Bail Slip

The Petitioners/Accused 2 & 3 namely 1) G.Shanmugam, S/o.Gurusamy, 2) R.Sampathkumar, S/o.Ramasamy were directed to be released on bail as per the order of this Coourt dated 14/08/2012 in Crl.MP.No.1 of 2012 in Crl.RC.No.945 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

Reserved on : 11.12.2020

Pronounced on : 08.01.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No.945 of 2012

1.Indu Financiers,
No.1083, Mettupalayam Road,
R.S.Puram,
Coimbatore - 641 002.

2.G.Shanmugam,
S/o.Gurusamy

3.R.Sampathkumar,
S/o.Ramasamy ... Petitioners / Accused 1 to 3

versus

The State represented by
The Inspector of Police,
Economic Offences Wing-II,
Coimbatore. ... Respondent / Complainant

Prayer: Criminal Revision Petition filed under Sections 397 & 401 the Code of Criminal Procedure, to set aside the judgment dated 21.06.2012 made in Crl.A.No.121 of 2012 on the file of the learned Principal District and Sessions Judge, Coimbatore, in confirming the judgment dated 14.03.2012 made in C.C.No.71 of 2008 on the file of the learned Special Judge under TNPID Act Cases, Coimbatore and allow the above Criminal Revision Petition.

For Petitioners : Mr.R.John Sathyan

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

O R D E R

Aggrieved over the concurrent findings made in C.C.No.71 of 2008 dated 14.03.2012 on the file of the learned Special Judge under TNPID Act Cases, Coimbatore and in Crl.A.No.121 of 2012 dated 21.06.2012 on the file of the learned Principal District and Sessions Judge, Coimbatore, the petitioners, who are the appellants in the above referred appeal are before this Court by filing this Criminal Revision Petition to check the correctness of the judgments rendered by the Courts below.

2. The petitioners / appellants herein are arrayed as A-1 to A-3 in C.C.No.71 of 2008 on the file of the learned Special Judge under TNPID Act Cases, Coimbatore. By a judgment dated 14.03.2012, the learned Special Judge under TNPID Act Cases, Coimbatore, convicted the revision petitioners for an offence under Section 5 of TNPID Act and ordered the first accused to pay a fine of Rs.28,000/- which will be payable by the second and third accused equally, in default to undergo Rigorous Imprisonment for 6 months each and sentenced the second and third accused to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.28,000/- each, in default to undergo Rigorous Imprisonment for 6 months each.

3. Challenging the same, the petitioners filed an appeal before the learned Principal District and Sessions Judge, Coimbatore, in Crl.A.No.121 of 2012, wherein the learned Principal District and Sessions Judge, Coimbatore, affirmed the findings arrived at by the learned Special Judge under TNPID Act Cases, Coimbatore and dismissed the appeal. Aggrieved over the same, the petitioners are before this Court with this revision petition.

4. The case of the prosecution, in brief, is as follows;

4.1. The petitioners 2 and 3 / A-2 & A-3 were carrying on the business of receiving deposits in the name of the Indu Financiers, the first accused herein. It is a Financial Establishment, within the definition of Section 2(3) of TNPID Act. The first accused is a registered Firm under the Registrar of Firms (Ex.P.86). The accused 2 and 3 were responsible for the management of the affairs of the Financial Establishment. They have collected deposits for fixed period and for interest, to the tune of Rs.77,50,000/- as detailed below. The deposit receipts have been marked as Ex.P.2 to Ex.P.85 in the trial Court.

