

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2021

CORAM:

THE HON'BLE MR. JUSTICE P.VELMURUGAN

Criminal Revision Case No.208 of 2021
and
Crl.M.P.No.4816 of 2021

C.Sankar

... Petitioner

...vs...

The State Represented by
DSP (Economic Offence Wing-II),
Erode District,
Crime No.2 of 2012.

.... Respondent

Criminal Revision Case filed under Section 397 Cr.P.C, to set aside the order dated 22.02.2021 passed in C.C.No.10 of 2012 on the file of the Special Judge for the cases under Tamil Nadu Protection of Interest of Depositors Act, 1997, Coimbatore and discharge the present petitioner.

For Petitioner : Ms.S.Pooja Shree
for Mr.A.Parthasarathy

For Respondent : Ms.T.P.Savitha
Government Advocate (Crl.Side)

O R D E R

Ms.T.P.Savitha, learned Government Advocate (Crl.Side) takes notice for the respondent. By consent of both parties, the Criminal Revision Case is taken up for final hearing at the admission stage itself.

2.The Criminal Revision Case has been filed against the order dated 22.02.2021 passed in C.C.No.10 of 2012 by the learned Special Judge for the cases under Tamil Nadu Protection of Interest of Depositors Act, 1997, Coimbatore and to discharge the petitioner from the said case.

3.The case of the petitioner is that the respondent police registered a case in Crime No.2 of 2012 against accused No.1 to 10 for the offence under Section 5 of TNPID Act 1997 read with Section 120, 420 IPC. On completion of the trial, the respondent

police filed additional charge sheet before the learned Special Judge, Special Court Under TNPID Act, Coimbatore, by impleading the petitioner as one of the accused in C.C.No.10 of 2012. Subsequently, the petitioner filed a petition under Section 239 Cr.P.C to discharge him from the said case. After hearing, the learned Special Judge dismissed the petition. Challenging the same the petitioner is before this Court.

4.Ms.S.Pooja Shree, learned counsel for the petitioner would submit that the petitioner was arrayed as A11 in the present case. Initially, the respondent police filed a charge sheet against the accused No.1 to 10, without impleading the petitioner as an accused. Thereafter, the accused 2, 4 to 10 arrested and surrender before the Court and the 3rd accused died and hence, the respondent police filed the additional charge sheet against the very same accused i.e. A1 to A10. After receipt of the final report, the trial was commenced. During the pendency of the trial, after examination of the witnesses, the respondent police filed second additional charge sheet by impleading the petitioner as A11 and other accused as A12 in C.C.No.10 of 2012. Thereafter, the petitioner filed the petition under Section 239 Cr.P.C to discharge him from the case. However, the learned Magistrate failed to consider that there was no incriminating materials against the petitioner to include him as an accused. The learned counsel would further submit that after commencement of the trial, the prosecution has no authority to continue the investigation and to file the additional charge sheet. After investigation, if any new accused are arrayed, they need not be impleaded as accused in the original complaint and they have to be prosecuted separately. However, the learned Magistrate failed to consider the above facts and simply dismissed the petition. Hence, the order passed by the trial Court is liable to be set aside. It is also submitted that the third Additional charge sheet filed by the respondent police is yet to be taken on file.

5.Ms.T.P.Savitha, learned Government Advocate (Crl.Side) for the respondent would submit that more than 3000 depositors are involved in the case. After examination of the witnesses, the prosecution has come to the conclusion that the petitioner also involved in the said case and hence, the petitioner was included as A-11. She would further submit that the respondent police have filed the charge sheet in time before the trial Court. However, at the time of filing the discharge petition, the petitioner challenged the additional charge sheet and the same has nothing to do with the present revision case. Therefore, the trial Court has rightly appreciated the entire evidence and also the incriminating materials and passed the order. There is no merit in this case and the same is liable to be dismissed.

