IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.15851 of 2021
and
Crl.M.P.Nos. 8647 & 8648 of 2021

1. Ms. Chitra,
W/o. Shanmugam

2. Mr.Shanmugam,
S/o. Vellingiri Gounder ... Petitioners

Versus

1. State rep. by
Deputy Superintendent of Police,
Economic Offence Wing (EOW)-II,
Coimbatore.

2. A.Soundhararajan, ... Respondents

PRAYER: This Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records in C.C.No.4 of 2020 on the file of Special Court for cases under TNPID Act at Coimbatore to quash the same.

For Petitioners : Ms.S.Yogalakshmi for
Mr.Mahesh Kumar

For 1st Respondent: Mr.A.Damodaran,
Addl. Public Prosecutor

ORDER

(This case has been heard through video conference)

The petitioners/Accused 6 and 7 in C.C.No.4 of 2020, who are facing trial for offence under Sections 120B, 406, 409 I.P.C. and Section 5 of TNPID Act, have filed this quash petition.

2. The contention of the petitioners is that A1 is the Private Limited Company, A2 and A3 are its Directors. The 1st petitioner is daughter of A2 and A3 and 2nd petitioner is their son-in-law. Other than having this blood relationship, there is no other relationship between the petitioners and A1 company.

The petitioners have been falsely implicated in this case. The petitioners do not hold any shares and they have not taken part in the business of the company. Further, earlier, in the year 2017, when there was a dispute with the subscribers to the chits, on 27.11.2017, an undertaking entered between the subscribers and the petitioners company. At that time, the petitioners have agreed to sell their properties, but the said undertaking was not signed by the petitioners and it was signed only by A2 and his son A5. Had the petitioners active part in A1 company, they would have signed in the undertaking. In view of the same, the petitioners are strangers to the transaction and as far as the business of A1 is concerned, they have not signed in any of the undertaking or any other documents concerned with the A1 company. Further, to attract Sec.5 of TNPID Act, there must be an active role by the petitioners in conducting the business of the firm on the day-to-day affairs. The petitioners are only company's wheel, which has to be removed and thereafter only it would reveal the connivance role played by the petitioners in the company's activities for any illegal activities. In view of the same, the learned counsel further placed reliance on the decision of this Court reported in 2009 STC Online Mad. 1285, 2013 SCC Online Mad. 844, and 2013 STC Online Mad. 818 for the points that, even though in case of partner, like child, minors of the family, it is to be considered that they are only silent partners and they have not benefited from any of the company's funds. In one of the cases, even a person, as a Director, she has been admitted, and she was made as Director only for the purpose of canvassing for the deposits. Thus, without active role played by the petitioners, being a family members, all the other acts would not automatically make the petitioners liable for the default in payment of chits of A1 company.

3. The learned Additional Public Prosecutor appearing for 1st respondent would submit that A6 is the daughter of A2 and A2 and A3 are Directors of A1 company. It is well close relative company of family members. The 1st petitioner is a daughter and the 2nd petitioner is son-in-law. During the year 2008 to 2018, the amounts collected from A1 company has been diverted to the petitioners herein, who had purchased the properties in their own name and made it to appear that it is their individual properties. In fact, major portion of A1 Company's money has been diverted into properties by these petitioners and in the attachment proceedings, the properties of these petitioners have been attached. There are totally 434 depositors in the A1 company and the amount involved is to the tune of Rs. 7,17,42,330/-. The petitioners, who are other Directors, have not taken any steps to pay back the depositors money and hence, the learned counsel strongly opposed this quash petition. He would further submit that investigation in this case has been

completed and the charge sheet has been already filed in the year 2020 and past one year, due to Covid-19 and also discharge petition filed by some of the petitioners, the case has been prolonged and even the charges have not been framed. The case is now posted on 25.10.2021 for framing charges.

4. Heard submissions of learned counsel appearing for petitioner and learned Addl. Public Prosecutor appearing for 1st respondent and perused the records.

5. Considering the submissions and on perusal of materials, it is seen that in this case, there are 434 depositors and the chit amount involved is to the tune of Rs.7,17,42,330/-. It is also seen that petitioners' properties have been attached and in the recovery proceedings, the attachment of properties are made only to safeguard the interest of depositors even the Managing Director/A2 had admitted in this case that these petitioners have evaded to appear during the investigation, and unless they appear and co-operate with the investigation and give the details of deposits, amounts cannot be settled to the depositors, against whom the entire money has been siphoned. Further, the contention of the petitioners can be raised only during trial and not in this petition. Therefore, this Court is not inclined to entertain this petition. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpp/rap

To

1. Deputy Superintendent of Police,
Economic Offence Wing (EOW)-II,
Coimbatore.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Maheshkumar, Advocate, S.R.No.48107

CRL.O.P.No.15851 of 2021

GSM(CO)
CB(06/10/2021)