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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2020

CORAM:

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

Crl.O.P.(MD)No.5059 of 2016

and

Crl.M.P.(MD)No.2501 of 2016

1.R.K.Ramkumar

2.Divya

... Petitioners/Accused Nos.27 & 28

-Vs-

1.The State through

The Inspector of Police,
Economic Offences Wing - II,
Virudhunagar,
Virudhunagar District.

... 1st Respondent/Complainant

2.R.Abdul Imran

...2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the charge sheet in C.C.No.8 of 2015 on the file of the Special Court Under TNPID Act Cases, Madurai District and quash the same as null and void insofar as the petitioners are concerned.

For Petitioners : Mr.G.Prabhu Rajadurai
for Mr.V.B.Sundareshwar

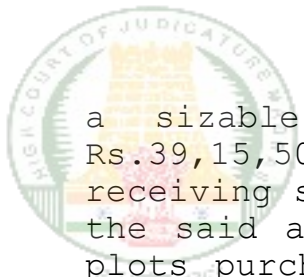
For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.side)

For R2 : Mr.R.Sundar Srinivasan

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.8 of 2015 on the file of the Special Court Under TNPID Act Cases, Madurai District, as against the petitioners.

2.The case of the prosecution is that the accused are running a Multilevel Marketing Business in the name and style of R.M.Wealth Creations India Pvt., Ltd., (RMWC) and the accused 1 and 5 to 18 are blood relatives and the accused 2 to 4 are the Directors of the said Company while the accused 26 to 28 are the wife, son and daughter-in-law of the deceased/Kalyanaraj respectively, who is the Director of said Company and they are acted as benami and they have supported for the indulgence of cheating in the said Company. The Company is functioning at E.Muthulingapuram and its business activities with regard to Insurance, Construction, Land and Home appliances. During the beginning of June, 2011, the accused Nos.1, 2, 3, 4, 8, 12, 13 and 15 have induced the defacto complainant as their company having fantasizing schemes to those who are investing a sum of Rs.10,000/- for availing the Insurance, Construction, Home Appliances and Land,

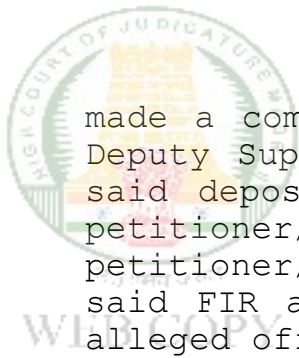


a sizable income could be derived nearly to the tune of Rs.39,15,500/- in six phases for the invested amount. Until receiving such amount, 10% interest will be given for the said amount of Rs.10,000/-. Further they assured that if the plots purchased from the company, the registration will be done at free of cost. Believing the enticing advertisements of the company, the defacto complainant has invested money to the tune of Rs.2,93,72,395/- collecting amounts from his friends for the period of June 2011 to June 2012 and he received a sum of Rs.5,00,000/- as interest up to the month of April 2012 and also 35 plots in numbers have been given in registration at Sathur Mega City, but remaining plots and Home appliances have not given to him. Since the plots are unworthy even for a sum of Rs.10,000/- the defacto complainant asked repayment, the accused have again given false promise with enticing words, but thereafter, the accused have not acted according to their own promises and now absconded with huge sum of Rs.5 crores. Hence the complaint.

3. The learned counsel appearing for the petitioners would submit that the accused 1 and 2 are doing the Business in the name and style of R.M.Wealth Creations India Pvt Limited and they are alone the main founders of the Company. To that effect, a registration certificate has also been issued by the Assistant Commissioner of Commercial Tax, Sivakasi, vide GST.No.1069029 and TIN No.33915962957. Further the petitioners submitted that the deceased/Kalyanaraj is the husband of accused No.26 and accused Nos.27 and 28 are the son and daughter-in-law of the deceased respectively. Since the deceased/R.Kalyanaraj was reputed person in that locality, the accused Nos.1 & 2 have approached him to introduce the investors for which the said Kalyanaraj has just introduced and did not give any promise to the investors on behalf of company and the petitioners never took part with the any affairs of the so-called company.

4.It is further submitted by the learned counsel for the petitioners that the petitioners herein are working in a reputed private Company namely, INFOSYS and TCS at Chennai and the first petitioner's mother is working as Nurse at Thayilpatti. Hence there is no dire need of money to involve with the affairs of the said company. Moreover the petitioners herein are never visited the place, where the said company is functioning and they did not have any acquaintance with other directors of the Company, more so, they don't have any knowledge about that company.

5.It is also submitted that in fact the father of the first petitioner, R.Kalayanaraj had deposited a sum of Rs.35 lakhs with RMWC Pvt.Ltd., but said deposit amount was not repaid to the father of the first petitioner or to his mother. The first petitioner's father namely, R.Kalyanaraj has committed suicide on 19.08.2012 due to harassment of the accused Nos.1 and 2. After the death of the first petitioner, on 21.12.2012, the first petitioner



made a complaint to the Superintendent of Police, Virudhunagar and Deputy Superintendent of Police, EOW, Virudhunagar for getting the said deposited amount from the first accused herein. The second petitioner/28th accused happens to be the wife of the first petitioner/27th accused, she has also been falsely implicated in the said FIR and charge sheeted. But she has nothing to do with the alleged offences.

6. The learned Counsel appearing for the petitioners would submit that the petitioners are innocents and they have not committed any offence as alleged by the prosecution. Without any base, the case has been registered as against the petitioners for the offences under Sections 406, 420, 120(b), 294(b) and 506(ii) IPC and the same has been taken cognizance in C.C.No.8 of 2015 on the file of the Special Court under TNPID Act Cases, Madurai, as against the petitioners. Hence, he prayed to quash the same.

7. Heard Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl.Side) appearing for the first respondent and Mr.R.Sundar Srinivasan, learned counsel appearing for the second respondent.

8. The learned Government Advocate (Crl. Side) submitted that there are specific over tact as against the petitioners and also there are material evidences to attract the offence. In fact, because of the absence of the petitioners, the case has been split up in C.C.No.4 of 2018 as against the petitioners and trial is pending. He further submitted that already trial commenced and so many witnesses have been examined.

9. It is 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.

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10. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **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."

11. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if



accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are 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.

12. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.8 of 2015 on the file of the Special Court Under TNPID Act Cases, Madurai District. The personal appearance of the petitioners is dispensed with and he shall be represented by a counsel. However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

13. Accordingly, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

vsd

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Special Judge,
Special Court Under TNPID Act Cases,
Madurai District.



2.The Inspector of Police,
Economic Offences Wing - II,
Virudhunagar,
Virudhunagar District.

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

+2 ccs to Mr.R.SUNDAR SRINIVASAN ,Advocate, SR No.24716,23570

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and
Crl.M.P.(MD)No.2501 of 2016

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