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

7. Admittedly, the depositors registered the complaint before the respondent police. During the investigation, the respondent police filed the charge sheet against A1 to A10, wherein the petitioner has not been arrayed as an accused. Thereafter, they have filed additional charge sheet against the accused i.e. A1 to A10. During trial, the respondent police filed second additional charge sheet before the learned Special Judge by impleading the petitioner as accused/A11. Further, the prosecution witnesses have clearly spoken about the specific role played by the petitioner/A11, hence, the scope of 239 Cr.P.C is very narrow to decide the matter. At time of deciding the petition under Section 239 Cr.P.C, the Court has to see the charge sheet filed by the prosecution under Section 173 Cr.P.C and also the documents annexed with, but, not the defence taken by the accused and the documents produced by the accused at this stage. Further the Court cannot conduct roving enquiry at this stage on the materials produced along with final report and only has to see whether there is any prima facie allegations or incriminating materials against the accused. The Court would be justified in framing charges, if the prosecution has sown the seed in the form of some incriminating material which has got the potential to develop itself into a full-fledged one during trial.

8. This Court also gone through the entire materials including the prima facie materials in the form of incriminating materials available against the petitioner and satisfied that there is sufficient ground to frame the charges.

9. Under these circumstances, this Court does not find any perversity or illegality in the order passed by the learned Magistrate and hence, this Criminal Revision Case is dismissed. Accordingly, this Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar(CS-VII)

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Sub Assistant Registrar

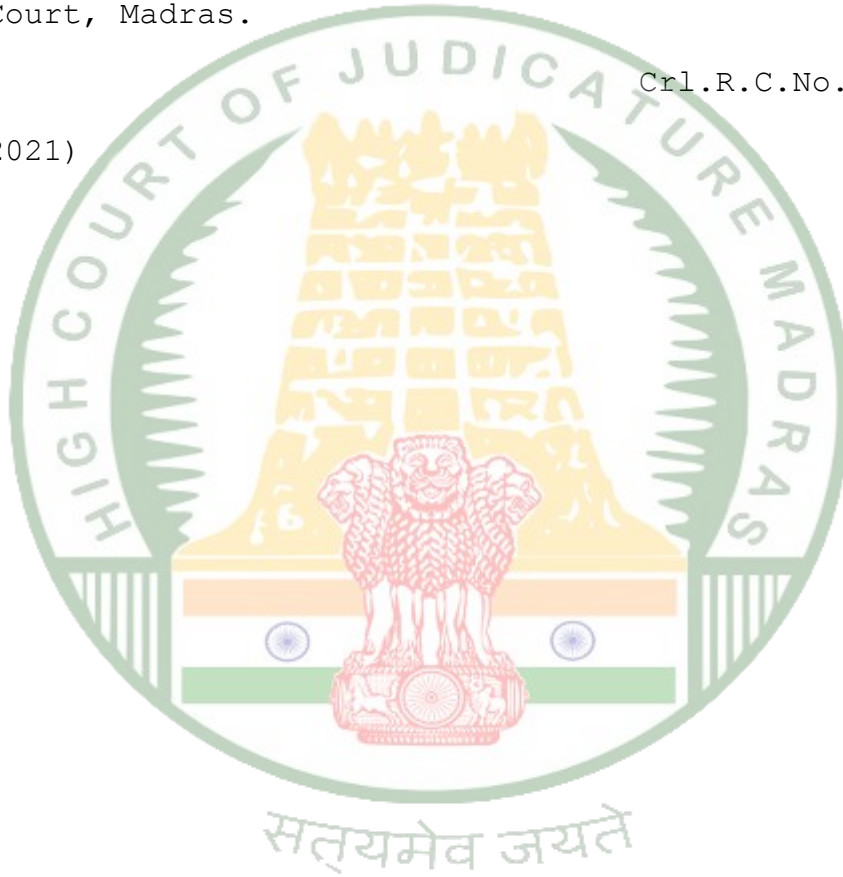
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To

- 1.The Special Judge,
Special Court under TNPID Act,
Coimbatore.
- 2.The Deputy Superintendent of Police,
Economic Offence wings-II,
Erode Crime No.2/2012.
- 3.The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.208 of 2021

RLD(CO)
CB(08/07/2021)



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