Sl. No.	Name of Depositor	FDR No.	Date of Deposit	Date of Maturity	Deposit Amount	Interest	Total
1.	2.	3.	4.	5.	6.	7.	8.
1.	K.M.Phillipose	40	01.04.03	01.04.06	30000/-	-	30000/-
2.	P.Lalu Mathews	45	01.06.03	01.06.05	20000/-	-	20000/-
3.	P.Gowri	175 193	16.07.05 06.10.05	16.07.10 06.10.11	25000/- 25000/-	- -	25000/- 25000/-
4.	A.Lalithamani	231 120 232 218 219	18.09.03 27.08.04 31.08.04 01.04.06 01.04.06	18.11.07 27.10.08 31.10.08 01.04.11 01.04.11	16000/- 5000/- 6000/- 40000/- 10000/-	- - - - -	16000/- 5000/- 6000/- 40000/- 10000/-
5.	Rukmani	96 101 177 178 163 174 222 223 224 225	08.04.04 01.06.04 13.06.04 13.06.04 01.06.05 11.07.05 01.05.06 01.05.06 01.05.06 01.05.06	08.04.09 01.06.09 13.08.08 13.08.08 01.06.10 11.07.10 01.05.11 01.05.11 01.05.11 01.05.11	75000/- 50000/- 20000/- 20000/- 100000/- 40000/- 150000/- 50000/- 50000/- 50000/-	- - - - - - - - - -	75000/- 50000/- 20000/- 20000/- 100000/- 40000/- 150000/- 50000/- 50000/- 50000/-
6.	P.Sevaliappan	191 63 110 64	12.09.05 20.08.03 01.07.04 01.09.03	12.03.06 20.08.09 01.07.10 01.09.09	50000/- 50000/- 50000/- 25000/-	- - - -	50000/- 50000/- 50000/- 25000/-
7.	T.M.Manickam	119	01.09.04	01.09.09	25000/-	-	25000/-
8.	Punitha	118	26.08.04	26.08.09	100000/-	-	100000/-
9.	V.Shanmugam	198	15.12.05	15.12.11	200000/-	-	200000/-
10.	D.Suresh	203	16.01.06	16.01.10	70000/-	-	70000/-
11.	K.P.Zeovudeen	185	22.08.05	22.08.11	25000/-	-	25000/-
12.	Z.Kuzeed Banu	199	15.12.05	15.12.10	40000/-	-	40000/-
13.	N.Kathirvel	99 83	30.04.04 12.02.04	30.04.09 12.02.09	50000/- 100000/-	- -	50000/- 100000/-
14.	N.Selvaraj	80 142 206 98 104 105 129	02.02.04 01.02.05 01.03.06 30.04.04 01.06.04 01.06.04 01.10.04	02.02.07 01.02.08 01.03.12 30.04.09 01.06.09 01.06.09 01.10.08	300000/- 900000/- 350000/- 500000/- 500000/- 400000/- 70000/-	- - - - - - -	300000/- 900000/- 350000/- 500000/- 500000/- 400000/- 70000/-
15.	R.Sivasankaran	158 159 160 161 171	07.05.05 07.05.05 07.05.05 07.05.05 04.07.05	07.05.10 07.05.10 07.05.10 07.05.10 04.07.10	50000/- 100000/- 100000/- 100000/- 150000/-	- - - - -	50000/- 100000/- 100000/- 100000/- 150000/-
16.	Meena	93 94 95	08.04.04 08.04.04 08.04.04	08.04.09 08.04.09 08.04.09	100000/- 50000/- 50000/-	- - -	100000/- 50000/- 50000/-

