IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.Nos.1235, 1236, 1229 & 1268 of 2020
and
Crl.M.P.Nos.8613, 8614, 8655, 8656, 8660, 8662, 8881 & 8882 of 2020

C.Sundaram ...Petitioner in Crl.R.C.No.1229 of 2020

1. C.Kumar
2. P.Palanisamy
3. P.Subramani
4. G.Thukka Gounder
5. P.Kumar
6. G.Kandasamy
7. T.Nagarathinam
8. P.Prakash
9. C.Sundaram
10. C.Rajendran ...Petitioners in Crl.R.C.No.1235 of 2020

1. C.Kumar
2. P.Kandasamy ...Petitioners in Crl.R.C.No.1236 of 2020

1. P.Kandasamy
2. T.Manikandan
3. V.Elumalai ...Petitioners in Crl.R.C.No.1268 of 2020

-Vs-

State of Represented by
Deputy Superintendent of Police,
EOW - II, Salem.
...Respondents in all Crl.R.C. Petitions.

PRAYER in Crl.R.C.No.1229 of 2020: This Criminal Revision case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order dated 21.10.2020 passed by the learned Special Judge under TNPID Act, Coimbatore in Crl.M.P.No.639 of 2014 in C.C.No.36 of 2013 pending on the file of the Learned Special Judge under TNPID Act, Coimbatore.

PRAYER in Crl.R.C.No.1235 of 2020: This Criminal Revision case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order dated 21.10.2020 passed by the learned Special Judge under TNPID Act, Coimbatore in Crl.M.P.No.942 of

2014 in C.C.No.35 of 2013 pending on the file of the Learned Special Judge under TNPID Act, Coimbatore.

PRAYER in Crl.R.C.No.1236 of 2020: This Criminal Revision case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order dated 21.10.2020 passed by the learned Special Judge under TNPID Act, Coimbatore in Crl.M.P.No.640 of 2014 in C.C.No.36 of 2013 pending on the file of the Learned Special Judge under TNPID Act, Coimbatore.

PRAYER in Crl.R.C.No.1268 of 2020: This Criminal Revision case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order dated 21.10.2020 passed by the learned Special Judge under TNPID Act, Coimbatore in Crl.M.P.No.943 of 2014 in C.C.No.35 of 2013 pending on the file of the Learned Special Judge under TNPID Act, Coimbatore.

For Petitioners: Mr.R.Baskar
(in all R.C. Petitions)
For Respondent : Mr.R.Suryaprakash (Government Advocate)
(in all Crl.R.C.Petitions)

C O M M O N O R D E R

The respondent Police registered a case against the petitioners and others in Crime No.25 of 2012 on the file of the respondent Police for the offences under Sections 420, 406 r/w 120 (B) and 107 IPC and under Section 5 TNPID Act, 1997. After investigation, the respondent Police laid a charge sheet before the learned Special Court, TNPID Act, Coimbatore.

2. The learned Special Judge after completing the formalities taken the charge sheet on file in C.C.No.35 of 2013 and the said case was pending before the learned Special Judge for framing charges and at that stage, the petitions were filed by the petitioners under Section 239 of Criminal Procedure Code to discharge from the said case. The Special Judge after enquiry dismissed the petitions. Challenging the same, the petitioners have filed the present Revision Cases before this Court.

3. The learned counsel for the petitioners would submit that there is no triable case as against the petitioners. The petitioners filed petitions under Sections 239 C.R.PC. on 02.03.2014 and 09.06.2014 before the Trial Court in Crl.M.P.Nos.943, 942, 640, 639 of 2014 to discharge all from the said case. The respondent filed their counters. Thereafter, the arguments were heard by the learned trial Judge on 23.06.2015 and arguments were advanced on both sides. Thereafter, the case

was posted for orders on the discharge petitions.

