in question.

12.Since the fourth petitioner is a lady, her personal appearance before the Court below stands dispensed with. The Court below will insist on the personal appearance of the fourth petitioner only on three occasions namely, to answer the charge, to examination under Section 313 of Cr.P.C., and at the time of pronouncing Judgment. On all other occasions, the fourth petitioner need not appear before the Court below. However, on those



occasions, the fourth petitioner will have to be represented by her counsel. If the fourth petitioner's counsel is also absent, the benefit of dispensing the personal appearance of the fourth petitioner will stand automatically vacated. It is again made clear that the contentions and defences are left open.

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13. Accordingly, the Criminal Original Petition is partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

sj i

To

1. The Special Judge, Special Court for TNPID Cases,
Madurai.

2. The Deputy Superintendent of Police,
Economic Offence Wing-II,
Dindigul.

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

+1 CC to M/s.K.P.S.PALANIVELRAJAN, Advocate (SR-101640[F] dated
27/11/2019)

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AP(02/06/2020) 5P 5C