Sl. No.	Name of Depositor	FDR No.	Date of Deposit	Date of Maturity	Deposit Amount	Interest	Total
17.	Chitra Murugesan	85 86 102 103 126 127	24.02.04 24.02.04 01.06.04 01.06.04 03.11.04 03.11.04	24.02.10 24.02.10 01.06.10 01.06.10 03.11.10 03.11.10	10000/- 10000/- 10000/- 10000/- 5000/- 5000/-	- - - - - -	10000/- 10000/- 10000/- 10000/- 5000/- 5000/-
18.	T.Loganathan Saranyadevi	133	20.12.04	20.12.09	100000/-	76000/-	176000/-
19.	Deivanayagam Sneka -do- -do- -do-	36 67 81 221	15.03.03 22.10.03 11.02.04 01.05.06	15.03.08 22.10.09 11.02.10 01.05.12	25000/- 30000/- 25000/- 125000/-	29500/- 31200/- 24000/- 52500/-	54500/- 61200/- 49000/- 177500/-
20.	Murugesan	151	31.03.05	31.03.11	17000/-	11900/-	28900/-
21.	C.Anandpeter -do- -do-	165 169 170	14.06.05 01.07.05 01.07.05	14.06.06 01.07.06 01.07.06	100000/- 300000/- 100000/-	34000/- 93000/- 31000/-	134000/- 393000/- 131000/-
22.	K.Subramaniam -do-	116 135	31.07.04 01.01.05	31.07.10 01.01.11	100000/- 50000/-	86000/- 37000/-	186000/- 87000/-
23.	S.Shanmugavadivu -do-	74 179	01.12.03 01.08.05	01.12.09 01.08.11	50000/- 40000/-	50000/- 24000/-	100000/- 64000/-
24.	R.Usha	32	01.03.03	01.03.08	100000/-	118000/-	218000/-
25.	N.Nithiyanandhan	30	01.03.03	01.03.08	100000/-	118000/-	218000/-
26.	S.Gunasekar -do- -do- -do- -do- Sambasivam Santhamani Santhiya	168 150 90 157 31 79 33 89	30.06.05 08.02.05 01.03.04 02.05.05 01.03.03 31.01.04 01.03.03 01.03.04	30.06.11 08.02.11 01.03.10 02.05.11 01.03.08 31.01.10 01.03.08 01.03.10	15000/- 25000/- 20000/- 25000/- 100000/- 50000/- 55000/- 6000/-	9600/- 18000/- 18800/- 17000/- 98000/- 49000/- 64900/- 5640/-	24600/- 43000/- 38800/- 42000/- 198000/- 99000/- 119900/- 11640/-
27.	V.Kamalam -do- -do- do- -do-	52 91 138 143 149	17.07.03 06.03.04 17.01.05 10.02.05 16.03.05	17.07.06 06.03.08 17.01.07 10.02.09 16.03.09	15000/- 10000/- 10000/- 10000/- 10000/-	11925/- 7050/- 3700/- 3600/- 3500/-	26925/- 17050/- 13700/- 13600/- 13500/-
28.	C.Selvaraj -do- -do- -do- -do- -do-	217 250 213 245 38 39	29.03.06 01.05.06 01.03.06 01.05.06 15.03.03 15.03.03	29.03.11 01.05.12 01.03.11 01.05.12 15.03.07 15.03.07	100000/- 100000/- 200000/- 150000/- 50000/- 50000/-	46000/- 42000/- 92000/- 63000/- 59000/- 59000/-	146000/- 142000/- 292000/- 213000/- 109000/- 109000/-
29.	S.Sagundala	244	01.05.06	01.05.12	100000/-	42000/-	142000/-
	TOTAL				7750000/-	1529815/-	9279815/-

4.2. According to the prosecution, A-1 has defaulted the return of deposits and interest after maturity, to a total sum of Rs.92,79,815/-. Therefore, A-2 and A-3 being the responsible persons for the management of the affairs of the

Financial Establishment (A-1). All the accused are liable to be punished under Section 5 of TNPID Act.

4.3. On receipt of complaint (Ex.P.1) given by P.W.1-K.M.Philipose, P.W.29-P.K.Subramaniam, the then Inspector of Police, Economic Offences Wing, Coimbatore, registered a case against the petitioners in Crime No.10 of 2006 for the offence under Section 5 of TNPID Act. Ex.P.87 is the First Information Report. He took up the investigation of the case. He examined depositors, recorded their statements and collected their deposit receipts. He received Certificate (Ex.P.86) from the Registrar of Firms and laid final report after completion of investigation.

4.4. P.W.30-G.G.Ramasamy, the then Inspector of Police, Economic Offences Wing, Coimbatore, took up the further investigation. He examined the other depositors and collected the deposit receipts. He laid additional charge sheet against the accused.

5. Based on the above materials, the trial Court framed the charge under Section 5 of TNPID Act. The accused denied the same and opted for trial. Therefore, in order to prove their case, on the side of the prosecution, as many as 30 witnesses were examined as P.W.1 to P.W.30 and 87 documents were exhibited as Ex.P.1 to Ex.P.87.

6. Out of the said witnesses, except P.W.1, P.W.2 and P.W.11, all the remaining witnesses gave evidences that they have received the interest for the deposit amount till 2006. Only P.W.1, P.W.2 and P.W.11 had stated that the maturity amount has not returned to them.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On his side, he examined 5 witnesses as D.W.1 to D.W.5 and marked 4 documents as Ex.D.1 to Ex.D.4.