4. While so, on 16.07.2015, the learned trial Judge directed the respondent Police to file an application for further investigation and allowed the same on the very same date, without even sending notice to the petitioners. Subsequently when the petitioners' counsel informed the trial Court that the discharge petitions are posted for orders, the learned Trial Judge adjourned the petitions stating that the pronouncement of the orders on the discharge petition has been postponed, since further investigation has been ordered in the case. He will not pass orders on the discharge petitions till further report is filed under Section 173 (8) of C.R.PC.

5. Though it is between the trial Court and the respondent with regard to the further investigation, the subsequent act of the learned Judge in postponing the pronouncement of order on the discharge petitions until further report is filed under Section 173(8) of Cr.P.C, is illegal. Therefore, the petitioners filed petitions before this Court seeking directions of this Court to direct the trial Court to dispose of the discharge petitions filed by the petitioners in Crl.M.P.Nos.943, 942, 640, 639 of 2014. This Court vide its order dated 23.09.2015, dismissed the said petitions in Crl.O.P.No.23894 to 23897 of 2015 observing that the order of the Trial Court in not passing any order on the discharge applications till filing of the Supplementary Report cannot be faulted. After dismissal of the said petitions by this Court petitioners were patiently waiting for the respondent Police to file Supplementary Report.

6. While so, the learned Special Judge, Coimbatore has directed the petitioners to advance their arguments on the discharge petitions without even adverting to the orders passed by this Court dated 23.09.2015 and also earlier order passed by the predecessor of the Trial Court for further investigation under section 173 (8) of C.R.PC. The trial Court without looking into the records of the case, dismissed the discharge petitions filed by the petitioners in Crl.M.P.Nos.943, 942, 640, 639 of 2014 on 21.10.2020.

7. He would further submit that once the predecessor of Trial Judge ordered for further investigation and stopped to pronounce order in discharge petitions and this Court also while dismissing the petitions observed that the trial Court shall pass orders after filing the supplementary Report, the successor of the Special Court, without receiving the final Report and looking into the order of the predecessor with the discharge petition filed by the petitioners, dismissed the same. Therefore, the orders passed by the learned Trial Judge has to be set aside.

8. Further, he would submit that the petitioners are only the agents to the second accused and the first accused is a proprietor. These petitioners are only the collecting agents and the same is established even as per the evidence of the witnesses. It reveals that these petitioners are the collecting agents and they canvassed the depositors for A1 & A2 and they have not committed any offence under Indian Penal Code. The predecessor to the Trial Judge directed to conduct further investigation. However, the Trial Judge, without receiving the report of the further investigation, passed the order with the available materials and therefore, the same warrants interference of this Court.

9. The learned Government Advocate for the respondent would submit that though the Predecessors to the trial Judge directed to conduct the further investigation and file a supplementary report, they filed the final report in 09.08.2016 itself i.e. even before passing the orders in the discharge petitions. The order in the discharge petitions was passed only on 21.10.2020. The final report was represented and the final report was very much available with the Court. Further he would submit that though the petitioners are being described as the agents, the statement of witnesses clearly shows that the petitioners themselves stated that they are the partners of the A1 Company and canvassed the depositors and they have also signed in certain documents and the witnesses also have stated that they do not know the difference between the agent and the partner. However, the petitioners have described as partners in the A1 company and they have canvassed the witnesses. Even further investigation report also reveals that the petitioners are involved in the offence and therefore, the trial court rightly dismissed the petitions and hence, there is no merit in the revision and the same are liable to be dismissed.

10. Heard. Perused the records.

11. Admittedly the respondent Police registered the case against the petitioners and others. These petitioners have been shown as A4 to A6 and after the investigation, the respondent police laid a charge sheet against the petitioners along with other accused for the offences punishable under Section 420, 406 r/w 120 b and 107 IPC also Section 5 of the TNPID Act. The Special Judge took the charge sheet on file in C.C.No.35 of 2013 and after completing the formalities, the matter was pending for framing charges. At that stage, the petitioner approached with the said petitions and the same was initially heard and the matter was listed for orders. Subsequently, the trial Court directed the respondent to file a petition for further investigation and ordered for further investigation. Since further investigation was ordered, the Trial Court stated that

no orders would be passed in the discharge petitions till the report of the further investigation is received. Challenging the said order, the petitioners approached this Court in Crl.O.P.No.23897 of 2015 and this Court also dismissed the petition and thereafter, before filing of the supplementary report, the Successor of the trial Court passed the order in the discharge petitions and dismissed the same.

