



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.R.C.NO.854 OF 2021

AND

CRL.M.P.NO.12144 OF 2021

R.Sivaraj

... Petitioner

.Vs.

Deputy Superintendent of Police,
Economic Offences Wing - II,
Salem.

(Crime No.24 of 2012)

... Respondent

Prayer:

Criminal Revision filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 21.10.2020 made in Crl.M.P.No.2057 of 2014 in C.C.No.34 of 2013 on the file of the Special Judge, Special Court under TNPID Act, Coimbatore.

For Petitioner	: Mr.C.Prabakaran
For Respondent	: Mr.S.Sugendran
	Government Advocate [Crl. Side]

ORDER

The Criminal Revision Petition has been filed challenging the order passed by the Special Judge, Special Court under TNPID Act, Coimbatore in Crl.M.P.No.2057 of 2014 in C.C.No.34 of 2013 dated 21.10.2020 in dismissing the petition filed under Section 239 Cr.P.C seeking discharge of the petitioner.

2. Brief facts of the case is as under:-

a. The petitioner is arrayed as Accused No.16 in C.C.No.34 of 2013 pending on the file of the Special Court of offences under Section 420, 406 r/w 120(B) and 107 of IPC and under Section 5 of TNPID Act. The petitioner had filed a petition seeking to discharge him, contending that he is no way



connected to the case and no materials had been placed by the respondent to show that he is a collection agent and that the fact remains, he and his relatives have deposited in A1 firm and thereby, they are also victims in this case.

WEB COPY

b. The respondent had filed a counter, contending that A1 in this case is an unregistered Firm and the petitioner along with other accused have canvassed the public to deposit amounts in A1 firm and that the firm and the petitioner along with other accused have received the deposits from 328 victims and cheated them to the tune of more than 18 crores. Further, it was contended by the respondent that the statements of victims/Mohan and Nagarajan, discloses about the involvement of the petitioner in the offence. The Trial Court finding that there were materials available against the petitioner/accused had dismissed the application for discharge, as against the order of dismissal, the present Revision has been filed.

3. Learned counsel appearing for the petitioner would submit that the petitioner is an innocent person and he has been falsely implicated in this case. He would further submit that the petitioner along with his relatives have deposited in the firm and the petitioner himself is a victim, there is no specific material available as against the petitioner and no materials have been produced by the respondent to show that the petitioner canvassed the general public for deposits, the Trial Court without properly looking into the materials, dismissed the petition.

4. Per contra, Mr.S.Sugendran, learned Government Advocate (Crl.Side) would submit that petitioner is A16 in this case, unregistered firm A1/Jenith Herbals was plotted by A2 and the petitioner along with the other accused have canvassed for deposits from general public and they have cheated 328 gullible victims to the tune of more than 18 Crores. He would further submit that the listed witnesses one Mohan and Nagarajan have stated that the petitioner had canvassed and collected deposits from them. There are prima facie materials are available against the the petitioner along with the other accused that they have collected money from the depositors and ultimately, the company had defaulted in payments. It is settled law, while considering the question of framing charges, though the power is available to the Trial Court to shift and prove the evidence, it would be a limited purpose to find out whether the prima facie case is made out against the petitioner or not, in such stage, the Court is not supposed to hold mini trial by marshaling the loads on record. He would further submit that subsequent to the dismissal of the petition, the Trial Court has also framed charges against the accused and the case is now been taken up for trial. In support of this contention, the learned Government Advocate



(Crl.Side) would rely on decision of the Hon'ble Apex Court in State of Karnataka Vs M.R.Hiremath reported (2019) 7 SCC 515.

5. Heard both sides and perused the materials available on record.

6. In this case the petitioner is arrayed as A16. The case of the prosecution is that the petitioner along with other accused canvassed for deposits from 328 depositors for A1 firm and the firm has cheated the depositors by not repaying the amount. In this case, the witnesses Mohan and Nagarajan have clearly spoken about the involvement of the petitioner in the offence. In the Judgment cited supra, the Hon'ble Apex Court is held as follows:-

"25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] , adverting to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29)

"29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the



conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage".

7. As stated above, for framing of charges, the Court is not required to hold an elaborate enquiry and not required to conduct a roving enquiry. The Court has to only see whether prima facie case has been made out against the accused. Based on the material, the Trial Court having found that the list of witnesses have spoken about the involvement of the petitioner, had dismissed the petition.

8. I do not find any infirmity or error in the order passed by the Special Judge, Special Court under TNPID Act, Coimbatore in CrI.M.P.No.2057 of 2014 in C.C.No.34 of 2013 dated 21.10.2020, therefore, the Criminal Revision Case stands dismissed. Consequently, connected criminal miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ham

To

1. The Special Judge, Special Court under TNPID Act, Coimbatore.
2. The Deputy Superintendent of Police, Economic Offences Wing -II, Salem.
3. The Public Prosecutor, High Court, Madras.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.68028

CrI.R.C.No.854 of 2021
and
CrI.M.P.No.12144 of 2021

RSI (CO)
PM/24/01/2022