8. D.W.1 to D.W.5 were examined to substantiate the case that the accused were carrying on the business of receiving deposits and conducting chits and that they were regular in payment of chit amount and deposit amounts.

9. Having considered the materials placed before him and upon the arguments advanced by either side counsels, by a judgment dated 14.03.2012, the learned Special Judge under TNPID Act Cases, Coimbatore, found the accused guilty for the offence under Section 5 of TNPID Act and sentenced him as stated in the second paragraph of this order.

10. Challenging the same, the petitioners filed a Criminal Appeal before the learned Principal District and Sessions Judge, Coimbatore. By a judgment dated 21.06.2012 in Crl.A.No.121 of 2012, the learned Principal District and Sessions Judge, Coimbatore, affirmed the findings arrived at by the learned Special Judge under TNPID Act Cases, Coimbatore and dismissed the appeal. Aggrieved over the said judgment, the petitioner is before this Court with this petition.

11. I have heard Mr.R.John Sathyan, learned counsel appearing for the petitioners and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the State. I have also perused the records carefully.

12. It is not in dispute that G.Shanmugam (A2) and R.Sampathkumar (A3) were carrying on the business of receiving deposits for fixed period, in the name of Indu Financiers (A1), which is the Financial Establishment, within the definition of Section 2(3) of TNPID Act). Further, it is alleged by the prosecution that the accused have received the deposits as indicated in paragraph 4.1. of this order under deposit receipts (Ex.P.2 to Ex.P.85).

13. Before the trial Court, during the time of trial, the prosecution has examined 27 witnesses to substantiate the case that the accused were carrying on the business of receiving deposits and that they have defaulted the return of deposits and also interests. Further, the accused when examined under Section 313 Cr.P.C. have admitted that they have defaulted the return of deposits. But in their written statements, which have been filed during the time of 313 Cr.P.C. examination, they have stated as during the relevant point of time they have been arrested and their office was sealed by B-2 R.S.Puram Police, in connection with another one case, which registered against them. So due to the said reason, they are not in a position to recover the amount due to them from the borrowers and also they are not in a position to return the amount to the depositors. In order to substantiate the same, the accused have examined D.W.3-Karnan, Registrar of Chit funds to show that they were running registered chits. In this regard, D.W.3 gave evidence in support of the contention raised by the petitioners.

14. In this regard, though the evidence given by the D.W.3 is in favour of petitioners, as already stated in respect to the evidences given by the prosecution witnesses, particularly in respect to the deposits made by them and also in respect to the copy of the deposit receipts, the evidences given by the depositors, are not denied on the side of the accused. In the said circumstances, Section 5 of TNPID Act reads as follows;

"where any Financial Establishment defaults the return of the deposit or defaults the payment of interest on the deposit, every person responsible for the management of the affairs of the Financial Establishment are liable for punishment."

15. The First Appellate Court also by considering the said situation that the persons responsible for the management of the affairs of the Financial Establishment are liable for punishment and hold that the accused are defaulted in return of deposits and interest on the deposits.

16. In the said circumstances, the first and foremost contention raised by the learned counsel appearing for the petitioners is that only due to the reason that the police officers attached with R.S.Puram Police Station, Coimbatore, sealed the premises, in which, the Financial Establishment was run by the accused, they are not in a position to find out the dues payable to the depositors and to ascertain the total dues, which have been paid to them by various persons. In otherwise, the specific contention raised by the learned counsel appearing for the petitioners is that the petitioners are not having any *mens rea* to cheat the depositors.

17. On considering the said submission with the relevant records, maximum number of witnesses have been examined on the side of prosecution gave evidences as till registering the case, the revision petitioners had paid interests without any default. In this regard, P.W.29-P.K.Subramaniam, who is the Investigating Officer in this case gave evidence before the trial Court as except the deposits made by P.W.1-Philipose, P.W.2-Lalu Mathews and P.W.11-Sevalliappan, the deposits made by the other witnesses are not matured one. Further, most of the depositors had fairly conceded that till 2006, they received interests from the Financial Establishment. Therefore, the said evidences given by the Investigating Officer and others disclose the fact that the petitioners / accused herein had defaulted to pay the matured amount only to 3 depositors.

