IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17.12.2020

PRONOUNCED ON : 22.12.2020

CORAM

THE HONOURABLE MR. JUSTICE G. CHANDRASEKHARAN

Crl.RC.No.1235 of 2017
and
Crl.M.P.No.11831 of 2017

G.Anand ... Petitioner/Accused No.18

..Vs..

The State
Represented by the Inspector of Police,
Economic Offence Wing II,
Villupuram ...Respondent/Complainant

Prayer: Criminal revision filed under section 399(1) of Cr.P.C to call for the records of the Special Judge, TNPID Act, Chennai - 600 104 pertaining to the common order dated 09/08/2017 passed in Crl.M.P.No.711 of 2016 in C.C.No.12 of 2015 with reference to Crime No.49 of 2013 and set aside the same.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.K.Madhan
Government Advocate (Crl. Side)

ORDER

(This case has been taken up for hearing through Video conferencing)

This criminal revision case is directed against the order passed in Crl.M.P.No.711 of 2016 in C.C.No.12 of 2015 on the file of the Special Judge for TNPID Act, Chennai.

2. The petitioner filed Crl.M.P.No.711 of 2016 under section 245 of Cr.P.C to discharge him from the case in C.C.No.12 of 2015. It is seen from the averments found in the petition that the petitioner is the eighteenth accused in this case. The respondent police filed final report against the accused alleging that A1 to A4 collected huge amount from 273 depositors and failed to pay the depositors for the chit they subscribed. The petitioner was not connected with the collection and distribution of money or any other monetary transaction. He was only an employee of A1 to A4 and he was not involved in the decision making process or collection and

repayment of amounts to the depositors. He was only managing the office. He resigned his job on and from 30.04.2013 and his resignation was also accepted. Even as per the final report, no specific allegation of any default has been made against him under any of the provisions of the Indian Penal Code or any other law. He has been wrongly mentioned as a partner in A1 to A4 which are the private limited companies and therefore, there is no question of any partnership in the said companies. He was not a director of any of the companies namely A1 to A4. Since he has nothing to do with the alleged collection and disbursal of amount, there is no material to proceed against him and therefore, he has to be discharged.

3. The counter filed by the respondent denies the averments made in the petition. It is seen from the counter that A1 to A4 are the private limited companies and A5 to A7 were the directors of these companies and A8 to A20 were the managers and they were the one who have taken actual participation in running these establishments by collecting chit amounts, canvassing all the depositors by making advertisements, participated in the conduct of tender etc. The accused involved in this case cheated 273 depositors by collecting huge amount of Rs.3,56,27,206/- towards chit transaction and failed to disburse the amount. Therefore, the case in crime No.49 of 2013 under section 420, 406 & 120(B) IPC read with section 5 of TNPID Act was filed by Economic Offence Wing - II, Villupuram. The claim of the petitioner that he was only a servant to the company and he could not be made responsible for the affairs of the financial transaction, default to pay the depositors is not correct. The petitioner was the close associate of the prime accused A.K.Muthu, Senthamilselvi and Karthikeyan and he was actually participated in the financial transaction and it is evident from the materials collected. There is prima facie case to frame charges against the accused under relevant provisions of Indian Penal Code or any other criminal laws.

4. On considering the submissions made before the learned Special Judge for TNPID Act, Chennai and perusing the materials placed before this Court, the learned Judge found that the materials found on record are sufficient to frame charges against the petitioner and dismissed the discharge petition. Against the said dismissal order, this revision petition has been filed.

5. The points now to be considered is (a) whether there is any sufficient material to frame charges against the petitioner warranting his discharge and (b) whether the order of the learned Special Judge suffers from any incorrectness, illegality or impropriety.

6. As narrated above, the petitioner claims that he was only a paid servant and he has nothing to do with any of the financial transaction of A1 to A4 either by way of collecting

amount from the depositors or in the matter of disbursement of the amount. He was only managing the affairs of the office. Nothing more or nothing else. His activity do not make out a prima facie for framing charges under section 240 of Cr.P.C.

7. The following factors have to be kept in mind while framing charges or entertaining a discharge petition:

(1) The court need not have to go into evidentiary and probative value of the materials collected by the police during the course of investigation.

(2) The court is not required to go into the details of the investigation.

(3) The materials before the Court had to be accepted as true.

(4) The court should not appreciate the evidence.

(5) There is no need to conduct a mini trial at the time of framing charges.

(6) Rowing and fishing enquiry is impermissible.

(7) What has to be considered is whether the materials placed before the court discloses a strong suspicion against the accused and whether there is sufficient grounds to frame charges against the accused.

8. The petitioner has not produced any other materials except the petition and the counter in Crl.M.P.No.711 of 2016 and the order passed thereon. Apart from the contention that the petitioner has nothing to do with the collection and disbursement of money from depositors, it was also contended by the learned counsel for the petitioner that the petitioner resigned his job on and from 30.04.2013 and the same has been accepted. It is also submitted that there is no materials produced to show that the petitioner has any way involved in the collection of deposits and failed to deposit of the collected amount with the company.

9. The learned Public Prosecutor gave his response to the submission made by the learned counsel for the petitioner that as a manager of the company, the petitioner was actually involved in the canvassing of depositors, receiving the deposit amount and the disbursement of the amount. It is also brought to the notice of this Court that the accused Manikannan and Durai murugan have filed Crl.R.C.Nos.1408 & 1409 of 2017 against the order of dismissal of their discharge petitions. This petitioner is also similarly placed like that of the petitioners in Crl.R.C.Nos.1408 & 1409 of 2017. A copy of the order is also produced for the perusal of this Court.

10. The perusal of the order passed by the learned Special Judge shows that Section 5 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 means on the deposit, every person responsible for the affairs of the financial establishments is liable for punishment. It is also seen that the petitioner

along with other accused had canvassed the deposit from 237 depositors and cheated them to the tune of Rs.3,56,27,206/-. The witnesses have given statement about the fact of collection of amount from them by the petitioner and issuing receipts for those payments. As a manager for the company, the petitioner received deposits and issued receipts. It is clear from section 5 of TNPID Act, 1997 that it is not necessary to be incharge of the company and responsible for the conduct of business of the company. It is enough if the person is responsible for the management of the affairs of the establishment. It is seen that there is enough material available to frame charges against the petitioner. Merely because of the petitioner sent his resignation letter dated 30.04.2013, he cannot be excluded from the consideration for the criminal act committed by him, when he was under the service of the company.

11. From the materials produced before this Court and also the order passed in Crl.R.C.Nos.1408 & 1409 of 2017, this Court is of the considered view that there are sufficient materials available to frame charges under relevant provisions of Indian Penal Code and Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 against the petitioner.

12. In this view of the matter, this Court finds that there is no incorrectness, illegality or impropriety in the order of the learned Special Judge. Accordingly, the order of the learned Special Judge in Crl.M.P.No.711 of 2016 is confirmed and this Criminal Revision is dismissed. Since this case is of the year 2017, the learned Special Judge for TNPID Act is directed to dispose this case at the earliest, preferably within a period of three months from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Special Judge I,
TANPID Act, Chennai 104.

2.The Inspector of Police,
Economic Offence Wing II,
Villupuram.

3. The Public Prosecutor,
High Court, Madras.

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Crl.M.P.No.11831 of 2017

CA(CO)
GN(11/02/2021)