

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

CRL.O.P.NO.20251 OF 2020

AND

CRL.M.P.NO.8432 OF 2020

S.Thangaraj,
S/o, Sivalingasamy Goundr,
No.10/99-A, Panathampatti,
Metrathi Village,
Madathukulalm Taluk,
Tiruppur District.

...Petitioner

-Vs-

State: Rep by
The Deputy Superintendent of Police,
Economic Offences Wings-II,
Coimbatore.

... Respondent

Prayer:

Criminal Original Petition filed under section 482 of Criminal Procedure Code, to set aside the order dated 28.10.2020 in Crl.M.P.No.600/2020 in C.C.No.48/2008 on the file of the Special Judge, Special Court under TNPID Act, Coimbatore.

For Petitioner : Mr.P.Tamilavel

For Respondent : Ms.M.Prabhavathi
Additional Public Prosecutor

O R D E R

Assailing the order dated 28.10.2020 passed in Crl.M.P.No.600 of 2020 in C.C.No.48 of 2008 on the file of the Special Judge, Special Court under TNPID Act, Coimbatore, the petitioner/accused No.4 has preferred the Criminal Original Petition.

2. The Crl.M.P.No.600 of 2020 has been preferred by the petitioner under section 233 Cr.P.C., by putting forth the case that he has laid the petition in Cr.M.P.No.2847 of 2019 under section 91 Cr.P.C to issue summons to the Registrar of Firms, Coimbatore to produce the Form V and the retirement deed dated

25.02.1997 executed between the parties of A2 Firm and in obedience to the abovesaid summons, the Registrar of Firms produced only Form V and apprised that no retirement deed is available in the file and therefore, according to the petitioner, it has become necessary to produce the abovesaid retirement deed to prove that he had retired from A1's Firm and hence seeking permission to produce the said document and tender evidence, he has preferred the abovesaid petition.

3. The abovesaid petition was resisted by the respondent contending that the defraud amount involved in the matter amounts to Rs.25,30,000/- and the default interest amounts to Rs.13,27,200/- and the prosecution evidence has already been closed and A1's Firm had been registered on 29.03.1996 vide Registration No.273 of 1996 and the retirement deed was belatedly registered on 14.04.2004 before the Registrar of Firms, Coimbatore and if any partner gets relieved from the Firm, the same must be published in the daily newspaper and also to be informed to the depositors and the petitioner has filed only the xerox copy of the retirement deed to delay the proceedings and to escape from the clutches of law and hence sought for the dismissal of the petition.

4. On an appreciation of the materials available on record and the rival contentions putforth by the respective parties, the Court below has dismissed the petition preferred by the petitioner/accused No.4 in Cr.M.P.No.600 of 2020. Impugning the same, the present Criminal Original Petition has been laid by the petitioner.

5. On an appreciation of the materials placed on record and after hearing the counsel for the petitioner, it is noted that the complaint has been laid against the petitioner and the other accused on 04.01.2004 and the final report in the matter has been taken on file in C.C.No.24/2005 on the file of the Special Court for TNPID Act cases, Chennai and subsequently transferred to the Special Court under TNPID Act, Coimbatore and the same has been renumbered as C.C.No.48 of 2008. The total defraud amount including the interest involved in the abovesaid matter comes to Rs.38,57,700/-.

6. Seeking to produce the copy of the retirement deed dated 25.02.1997, the petitioner/accused no.4 has come forward with the petition under section 233 Cr.P.C. According to the petitioner, though the Registrar of Firms had been summoned to produce the retirement deed dated 25.02.1997, he has not procured the said retirement deed, and inasmuch as, he has not produced the said retirement deed by informing that the same is not available in the file, according to the petitioner, he has

been necessitated to lay the petition to file the copy of the retirement deed dated 25.02.1997. As abovenoted, the respondent had taken the defence that the retirement deed projected by the petitioner has been belatedly registered only on 14.04.2004 before the Registrar of Firms, Coimbatore and hence the present petition laid by the petitioner is totally misconceived and intended to delay the proceedings and liable to be dismissed.

7. The A1's Firm is found to have been registered on 29.03.1996 vide Registration No.273 of 1996, and as rightly noted by the Court below, while summoning the retirement deed dated 25.02.1997 from the Registrar of Firms in Crl.M.P.No.2847 of 2019, the petitioner has not mentioned the date of the retirement deed and thus held that the petitioner has deliberately suppressed the date of filing of the retirement deed in the above petition. When it is the case of the respondent that the retirement deed had been presented for registration only on 14.04.2004, no valid explanation has been putforth by the petitioner for the delayed registration of the abovesaid retirement deed. Furthermore, as rightly held by the Court below, during the course of evidence, the petitioner had tendered evidence that he had retired from the partnership firm on 10.12.2003. But, subsequently, he has projected a case as if he had retired from the partnership firm vide retirement deed dated 25.02.1997 and during the course of questioning under section 313 (1)(b) Cr.P.C., the petitioner has not whispered anything about the retirement deed. In addition to that, the petitioner has also not endeavored to mark the retirement deed, during the course of his evidence.

8. In the light of the abovesaid factors, when the petitioner has projected two dates of retirement i.e., one on 10.12.2003 during the course of his oral evidence and another on 25.02.1997 in the present petition and the petitioner has only come forward with the xerox copy of the retirement deed dated 25.02.1997 and furthermore, when it is noted that the retirement deed has been presented for the registration very belatedly on 14.04.2004, as held by the Court below, no proper explanation has been forthcoming on the part of the petitioners as to why he had waited till 2004 for the registration of the retirement deed and why it has not registered in the year 1997 itself when the retirement deed is said to have been come into existence. With reference to the same, absolutely there is no explanation forthcoming on the part of the petitioner.

9. In the light of the abovesaid factors, the Court below has rightly concluded that only with the sole object of delaying the proceedings and the payment of the abovesaid amount due to the depositors amounting to several lakhs of rupees, the petitioner has come forward with the petition belatedly and

without any sufficient cause and consequently dismissed the petition preferred by the petitioner.

10. In the light of the abovesaid factors, it is noted that the Court below has taken into consideration the valid factors as contemplated under law and declined the request of the petitioner to adduce evidence qua the xerox copy of the retirement deed dated 25.02.1997. I do not find any error or infirmity in the impugned order passed by the Courts below. Resultantly, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

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 Deputy Superintendent of Police,
Economic Offences Wings-II,
Coimbatore.
3. The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.20251 of 2020
and
CrI.M.P.No.8432 of 2020

PA (CO)
CS/20/01/2021

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