18. Secondly, in respect to the closure of Finance Company, P.W.29 has stated in his cross examination as during the time of registering the present F.I.R., Financial Establishment ran by the revision petitioners was closed. He has further added that he did not take steps to made a search in the said Financial Establishment. He has specifically stated that he has not verified the details of case which registered against the petitioners in R.S.Puram Police Station. Further, he has not send any summons to produce the document relates to the Indu Financiers ran by the petitioners. Furthermore, he fairly conceded that during the relevant point of time, the accused were arrested and remanded to judicial custody in a case registered by R.S.Puram Police.

19. In the said circumstances, before filing the final report P.W.29, being the responsible Police Inspector, necessarily to take steps for opening the Financial Establishment and recover the counterfoil of the deposit receipts. But here it is a case, during the pendency of the investigation, no steps were taken by the Investigating Officer to recover the documents related to deposits made in the first accused firm and also he has not recovered the document which relates the due towards the first accused.

20. One another important aspect is that before the trial Court, the District Registrar, Coimbatore, was examined as D.W.3. He gave evidence as during the relevant point of time, the accused running a chit in the name of 'Kamalalayam' in the same premises, further the same was continued till 15.04.2006. He has further stated that in respect to the running of chits, nobody has given a complaint against the petitioners. Therefore, it is made clear that the accused herein running his business without any difficulty till registering the present case. Accordingly, it cannot be said that the petitioners are intended to cheat the depositors, only due to the inaction on the part of the Police Officers, it is difficult for the petitioners to find out the outstanding due to them. If such outstanding due is find out, it is very easy for them to settle the dues to the depositors.

21. But here it is a case, after registering a case against the petitioners in R.S.Puram Police Station, the documents pertains to the Financial Establishment ran by the petitioners are not seized in this case. In this regard, the Investigating Officer fairly conceded that he has not verified the outstanding dues to the petitioners.

22. However, though the Investigating Officer conducted a defective investigation in respect to the wealth of the petitioners, the petitioners themselves admitted in 313 Cr.P.C. examination as, till registering the case the interest was paid regularly. It shows that they paid the interest as stated by the prosecution witnesses. On the other hand, in the absence of any documents, it is difficult for them to collect the outstanding dues from the persons, who received the amount from the finance. Therefore, non-recovery of documents related to the Financial Establishment is one of the reason for not refunding the maturity amount. However, as already observed, since the petitioners themselves admitted the receiving of the deposits, they are having the liability to pay the same immediately after the maturity. But here it is a case, the same has not been done by the petitioners. Accordingly, convicting the accused under Section 5 of TNPID Act, is found correct.

23. Now, coming to the quantum of punishment awarded by the Courts below, as already observed, due to the attitude committed by the Investigating Officer of this case, the petitioners are not in a position to calculate the outstanding dues liable to be received by them and also the amount, which has to be paid to the depositors. Therefore, the Investigating Agency itself has closed the door for settlement. Accordingly, considering the facts and circumstances of the case, I am of the considered opinion that, to meet the ends of justice, reducing the sentence awarded by the Court below alone is sufficient to dispose the appeal. Therefore, the sentence of Rigorous Imprisonment of 2 years for the offence under Section 5 of TNPID Act awarded by the learned Principal District and Sessions Judge, Coimbatore in Crl.A.No.121 of 2012 dated 21.06.2012 to the petitioners is modified to the extent of 6 months instead of 2 years and the same was ordered to set off under Section 428 Cr.P.C. Since the petitioners / accused are in bail, they shall undergo the remaining period of sentence, if any. Fine amount, if any paid is directed to be adjusted.

24. In the result, the Criminal Revision Petition is partly allowed.

Sd/-
Assistant Registrar (CS.II)

/True Copy/

Sub Assistant Registrar

To

1.The Principal District and Sessions Judge, Coimbatore.
2.The Special Judge under TNPID Act Cases, Coimbatore.
3.The Inspector of Police, Economic Offence Wing, Coimbatore.
4.The Superintendent, Central Prison, Coimbatore.
5.The Public Prosecutor, High Court, Madras.

Copy to : The Section Officer, Criminal Section,
High Court of Madras, Chennai.

AKM/24.2.21 /9P-7C/

Order in
Crl.R.C.No.945 of 2012
08.01.2021