IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1190 of 2020 and
Crl.M.P.No.8247 of 2020

A.Saranya
D/o.Anna Durai ...Petitioner

Vs

State Rep by
Deputy Superintend of Police,
Economic Offences Wing II,
Coimbatore District. ...Respondent

PRAYER: Criminal Revision case filed under Article 397 r/w 401 of Criminal Procedure Code to set aside the order passed in C.M.P.No.2358 of 2019 in C.C.No.2 of 2018 dated 13.12.2019, on the file of the Special Judge, Special Court under Tamil Nadu Protection of interests of Depositors Act, Cases, Coimbatore and acquit the petitioner/accused-5 from all charges framed against her.

For Petitioner : Mr.G.Murugendran

For Respondent : Mr.R.Suryaprakash
Government Advocate

O R D E R

This Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C. to set aside the order passed in C.M.P.No.2358 of 2019 in C.C.No.2 of 2018 dated 13.12.2019, on the file of the Special Judge, Special Court under Tamil Nadu Protection of Interests of Depositors Act, Cases, Coimbatore and acquit the petitioner/accused-5 from all charges framed against her.

2.The respondent police registered a case in Crime No.06 of 2016 against the petitioner and four others for the offences punishable under Sections 120(b), 420, 468, 469, 471, 473 of IPC & Section 5 of Tamil Nadu Protection of interests of Depositors Act 1997 (TNPID Act). After completing the investigation, laid a charge sheet before the Special Court, the Special Court has taken the charge sheet on file in C.C.No.2 of 2018. During the pendency of the case, the petitioner had filed a petition before the Special Court under Section 239 of Cr.P.C. to discharge of petitioner/Accused No.5 from the case. The said petition was taken on file by the Special Court in C.M.P.No.2358 of 2019 in C.C.No.2 of 2018. The learned Special Judge after hearing the arguments advanced by the learned counsel on either side, dismissed the petition on the ground that there is a prima facie materials made out against the petitioner/5th accused. Challenging the said order, the petitioner has filed the present revision before this Court.

3.The learned counsel for the petitioner would submit that the first accused A1 is the company and 2 to 4 are the Directors of the company. The second accused is brother, third accused is the father and fourth accused is brother's wife of the petitioner. The petitioner is shown as A5 and he is no way connected with the case. The respondent police filed a final report and it is stated that the cheque was issued by the company/A1, its directors signed in the cheques and the petitioner is not the director of the said company, she is not a party to any agreement made by the accused 2 to 4 with depositors and the petitioner was not a signatory in any one of the documents which were referred to in the final report. Since the petitioner, being the sister of the second accused, has been falsely implicated in this case. This petitioner married in the year 2012 itself and she is residing with her husband as a result of which the case was registered against the family members of the petitioner. There is no materials against the petitioner and the other accused persons have only invited the depositors and the depositors made the deposit. The petitioner is no way connected with the deposit or any other transaction. None of the witnesses have been examined by the prosecution under Section 161 of Cr.P.C for mentioning about the terms and conditions of the agreement and period of agreement and there is no whisper in the entire materials except the charge sheet filed by the respondent police and the entire report has been filed under Section 173(ii) of Cr.P.C. There is no ground to presume the case against the petitioner.

4.The learned counsel for the petitioner vehemently contented that the Special Court failed to see the final report filed by the respondent police. As per the final report the first accused is the company, 2 to 4 accused are the directors and also submitted that the agreement was entered into between the directors and the depositors, and not to the petitioner. Even, as per the final report, cheques were issued by the company and its directors and not by the petitioner herein. In this case either the company or the directors repaid the money to the depositors and as such they are only liable to be prosecuted and the directors who were participated in the day to day affairs of the company, whereas this petitioner is neither a director nor a party to any one of the agreement with depositors. Since, the petitioner is only the sister of the second accused, she was falsely implicated in this case and there is no material to show that she has involved in any one of the transactions made between the first accused and the depositors and in the absence of materials, the petitioner is liable to be discharged from the case. However, the learned Special Court failed to consider the same and therefore the order of the Special Court is liable to be set aside and the petitioner is liable to be discharged from the case.

5.The learned Government Advocate (Crl. Side) would submit that the petitioner is being arrayed as accused No.5 and during the investigation, it is found that there are totally 13 depositors, who have deposited their amounts in the first accused company to the tune of Rs.1,80,82,349/- and they were cheated by the accused Nos.1 to 5. The above depositors have been examined as witnesses and their statements were also recorded under Section 161 of Cr.P.C and they had clearly spoken about the role of the present petitioner. During the course of investigation, it is revealed that the petitioner/accused A5 along with the other accused canvassed the public and collected the deposited amount from the depositors to the unregistered Finance Establishment in the name of Thirumurugan Finance and Fancy Stores and in the name of Saravana Fancy Stores at Ganapathi Managar and Ganapathy at Coimbatore, which was running by the accused A2 to A5 respectively. The petitioner has also involved in the commission of offence and all the accused conspired and they have cheated the depositors and the petitioner has not been shown as accused merely because she is the sister of the second accused. The prima facie materials show that the petitioner is also involved in the commission of offence, therefore, she had been shown as fifth accused in the charge sheet. The learned Special Judge rightly found that the prima facie materials available against the petitioner and also framed the charges and proceeded further with the trial, therefore dismissed the petition to discharge her from the case and there is no merits in this case, hence this Court is liable to dismiss the revision.

