IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.5556 of 2019

S.Suganthi Petitioner

vs.

1. The State of Tamil Nadu
   Rep. by its Principal Secretary to Government,
   Home Department,
   Fort St. George, Chennai - 600 009.

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

3. The District Revenue Officer,
   Office of the District Revenue Officer,
   Coimbatore.

4. The Sub Registrar,
   Office of the Sub Registrar,
   Mettupalayam,
   Coimbatore District. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 4th respondent to remove the encumbrance of attachment dated 04.01.2013 made in Doc.No.1 of 2013 on the file of the 4th respondent executed as per G.O.Ms.No.941 Home (Police XIX Department) dated 10.12.12 issued by the 1st respondent relating to petitioner's property, on the basis of petitioner's representation dated 04.02.2019.

For Petitioner : Mr.B.Nambiselvan
For Respondents: Mr.E.Balamurugan
Special Government Pleader
for R1 to R3

Mr.M.Tamilarasan
Additional Government Pleader
for R4

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O R D E R

This writ petition has been filed for issuance of a writ of mandamus directing 4th respondent to remove the entry in the encumbrance certificate with regard to the order of attachment passed by the Government in G.O.Ms.No.941, Home (Police XIX Department) dated 10.12.2012.

2.The case of the petitioner is that she is a proprietor of the Finance Company. A criminal case came to be registered against the Finance Company on the ground that the Company failed to repay back the deposits that were collected from nearly 72 depositors. Pursuant to the same, the 1st respondent issued a Government order in G.O.Ms.No.941, Home (Police XIX Department) dated 10.12.2012 attaching certain properties belonging to the Company. The same was also reflected in the encumbrance certificate that is maintained in the office of the 4th respondent.

4.During the pendency of the criminal case, steps were taken by the Finance Company to settle all the depositors. Ultimately, the main case was taken up for hearing in C.C.No.01 of 2012 by the learned Special Judge, Special Court under TNPID Act Cases, Coimbatore. The relevant portions in the judgment are extracted hereunder:

> 11)While so, since the Accused as per the directions of the Hon'ble High Court, even at the time of filing Bail Application deposited the amount and as per the directions of the Hon'ble High Court, 97% of the amount has been disbursed originally and the balance amount of 3% has been paid to the Depositors subsequently and the persons, who are claiming the interest amount has also been deposited by the Accused with the Competent Authority and the depositors were duly compensated by paying the interest for the depositors, who are claiming the interest. Apart from that out Hon'ble Hight Court while disposing the Crl.R.C.No.1035, 1036 and 1040 of 2015 dated 05.01.2017 directed this Court to consider and proceed U/S.5(A) of the TNPID Act. While so, applying the above Principal laid down by our Hon'ble Supreme Court and High Court, since the amount due to the depositors has been paid and the depositors who claim interest has also been compensated by paying the interest and since the provision of this Act is in compensatory nature. Considering the aforesaid circumstances and since U/S.5(A) of the TNPID Act provide for compromise and it is in the form of compounding in nature and the said provision is provides for settlement. Further, in

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view of the ruling of Hon'ble Supreme Court, as discussed earlier that though the compounding requires consent of both parties even in the absence of such consent the Court in the interest of justice on being satisfied that the complainant has been duly compensated then the Court can in its direction to closed the proceedings and discharge the Accused. Applying the said principles laid down by the Hon'ble Supreme Court in this case, as rightly contended by the learned Counsel appearing for the Accused that originally 97% of the amount has been disbursed to all the Depositors and subsequently the balance amount of 3% has also been disbursed to the depositors by the Competent Authority/District Revenue Officer and the depositors who claim interest have been duly compensated by depositing the amount with interest by the accused. Hence, applying the above principles and in view of the fact that all the Depositors has been paid and the Depositors, who were claiming interest, the interest amount has also been deposited. While so, as rightly contended by the Learned Counsel for the accused that since the entire amount has been deposited with interest for the Depositors, who claimed interest and the remaining depositors also been paid with their consent, hence in view of such circumstances the offence U/S/5 of the TNPID Act has not been made out by the Prosecution, is acceptable.

12.In view of my above discussions, the contention of the Learned Counsel appearing for the Accused that the Prosecution has failed to establish the willful intention to defraud the depositors in paying the amount to the depositors by the Accused has not been established by the Prosecution, in order to establish the case U/S.5 of TNPID Act is acceptable.

13.Hence, in view of my above discussion, I find that the prosecution has failed to establish the case against the Accused A-1 to A-6 U/S.420 IPC and Sec.5 of TNPID Act (72 Counts) through Prosecution Witnesses beyond all reasonable doubts.

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14.Hence, I find the Accused A-1 - A-6 are not guilty of the offences U/S.420 IPC and Sec.5 of TNPID Act, 1997 (72 Counts). Accordingly, I answered the point.

15.In the result, I find the Accused A-1 to A-6 are not guilty of the offences U/S.420 IPC and Sec.5 of TNPID Act, 1997 (72 Counts) and the Accused A-1 to

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A-6 are full acquitted U/S.248(1) Cr.P.C.

5.It is clear from the above judgment that the Court has recorded the fact that the Finance Company had settled almost the entire dues to the depositors and therefore, the Special Court came to a conclusion that there is no willful intention on the part of the Company to defraud the depositors and consequently the Special Court had acquitted all the accused persons by judgment dated 06.04.2018.