12. The main contention of the learned counsel for the petitioners is that the predecessor had found that there was no material to frame charge and direction for further investigation and the successor, without receiving further investigation report, dismissed the petition on the existing materials and therefore, the same is illegal. Further, he would submit that the petitioners are only the collecting agents and they are not held liable under Section 5 of the TNPID Act. No material to show that the petitioners had cheated the depositors, which the trial Court failed to consider and dismissed the petition. The trial Court ought to have decided the petitions after receipt of the report of the further investigation.

13. Per contra, the learned Government Advocate would submit that further investigation was ordered placed reliance on the following Judgments;

(i) Reported in 2013 - 2 L.W. (Crl) 212 in a case between Aruna and others Vs. State of Tamil Nadu by Deputy Superintendent of Police. EOW-II, Madurai and another.

(ii) In a case between S.Thamayanthi Vs. State of Tamil Nadu, DCB, Theni.

(iii) Reported in (2010) 1 MLJ (Crl). 742 in the case of Prasannadevi Vs. State of Tamil Nadu, Rep. by Deputy Superintendent of Police, (Economic Offences wing), Cuddalore.

(iv) Orders passed by the Madurai Bench of Madras High Court dated 30.07.2012 passed in Crl.O.P.No.(MD). Nos.4890 of 2011 & 4892 of 2011

14. The Trial Judge directed further investigation only on 16.07.2015 and after investigation, the respondent police filed supplementary report on 09.08.2016 and the trial Court dismissed the discharge petition only on 25.10.2020, four years after filing of the petition. Though the final report was filed before the Special Court and the same was returned for some reasons, subsequently, the same was represented.

15. The records shows that the petitioners filed a

discharge petition under Section 239 Cr.P.C. on 02.03.2014 and the respondent filed counter on 13.09.2014 and the trial Judge heard the matter on 23.06.2015 and the case was reserved for orders on 06.07.2015. Originally the supplementary report was filed on 09.08.2016. Though it was returned, subsequently it was represented and again returned, after that it was finally handed over to the Court on 06.01.2021. After passing of order of further investigation, the petitioners filed Crl.O.P.No.23897 of 2015 before this Court. Subsequently, Officer of the Special Court was transferred and the Successor took up the matter and heard further and dismissed the petitions for discharge on 21.10.2015.

16. A perusal of the original final report and also subsequent supplementary charge sheet, it is seen that the first accused is the Ms.Jenith Herbals and according to the prosecution, the accused induced the depositors to deposit the money in the Jenith Herbals by falsely representing that the depositors get one and a half time of the deposit amount within 30 days. They have fraudulently induced the innocent people to deposit the money in M/s.Jenith Herbals. Since the accused A3 to A18 including the petitioners herein are the residents of the same area, the people in and around Rasipuram believed their representation and deposited a sum of Rs.2,92,47,500/- and they were cheated and the total deposit comes around Rs.16,52,18,000/- and when the depositors visited the office of the Jenith Herbals, it was found locked and the accused persons could not be contacted. On receiving the said complaint, the Superintendent of Police directed the District Crime Branch, Salem to register the case and investigate. The Inspector of Police, DCB, Salem registered the case in DCB, Salem in Crime No.24 of 2012 under Sections 420 IPC and Section 5 of Prize Chits and Money Circulation Scheme (Banning) Act 1978 and took up the investigation. Subsequently, the case was transferred to EOW-II, Salem as per the order of Inspector General of Police, EOW-II, Chennai-40 in Crime No.C2/006190/IGP/EOW/2012 dated 18.06.2012. The Deputy Superintendent of Police, EOW-II,Salem registered the case. According to the prosecution, 1st accused is an unregistered Financial Establishment. The accused 3 to 18 joined with the second accused as the agents, but A2 made them agents cum partner because they were local persons who alone can convince the innocent who have trust over the A1 Establishment. The accused 3 to 18 were receiving huge share of the investment because of the day-to-day administration of M/s.Jenith Herbals. The first accused is the financial establishment. The investigation further reveals that A1 to A18 initially collected deposits assuring to repay one and a half time of the money within 30 days. The accused 3 to 18 as the canvassing agents dishonestly induced the depositors and collected the deposit money. The accused 3 to18 were promised by