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

7.Admittedly, the case was registered against the petitioner and four others in Crime No. 06 of 2016 on the file of the respondent police for the offences punishable under Sections 120 (b), 420, 468, 469, 471, 473 of IPC & Section 5 of Tamil Nadu Protection of interests of Depositors Act 1997 (TNPID Act). After the investigation the respondent police laid the charge sheet before the Special Court under Section 173(ii) of Cr.P.C.

The learned Special Court has taken the charge sheet on file in C.C.No.2 of 2018 in the said case, the petitioner is arrayed as fifth accused/A5. During the pendency of the case the petitioner had filed a petition before the Special Court under Section 239 of Cr.P.C. to discharge the petitioner/Accused No.5 from the case. The learned Special Judge after conducting enquiry and considering the material, dismissed the petition. Challenging the same, now the petitioner is before this Court.

8.On perusal of records it reveals that A1 is the company, A2 to A4 are the Directors of the company and its directors invited the depositors from the public and 13 depositors approached the first accused/company and thereafter entered into the agreement and also the accused persons received the deposit, subsequently, they have not repaid the money as per the agreement. Therefore, they lodged the complaint before the respondent police and the respondent police registered the case in Crime No.06 of 2016 and investigated the matter and laid the charge sheet.

9.Now, the main contention of the counsel is that the petitioner has been shown as A5, neither she is one of the directors of the first accused company nor she has singed any one of the documents executed by the company and the depositors. The petitioner is the only sister of the second accused, she was married in the year 2012 and she was residing with her in-laws house therefore she is no way connected with the day to day affairs of A1/ Company and she has no role in this case and even in the charge sheet filed by the respondent police also reveals any incriminating circumstance against the petitioner and therefore the petitioner filed the petition before the Special Court to discharge the petitioner from the case. Unfortunately, the Special Court failed to consider the materials and dismissed the petition.

10.The allegation of the defacto complainant is that all the accused A2 to A5 joint together and canvassed the public to deposit their money into the A1 company by assuring to give interest rate up to 10% per month and promised to return their principal amount within 11 months. All the accused having criminally conspired and prepared fake tender order copies of reputed Central Government organization of NLC, BHEL, OFT, Dalmia and also prepared fake rubber stamp, round seal, logo of BHEL and NLC by using the fake items they prepared fake tender order copies for cheating the general public to believing them as A1 is the Medcure Pharmay is a famous pharmacy establishment which supplied huge medicine to Central Government Organization and enabled to give enhanced interest to the depositors. Though, the petitioner stated that the petitioner is not the director of the company and also she is not the signatory to any one of the agreements and any one of the documents, the statement of witnesses clearly shows that the petitioner and A2 also gave a cheques, promissory notes to the depositors against the investments and the investigation also reveals that all the accused A2 to A5 canvassed the public and investments from the depositors to the unregistered Finance Establishment in the name of Thirumurugan Finance and Fancy Stores in the name of Saravana Fancy Stores at Ganapathi Managar and Ganapathy at Coimbatore which was running by the accused A2 to A5 respectively. The final report has been filed by the respondent police under Section 173 (ii) of Cr.P.C reveals that the prima facie materials available against the petitioner also, to proceed further in this case.

11.It is the well settled proposition of law at the time of deciding the petition under Section 239 of Cr.P.C., the Court has to see the final report filed by the respondent police and documents annexed therein. This Court need not consider the defense taken by the accused and documents produced by the accused. If the Court finds from the final report filed by the prosecution agency if prima facie incriminating materials against the accused, the Court can frame the charge in this case also reading of the final report filed by the prosecution agency under Section 173(ii) of Cr.P.C. the prima facie material available against the petitioner. The prosecution agency has not filed the charge sheet against the petitioner, because, she is the sister of second accused and she is also one of the Directors of the company and signatory in the cheques and promissory note created infavour of the depositors, therefore, the contention raised by the petitioner counsel is not acceptable.

12.Accordingly, on reading of the entire materials, this Court also finds that prima facie incriminating materials are available against the petitioner to frame the charge and proceed further. Therefore, this Court finds no merits in this revision, hence this case is liable to be dismissed.

In the result, this Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

tta/klt

To

1. The Special Judge,
   Special Court under Tamil Nadu Protection
   of interests of Depositors Act,
   Cases, Coimbatore.

2. The Deputy Superintend of Police,
   Economic Offences Wing II,
   Coimbatore District.

3. The Public Prosecutor,
   High Court of Madras.

+1cc to Mr.G. Murugendran, Advocate, S.R.No.3145

Crl.R.C.No.1190 of 2020
and
Crl.M.P.No.8247 of 2020

RK(CO)
PM(16/07/2021)