IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.No.443 of 2020 and
CRL.M.P.No.6767 of 2020

K.Gunasekaran ... Appellant/Accused-3

Vs.

State rep. by
The Inspector of Police,
C.C.I.W. C.I.D Karur,
Economic Offences, Wing-II,
Erode District. ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the judgment made in C.C.No.5 of 2014 on the file of the Special Judge, Special Court under TNPID Act, Coimbatore, dated 13.10.2020 and acquit the accused.

For Appellant : Mr.S.N.Arunkumar

For Respondent : Mr.C.Raghavan,
Government Advocate [Crl. Side]

JUDGMENT

This Criminal Appeal arises out of the Judgment passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore in C.C.No.5 of 2014, dated 13.10.2020.

2.The conviction and sentence passed against the appellant/A3, A1 and A2 in C.C.No.5 of 2014 are as follows:-

- A1/M/s.Jothi Emu Farms to pay a fine of Rs.10,000/- for each offences and each counts under Section 420 IPC and Section 5 of TNPID Act (Rs.10,000/- X 2 offences X 16 counts = Rs.3,20,000/-). A2 and the appellant/A3 shall pay the fine amount equally imposed on A1 Firm, in default of payment of fine by A2 and A3, they shall undergo further period of one years Simple Imprisonment for each offences.
- A2 and the appellant/A3 each to undergo two years Simple Imprisonment and to pay fine of Rs.10,000/- for each counts (Rs.10,000 X 16 counts = Rs.1,60,000/-) under Section 120-B IPC, in default of payment of fine to undergo further one year Simple Imprisonment.

* A2 and the appellant/A3 to undergo three years Simple Imprisonment and to pay fine of Rs.10,000/- for each counts (Rs.10,000/- X 16 counts = Rs.1,60,000/-) under Section 420 IPC, in default of payment of fine to undergo further one year Simple Imprisonment.
* A2 and the appellant/A3 to undergo three years Simple Imprisonment and to pay fine of Rs.10,000/- (Rs.10,000/- X 16 counts = Rs.1,60,000/-) under Section 5 of TNPID Act, 1997, in default of payment of fine to undergo further one year Simple Imprisonment. Total fine amount of Rs.12,80,000/-.
* Out of the said total fine of Rs.12,80,000/-, a sum of Rs.1,50,000/- shall be paid to PW5 Gomatheeswaran, Rs.2,75,000/- to PW7 Sheik Dawood, Rs.4,50,000/- to PW12 Palanivel and Rs.1,50,000/- to PW20 G.Ramamurthy towards compensation.

3.The background facts, as projected, by the prosecution are as follows:-

PW1 knew the accused were running a firm in the name of M/s.Jothi Emu Farms at Perundurai, Erode District. The accused advertised in the newspaper in the name of A1 company, on seeing the same, PW1 approached A1 company and on their representation, he deposited a sum of Rs.1,50,000/- on different dates and received the agreement [Ex.P1]. As per agreement [Ex.P1], the accused gave six emu birds and promised to pay monthly payment of Rs.6,000/-. Initially, the accused paid for five months, but later they failed to make the payments. PW1 went to the office of the accused to enquire about the same and he found the office of the accused was closed. Therefore, PW1 preferred a complaint [Ex.P2] to PW35. Likewise PW2 was cheated for Rs.3,00,000/- and the agreement is Ex.P3, PW3 was cheated for Rs.3,00,000/- and the agreement is Ex.P5, PW4 was cheated for Rs.1,00,000/- and the agreement is Ex.P7, PW5 was cheated for Rs.1,50,000/- and the agreements are Ex.P9, PW6 was cheated for Rs.4,50,000/- and the agreement is Ex.P11 and PW7 was cheated for Rs.2,75,000/- and the agreement is Ex.P13.

4.PW16 is the Manager of the A1 firm during March 2011 and he received a monthly salary of Rs.7,000/-. PW16 stated that A1 firm was breeding 18 emu birds and later, he resigned the job. PW17 is an employee of A1 firm. PW18 is the driver in A1 firm. PW33 is the Computer Operator in A1 firm. PW16, PW17, PW18 and PW33 were all employees of A1 firm and they later resigned their respective work. PW19, PW21, PW22 and PW30 are the building owners, who were rented their building to A1 firm to run the office. PW23 is the Manager of Oriental Insurance Company. PW24 is the Deputy Manager of National Insurance Company, Erode. PW25 is the Senior Manager of New India Insurance Company, Erode. PW26, the Manager of Axis Bank, Nassiyanur Branch stated that the petitioner opened a bank account in his name and made transactions in the account and A2 also opened account in the bank. The account opening form and Know Your Customer (KYC) documents were furnished. PW31, the Editor of the Newspaper stated that he published advertisement of A1 firm, for which the accused had made payments. PW35, the Special Inspector of Police, Perundhurai on 11.01.2013 received the complaint from PW1 against A1 firm and registered an FIR in Crime No.29 of 2013 [Ex.P50], for offence under Section 420 IPC. PW37, Circle Inspector of Police, Namakkal conducted further investigation. PW38, the Investigating Officer took up further investigation, examined 16 depositors, recorded their statement, seized the documents and filed final report, for offence under Sections 120 (B), 420 and Section 5 of TNPID Act, stating that the accused had collected Rs.41,75,000/- from the depositors and utilized the same for personal use.

