



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Tuesday, the Sixteenth day of February Two Thousand and Twenty One

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PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.930 of 2021

in

CRL A(MD)No.54 of 2021

G.N.S.MOORTHY

... PETITIONER/APPELLANT/
3RD ACCUSED

Vs

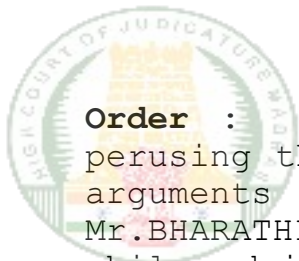
THE STATE REP.BY
THE INSPECTOR OF POLICE
E.O.W II POLICE STATION,
KARUR.

... RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to pass an order of Suspension of sentence and conviction imposed upon the petitioner/appellant to undergo one year rigorous imprisonment U/s 406 IPC and to undergo five years rigorous imprisonment U/s 5 of TNPID ACT and also imposed Rs.10,000/- as fine and in default of payment of fine to undergo six months imprisonment by the judgment dated 27.01.2021 by the Special Court for TNPID Act Cases, Madurai in C.C.No.4/2019 dated 27.01.2021 pending disposal of the main Criminal Appeal.

PRAYER IN CRL A(MD)No.54 of 2021:

Pleased to call for the records pertaining to the judgment dated 27.01.2021 made in C.C.No.4/2019 passed by the learned Special Court for TNPID Act Cases, Madurai in C.C.No.4/2019 found guilty of the Appellant/3rd Accused and passed order of conviction as 1st accused is sentenced to pay fine of Rs.1000/- U/s.406 IPC, and Rs.4000/-U/s.5 of TANPID Act, the and 3rd accused (the appellant herein) has to undergo rigorous imprisonment for one year U/s.406 IPC, A2 and A3(the appellant herein) has to undergo rigorous imprisonment for 5 years and pay a fine Rs.10,000/- each in default of payment of fine sentenced to undergo rigorous imprisonment of six months U/s. 5 of the TANPID Act, both sentences shall run concurrently and set aside the same by allowing this Criminal Appeal.



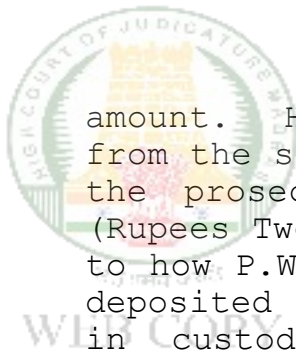
Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.R.SRIRAM, Advocate for the petitioner and of Mr.BHARATHI KANNAN, Government Advocate on behalf of the Respondent, while admitting the Criminal Appeal, the court made the following order:-

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This petition has been filed to suspend the sentence imposed by the Special Court for TNPID Act Cases, Madurai, in C.C.No.4 of 2019 dated 27.01.2021, till the disposal of the appeal.

2.The case against the petitioner is that A2/ Chithirasenan and A3/ petitioner herein executed a partnership deed, on 24.06.2010 and commenced partnership Firm viz.,A1/ Anuram Capitals. Both A2 and A3/ petitioner herein met several persons and induced them to deposit money in their financial establishment. They collected deposit from the public and failed to re-pay the deposited amount. A2 filed an insolvency petition in I.P.No.33 of 2017 before the Subordinate Court, Karur. On the complaint of P.W.3/ Murugesh, a case was registered in Crime No.1 of 2018 and the same was taken on file as C.C.No.4 of 2019 on the file of the Special Court under TNPID Act Cases, Madurai. The Special Judge, Madurai, found the Accused Nos.1 to 3 not guilty under Section 420 and 120(B) I.P.C and found the Accused Nos.1 to 3 guilty under Section 406 I.P.C. and under Section 5 of TNPID Act. The trial Court convicted and sentenced A1 under Section 406 of IPC, to pay a fine of Rs.1,000/- (Rupees One Thousand only), and under Section 5 of TNPID Act, to pay a fine of Rs.4,000/- (Rupees Four Thousand only). The trial Court convicted the petitioner / A3 and A2 under Section 406 I.P.C and sentenced them to undergo one year rigorous imprisonment and sentenced them to undergo five year rigorous imprisonment to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) each, in default, to undergo a further period of six months rigorous imprisonment. Against the conviction and sentence imposed by the trial Court, the petitioner has filed a criminal appeal in Crl.A.(MD)No.54 of 2021 and along with the appeal, he has filed this petition for suspension of sentence.

