



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:31.10.2019
CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

WEB COPY

Crl.O.P.(MD) No.15749 of 2019
and
Crl.M.P(MD) No.9319 of 2019

G.N.S.Moorthy ... Petitioner/Accused No.3

Vs.

1. The State rep by
The Inspector of Police,
Economic Offences Wing No.II
Karur ... 1st Respondent/Complainant

2.AR.Murugesh ... 2nd Respondent/Defacto Complainant

3.P.Chitrasenan ... 3rd Respondent/Accused No.2

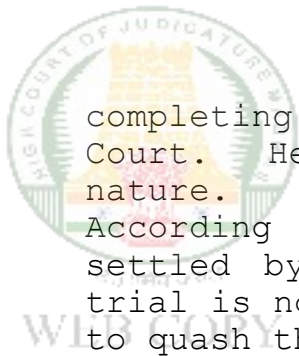
PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records pertaining to the case in C.C.No.4/2019 framed charge u/s.5 of TANPID Act and U/s.120(B), 420, 406 of IPC pending on the file of the Honble Special District Judge for TANPID Cases, Madurai and quash the same as against the petitioner concerned

For Petitioners : Mr.R.Sriram
For Respondents : Mr.K.Suyambulinga Bharathi
No.1 Government Advocate(Crl.Side)

O R D E R

This petition has been filed to quash the proceedings in C.C.No.4 of 2019 on the file of the learned Special District Judge for TANPID Cases, Madurai , as against this petitioner.

2. The learned Counsel appearing for the petitioner would submit that the offence under Section 5 of the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act,1997 would not attract as against the petitioner, since,even according to the prosecution, the pronote was issued by the petitioner for the amount received from the victims. Pronote is an instrument given under the preview of the TNPID Act. He further submitted that even at the stage of the First Information Report,he filed petition to quash the First Information Report, but the prosecution has stated that they have already completed investigation and filed final report , therefore the petition was dismissed. After verification the petitioner found that even after



completing the investigation the final report has not reached the Court. He further Submitted that the entire dispute is civil in nature. Infact he has settled 50 % amount of this share. According to the prosecution the remaining balance amount is to be settled by other accused persons. Therefore the pendency of the trial is nothing but clear abuse of process of law. Hence he prayed to quash the same.

3. The learned Government Advocate(Crl.Side) would submit that some of the witnesses have been examined in this case.

4. Heard Mr.R.Sriram learned counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate(Crl.Side) appearing for the first respondent.

5. It is seen from the First Information Report that there is a specific allegation as against the petitioner, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.



6. Recently, the Hon'ble Supreme Court of India held in respect of the very same issue in Crl.A.No.1572 of 2019 - Central Bureau of Investigation Vs. Arvind Khanna, wherein, it has been held as follows:

"19.After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20.In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

The above judgment is squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

7. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.4 of 2019 on the file of the learned Special District Judge for TANPID Cases, Madurai Hence this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Special District Judge for TANPID Cases, Madurai



2. The Inspector of Police,
Economic Offences Wing No.II
Karur

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

+1CC TO MR.R.SRIRAM, Advocate Sr. No. 95627

Crl.O.P. (MD) No.15749 of 2019
and
Crl.M.P (MD) No.9319 of 2019
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