5.During trial, the prosecution examined 38 witnesses and marked 51 documents. On the side of the defence, no witness was examined and no documents were marked. The trial Court on appreciation of the evidence and materials, convicted the accused as stated above.

6.The learned counsel for the appellant submitted that in this case, the majority of the depositors/witnesses received the deposited amount during pendency of trial, except four witnesses viz., PW5, PW7, PW12 and PW20, which is admitted and recorded in the judgment of the trial Court. Now, the appellant is willing to make the payment to the depositors. The affidavit were filed for acceptance of payment by the depositors viz., PW5, PW7, PW12 and PW20. Section 5(A) of TNPID Act and Section 420 IPC being a compoundable offence, the learned counsel for the appellant and the learned Additional Public Prosecutor agreed to take up the matter for final hearing.

7.The learned counsel for the appellant submitted that a scheme was formulated for breeding of EMU birds with understanding that fixed deposit to be made and thereafter, EMU birds would be handed over to the depositors. The feed, medical facilities would be taken care by the farm and the birds would be insured. The depositors have to rear the birds in their place. This scheme was later expanded and the second scheme is that the birds would be reared by the firm itself and the depositors to make the deposits proportionately and the birds would be identified to the depositors which would be taken care by the firm. The firm was initially making payments and later, the payments could not be made, due to crash in the market and the projected expectation could not be achieved due to various factors. Hence, the depositors have lodged the complaint to the respondent Police.

8.On receipt of the complaints from the depositors, the respondent Police without understanding the nature of work, launched prosecution as though it was default in payment and cheated the depositors. It is admitted that out of 16 depositors, the payments were made to 12 depositors and now, the payments to be made for four depositors. The payments made to the depositors during trial, had been marked as Exs.D1 to D7 and the witnesses/PW2, PW3, PW8, PW9, PW10 and PW11 admitted the same. Now, the appellant has made payments to PW5, PW7, PW12 and PW20. Hence, he prayed to set aside the judgment of trial Court.

9.The learned Additional Public Prosecutor appearing for the respondent Police submitted that all the accused conspired together and cheated the depositors by giving frequent advertisements in daily newspapers, TV channels and pamphlets etc., about the schemes of rearing EMU birds. For the two schemes, the accused have collected Rs.41,75,000/- from 16 depositors on false promise that they would return the amount with 61.31% interest after the maturity period. After depositing the amount by the depositors, the accused had no intention to return the payment to the depositors and indulged in fraudulent financial operations. The accused utilized the major portion of the deposited amount for personal benefits. During investigation, it was found that as per agreement, the feeds and medical care for EMU birds were not properly given. The accused initially paid the interest amount for sometime. The second scheme was conceptualized with the sole intention to cheat the depositors and shown the EMU birds as owned by some others. There was no identification of EMU birds of each of the depositors. It was also found that the EMU birds were not insured with any of the Insurance Company and no Doctor had visited the farm. Finally, the accused closed the farm and absconded themselves and later, they were arrested and some of the properties were seized.

10.It is further submitted that during pendency of trial, except four depositors, the accused made payment to other depositors and they have also admitted the same in their evidence. The trial Court on the evidence and materials adduced by the prosecution and also finding that the accused were dragging on the trial without making payment for 4 depositors by giving one reason or other, had convicted the appellant and other accused. The appellant has now produced affidavits for payment of amount to depositors/witnesses viz., PW5, PW7, PW12 and PW20.

11.This Court considered the rival submissions and perused the materials available on record.

12.It is seen that PW5/Gomatheeswaran filed an affidavit dated 16.12.2020 stating that he received the deposited amount of Rs.1,50,000/- from the appellant on 05.12.2020. Likewise PW7, PW12, PW20 have also filed affidavit to that effect. PW5, PW7, PW12 and PW20 had no objection for compounding the offence and setting aside the judgment of the trial Court. The prosecution confirms the payments and concurs the same.

13.In view of the Section 5(A) of the TNPID Act, the offence under TNPID Act can be compounded on payment of the entire amount due to the depositors with or without interest and Section 420 IPC is also compoundable offence and in view of the above mentioned four depositors having received the deposit amount, confirms the same, verified by the respondent, this Court is inclined to set aside the judgment of conviction by the trial Court.

14.In the result, the judgment dated 13.10.2020 in C.C.No.5 of 2014, on the file of the Special Judge, Special Court under TNPID Act, Coimbatore is set aside and the Criminal Appeal is, accordingly, allowed. The appellants are acquitted from all the charges levelled against them. Consequently, the connected Criminal Miscellaneous Petition is closed. Bail Bond, if any, executed shall stand cancelled.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To
1.The Special Judge,
Special Court under TNPID Act,
Coimbatore.

2.The Inspector of Police,
C.C.I.W. C.I.D Karur,
Economic Offences, Wing-II,
Erode District.

3.The Public Prosecutor,
High Court, Madras.

GPL(CO)
KM(19/04/2021)