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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.153 of 2021

and Crl.M.P.Nos.3275 & 3277 of 2021

1.Dakshina Moorthy

2.D.Kanchana

3.J.Nagalakshmi

... Petitioners

..vs..

The State Represented by
Deputy Superintendent of Police,
EOW-II,
Vellore, Vellore District,
Crime No.1 of 2014.

... Respondent

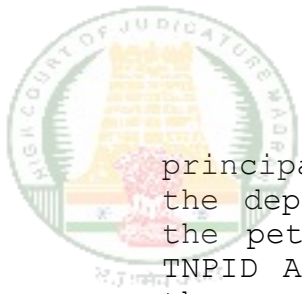
Criminal Revision Case filed under Section 397 and 401 Cr.P.C, to set aside the order passed in Crl.M.P.No.724 of 2018 in C.C.No.2 of 2017 dated 06.01.2021 on the file of the Special Judge under the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment Act 1997, Chennai -104)

For Petitioners	:	Mr.M.Vignesh
For Respondent	:	Mr.T.P.Savitha
		Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been filed against order dated 06.01.2021 in Crl.M.P.No.724 of 2018 in C.C.No.2 of 2017 on the file of the Special Judge under the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment Act 1997, Chennai -104).

2.The case of the prosecution is that the petitioners along with other accused have commenced two firms in the name and style of 'Think Big Investments' (A1) and 'Think Big Chit Funds' (A2) and indulged in online trading and share market business and collected deposits from 419 depositors, for a total sum of Rs.18,46,04,450/-. All the accused persons have actively involved in the business of the above said Firms. The petitioners and other accused failed to return either the



principal or interest and hence, several complaints were made by the depositors. The respondent police registered a case against the petitioners and others for the offence under Section 5 of TNPID Act r/w 420, 406 IPC r/w 120-B IPC. After investigation, the respondent police laid a charge sheet before the learned Special Judge, Special Court under TNPID Act, Chennai and the same was taken on file in C.C.No.2 of 2017. After completing the formalities, the petitioners were arrayed as A7, A8 and A9. Subsequently, the petitioners herein filed a petition in CrI.M.P.No.724 of 2018 under Section 239 Cr.P.C before the learned Special Judge, Special Court under TNPID Act, Chennai for discharging them from the case in C.C.No.2 of 2017 and the same was dismissed on 06.01.2021. Challenging the same, the present Criminal Revision Case is filed.

3.The learned counsel for the petitioners would submit that the petitioners/A7, A8 and A9 are the father, mother and wife of A6, who is the Managing Director of the said Company/Firm. The petitioners are only relatives of A6 and they have not committed any offence. The trial Judge failed to appreciate that the prosecution has not conducted a fair investigation and there is no prima facie materials against them to prosecute the petitioners. The learned Special Judge failed to consider the above said fact and taken the charge sheet on file in C.C.No.2 of 2017. Further, the petitioners are neither Managing Partners nor Managing Directors of the Company and they have not actively participated in the day to day affairs of the Company and also they did not know anything about the transactions and the investments made by the complainants, but, they are falsely implicated in this case. However, neither the respondent/police nor the trial Court considered all these aspects, but, simply dismissed the discharge petition, which warrants interference of this Court.

4.The learned Government Advocate (CrI.Side) would submit that A1 to A5 are Company/ Partnership Firm, A6 is the Managing Director, A7 is the father, A8 is the mother and A9 is the wife of A6. The petitioners, who are the in-laws of A6 have actively participated in the day to day affairs of the Company and they also convinced the public and invited investments from them and subsequently, they failed to repay the amount or interest. Therefore, the depositors filed the complaint before the respondent/police. After investigation, the respondent police laid the charge sheet and the same was taken on file in C.C.No.2 of 2017. Subsequently, the petitioners filed the discharge petition under Section 239 Cr.P.C. After due enquiry, the trial Judge found that the petitioners also participated in the day to day affairs of the Company and hence, dismissed the petition.

5.Heard the learned counsel for the petitioners and the



learned Government Advocate (Crl.Side) for the respondent and also perused the materials available on record.

6. Admittedly, the respondent/police, registered the case against the petitioners and others and the petitioners have been arrayed as A7, A8 and A9. The respondent police filed the charge sheet before the learned Special Judge, Special Court under TNPID Act, Chennai and the same was taken on file in C.C.No.2 of 2017. Subsequently, the petitioners filed a petition under Section 239 Cr.P.C seeking to discharge them from the above said case, which was dismissed by the trial Judge on 06.01.2021.

7. The learned Government Advocate (Crl.Side) by pointing out the statements of witnesses i.e., L.W.1 and L.W.2, clearly stated the involvement of the petitioners in this case.

8. On a careful perusal of the final report filed by the respondent/police under Section 173 Cr.P.C, it is seen that there are prima facie materials to frame the charges against the petitioners and proceed further.

9. It is a well settled proposition of law, while considering the discharge petition filed under Section 239 Cr.P.C, the Court has to see the final report filed by the respondent and the documents annexed thereon, but, not the defence taken by the accused. On a perusal of the final report and documents filed before the trial Court, it is seen that there are prima facie materials against the petitioners to proceed with the matter for framing of charges. Therefore, the defence taken by the accused can be decided after trial and not at this stage.

10. Under these circumstances, this Court does not find any merit in this Criminal Revision Case. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.

11. However, the appearance of the petitioners/A7 and A8 are dispensed with and they shall appear before the trial Court as and when required during the trial.

Sd/-
Assistant Registrar

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Sub-Assistant Registrar

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To

1.The Special Judge under the Tamil Nadu Protection
of Interest of Depositors
(In Financial Establishment Act 1997)
Chennai -104.

2.The Public Prosecutor,
High Court, Madras.

3.The Deputy Superintendent of Police,
EOW-II,
Vellore, Vellore District.

Crl.R.C.No.153 of 2021
and
Crl.M.P.Nos.3275 & 3277 of 2021

GMI (CO)
KKN 29.04.2021