A1 that they would be as partners of A2 in the day-to-day administration of the A1 establishment and collected the deposit. The accused 2 to 18 disbursed the amount under the administration of A1. The accused made innocent people to believe the M/s.Jenith Herbals depositors to remit the amount in the account of A1 establishment and for the matured amount. Whenever the deposits challan are shown where the petitioner is to the statement of account regarding the amount deposited and deposit the cheque for the matured amount. Therefore, the innocent depositors totally believed the accused collected crores of money, deposited the statements of account contained the date of deposit amount and date of maturity which was signed by A2 on plain paper. The allegation against the accused 2 to 18 including the petitioners is that they falsely represented that M/s.Jenith Herbals was involved in Herbal business and only due to shortage of money, money was collected from the depositors. They went further in offering repayment of two times of deposits amount after expiry of 45 days. Further allegation against the 2nd accused along with accused 3 to 18 is that they falsely represented that A1 is a genuine establishment and they canvassed that the funds are deposited for cultivating the medicinal plants and export the same and assured to repay one and a half time within 30 days and 45 days. In this matter for trial, prima facie there is allegation against these petitioners. The petitioners introduced themselves as partners of the first accused Jenith Herbals and collected deposits. Therefore, whether they have described as partners and falsely made a promise to the witnesses are the matter for trial and it cannot be decided at this stage.

17. It is settled proposition of law, while deciding petition under Section 239 Cr.P.C., the Court has to see the final report filed by the respondent police u/s.173 Cr.P.C and the Court need not conduct roving enquiry on the materials. Further the Court has to see the materials produced by the prosecution and not the defence taken by the accused and the document produced.

18. Therefore, a reading of the materials available on records prima facie case is made out that there are incriminatory materials available against the petitioners and to support the allegations some of the witnesses have given the statement under Section 161 of Cr.P.C. Therefore, this Court finds that there is enough materials available before the Court to frame the charges and proceed further. The defence taken by the petitioners can be decided only after completing the trial and not at this stage. With regard to the passing of the order in the discharge petitions without receiving the supplementary final report is concerned, the further investigation is only for additional materials for further strengthening the case of the

prosecution. The Predecessor of the Court while ordering for further investigation has not stated that there is no material to proceed further. Therefore, the Court would feel that there are 114 investors involved in this case and the main allegation is that they intended to make wrongful gain of money to larger extent by adopting an illegal method from innocent public and they have started the Company by a name and style of M/s.Jenith Herbal by misrepresenting that the petitioners are partners to A1 Company. In the name of the said Company, they have tried to get a good project with molafide intention. Therefore, there is no illegality or infirmity in the order passed by the trial Court and whatever the defence raised by the petitioners, the same can be decided after the trial and not at this stage. Therefore, this Court finds that there is no merit in the Revision petitions and the same are liable to be dismissed. Accordingly, these Criminal Revision Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmm

To

1. The Special Judge under TNPID Act,
   Coimbatore.

2. The Deputy Superintendent of Police,
   State of Tamil Nadu,
   EOW - II, Salem.

3. The Public Prosecutor,
   High Court, Madras 104.

+1cc to Mr.R.Baskar, Advocate, S.R.No. 4903

Crl.R.C.Nos.1235, 1236, 1229 & 1268 of 2020
and
Crl.M.P.Nos.8613, 8614, 8655, 8656, 8660,8662,8881 & 8882 of 2020

GMR(CO)
GN(16/03/2021)