6.Pursuant to the above judgment, the petitioner made a representation to the 4th respondent to remove the encumbrance that is being reflected in the register with regard to the attachment of the property made by the 1st respondent. Since no action was taken, the present writ petition has been filed before this Court for a direction to the 4th respondent to remove the encumbrance entries from the register.

7.During the pendency of this writ petition, a status report was filed on behalf of the respondents 1 to 3. The main ground that has been taken in the status report is that out of 72 depositors, three of the depositors were not satisfied with the rate of interest that was offered by the Finance Company and they were not willing to receive the interest in full quits. That apart it has also been stated that one of the depositors viz., N.Subbaiyan has filed a Criminal Appeal before this Court and since the same is pending no direction can be issued to the 4th respondent to remove the entry made in the encumbrance register.

8.The learned counsel for the petitioner submitted that the appeal filed by the said N.Subbaiyan in Crl.A.No.859 of 2018 was dismissed by this Court by a judgment dated 31.07.2019. The learned counsel also furnished a copy of the judgment of this Court. The relevant portions in the judgment are extracted hereunder:

> 6. There appears to be sufficient force in the submission of the learned counsel for the accused. At this juncture, it may be relevant to extract Paragraph No.10b of the judgement of the trial Court.
>
> > "Pursuant to the same, the Depositors received the amount to the tune of 97% as per the order of this Court in O.A.No.3/2011. The balance amount of 3% has also been disbursed, except to the 6 Depositors, who belonging to two families of PW-8 and PW-13, as per the report of the Competent Authority/DRO, and the said

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witnesses, who deposed that they have to be paid interest during the course of their evidence. The Competent Authority/DRO, who examined as DW-1 deposed that the balance amount of 3% with interest for the said 6 Depositors who claim interest has been deposited by the Accused with the Competent Authority/DRO and in support of his evidence the Exhibit D-1 (Series) has also been marked. On perusal of Exhibit D-1 (Series) would show that all the depositors including the persons, who have not received the 3% have received 97% amount originally and the balance amount of 3% has been paid to the Depositors subsequently, except the 6 Depositors belongs to two families of PW-8 and PW-13, though the 3% amount was available with the Competent Authority, since they are claiming interest the amount has not been received by them. But, the interest amount has been calculated and paid to the credit of Competent Authority, which was also not denied by DW-1, and who deposed during the course of his cross-examination that :-"நீதிமன்ற அனுமதி பெற்று வட்டி தொகையை ரூ.1,25,400/- ம் 15.12.2017 வரைவோலை மூலம் செலுத்தப்பட்டு கணக்கில் வரவ வைக்கப்பட்டது. 6 நபர்களை தவிர வேறு யாரும் வட்டி கேட்கவில்லை. ஆவணங்களின் படி 6 நபர்களின் வட்டி தொகை வைப்பீட்டில் உள்ளதுஞ/ Hence, from the perusal of the evidece of the Competent Authority, it is clear that all the Depositors except the 6 Depositors, the amount has been paid and received by the Depositors and the amount due to the 6 Depositors with interest has been deposited by the Accused and it is in the credit of Competent Authority/DRO."

7. Thus, from the above, it is clear that a sum of Rs.94,055/- is available with the District Revenue Officer for disbursement to N.Subbaiyan (P.W.8) and Rangarajan (P.W.13) and only on account of their Shylockian attitude, the District Revenue Officer has not been able to disburse the amount to them.

8. Under such circumstances, this Court does not find any infirmity in the acquittal of the accused warranting interference in appeal.

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9. In the result, this Criminal Appeal stands dismissed.

9.It is clear from the above judgment that this Court was satisfied with the fact that all the depositors have been substantially repaid back the deposits with interest and in fact a surplus amount is available in the office of the DRO for disbursement to two of the depositors and inspite of the receiving the amount, they have unnecessarily approached this Court and filed an appeal. This Court, therefore, found that there was absolutely no ground to interfere with the judgment passed by the trial Court and accordingly the criminal appeal was dismissed.

10.In view of the above development, there is no justification in continuing with the encumbrance entry in the concerned register. Considering the fact that the Finance Company had paid the entire amount to the depositors and this fact being recorded both by the trial Court and this Court, the entry in the encumbrance register requires to be removed.

11.In view of the above discussion, there shall be a direction to 4th respondent to consider the representation made by the petitioner on 04.02.2019 and take immediate steps to remove the encumbrance entry that has been made on 04.01.2013 pursuant to the Government order issued by the 1st respondent. This process shall be completed within a period of four weeks from the date of receipt of copy of this order. The petitioner is directed to make a fresh representation to the 4th respondent along with a copy of this order.

12.This writ petition is disposed of with the above direction. No Costs.

सत्यमेव जयते

s/d-
Assistant Registrar(J)

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Sub-Assistant Registrar

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To
1.The Principal Secretary to Government,
The State of Tamil Nadu
Home Department,
Fort St. George, Chennai - 600 009.

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

3. The District Revenue Officer,
Office of the District Revenue Officer,
Coimbatore.

4. The Sub Registrar,
Office of the Sub Registrar,
Mettupalayam,
Coimbatore District.

+1 CC to Govt. Pleader sr 19277
+1 CC to Mr.B.Nambiselvan, Advocate sr 18159.

W.P No.5556 of 2019

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