3.On the side of the petitioner, it is stated that promissory notes given to the creditors have been wrongly taken as deposit. No fixed period was given in the promissory notes. Unless a period is fixed, it cannot be treated as a deposit under Section 2 of TNPID Act. No deposit was ever canvassed from the public by A2 and A3, but, they were doing money lending business and they dissolved the partnership firm in the year 2017 through Arbitration on 01.06.2017. The creditors were divided into two groups. A2 and A3 each have to repay one group of the creditors. Ex.P1 to Ex.P21 revealed that the petitioner / A3 had settled the amount to the creditors. A2 gave insolvency petition, before his arrest. There is a delay of seven months in lodging the complaint. No proper enquiry was ever conducted. P.W.3 to P.W.5 turned hostile. P.W.1 never deposited any



amount. He gave some amount to one Kandasamy and he got interest from the said Kandasamy and the said Kandasamy was never examined by the prosecution. P.W.2 alleged to have deposited Rs.20,00,000/- (Rupees Twenty Lakhs only), but, there is no supportive evidence, as to how P.W.2 mobilised such an amount. Even during the bail A2 has deposited Rs.1,00,000/- (Rupees One Lakh only). The petitioner is in custody from 27.01.2021 onwards and the daughter of the petitioner is about to deliver a child and hence, the presence of the petitioner is very much necessary. There are much more points to be argued in the main appeal and prayed the sentence to be suspended till the disposal of the appeal.

4.On the side of the prosecution, it is stated that A2 and the petitioner/A3 created a Firm and they received deposit from various persons. Rs.41,00,000/- (Rupees Forty One Lakhs only) was received as deposit. Promissory notes were given to the depositors. The prosecution has examined 8 witnesses (P.W.1 to P.W.8) and marked 10 documents (Ex.P1 to P.10) and the defence side has examined one witness (D.W.1) and marked 21 documents (Ex.D1 to Ex.D21). Promissory Notes are marked as Ex.P2, Ex.P4 and Ex.P10. Partnership Firm deed is marked as Ex.P7. The evidence of P.W.1 corroborated with the evidence of P.W.2 to P.W.5. The case was proved by the prosecution beyond all reasonable doubts. The trial Court rightly convicted the petitioner and prayed the petition to be dismissed.

5.It is seen that the petitioner is in custody from 27.01.2021 onwards. The petitioner herein is A3 in the case. It is stated that the petitioner / A3 paid some of the creditors and the daughter of the petitioner is likely to deliver a baby. There are some arguable points for the petitioner in the appeal and the Criminal Appeal is not likely to be taken up for final hearing in the near future. Hence, this Court is of the view that the petitioner herein is entitled to the relief of suspension of sentence.

6.Accordingly, the substantive sentence of imprisonment alone is suspended till the disposal of the appeal and the petitioner is ordered to be released on bail on the following conditions:

(i)the petitioner is directed to execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Special Judge, Special Court for TNPID Act cases, Madurai ;

(ii)the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of any valid identity proof to ensure their identity ;



(iii) the petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., until the disposal of the appeal.

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sd/-
16/02/2021

/ TRUE COPY /

/ /2021

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE SPECIAL JUDGE,
SPECIAL COURT FOR TNPID ACT CASES, MADURAI.
 2. THE INSPECTOR OF POLICE
E.O.W II POLICE STATION,
KARUR.
 3. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
 4. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. C.C. to Mr.R.SRIRAM Advocate SR.No.1050

ORDER
IN
CRL MP(MD) No.930 of 2021
in
CRL A(MD) No.54 of 2021
Date :16/02/2021

LS
TK/VR/SAR.4/18.02.2021/4P/6C