BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on: 11.08.2021
Pronounced on: 04.10.2021
CORAM:
THE HONOURABLE MR JUSTICE G.ILANGOVAN
Crl.O.P.(MD) No.1858 of 2021
and Crl.M.P(MD)Nos. 923 and 925 of 2021

1.Subadha
2.Sudha @ Naga Sudha ... Petitioners/Accused 4 & 5

Vs.

1.The State of Tamil Nadu,
Represented by Inspector of Police,
Economic Offence Wing-II,
Dindigul.
(Crime No.3 Of 2019) ...Respondent/Complainant

2. P.Packiaraj ... Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C to call for the records in C.C.No.3 of 2020 on the file of the Special Court for TNPID cases, Madurai and quash the same in so far as the petitioners are concerned.

For Petitioners	:	Mr.K.P.S.Palanivel Rajan
For R1	:	Mr.R.M.Anbunithi Additional Public Prosecutor
For R2	:	Mr.Arunraj

O R D E R

This petition is filed seeking quashment of C.C.No.3 of 2020 on the file of the Special Court for TNPID cases, Madurai.

2. The case of the prosecution is that the first accused company collected money from the defacto complainant and failed to repay the same with interest. The case was registered in Crime No. 3 of 2019. After investigation, final report has been filed against the petitioner and now they are facing charges under Sections 406, 420, 120(B) IPC and Section 5 of the Tamil Nadu Protection of Interest of Depositors Act, 1997(hereinafter referred to as ''the Act''). Seeking quashment of the above said proceedings, this petition came to be filed by the accused 4 and 5 on the ground that the petitioners had no connection with the above said company. The offence under Section 120(B)IPC is also not made out and no materials have been collected during the course of investigation. It is also stated that any loan or deposit for more than Rs.20,000/- must be paid only through cheque or Demand Draft. But here, there is

no such allegation and so the proceedings in C.C.No.20 of 2020 may be quashed .

3. Heard both sides.

4. The allegations against the accused person is that the first accused company floated 7 schemes and the petitioners and other accused invited the public to make deposit in that schemes. They did not repay the amount that has been deposited as promised. After sometime, they closed the business and absconded form the business place. The main ground raised by the petitioners is that they were working as employees in the company and they were no way involved in the management and they are only engaged in canvassing to deposit, collection etc.

5. As per the counter filed by the second respondent, during the course of investigation it has been found out that the second petitioner actively participated in the affairs of the company and also partners of the above said firm. During the course of investigation, it was also found that the second petitioner has also signed in various receipts issued to the depositors. Only based upon the arrangement between the Directors of the company, receipts have been signed by the second petitioner. It is a specific case of the second respondent to the effect that the second accused namely Suriliappan has informed and represented that he has started business concern called Thirumalai Asset Promoters Private Limited in which his wife namely Suguna and sister in laws Subatha and Sudha, who are the petitioners herein, are also partners and they floated 7 schemes. On the basis of the representation given by him, the defacto complainant went to the company and at that time she found that the petitioners were also working there and they only handed over the brochures. During the course of investigation it was found that the second accused namely Suriliappan. and the third accused namely Suguna and the first petitioner herein were registered as Directors of the company and in that company, the second petitioner namely Subatha and the fifth accused were also unregistered partners. They were also in the management of the above said company. On going through the final report filed after investigation, we find that it is a clear case of cheating and misappropriation.

6. *Prima facie* materials have been collected during the course of investigation attracting the offences under Sections 406, 420, 120(B) IPC and Section 5 of Protection of Interest of Depositors Act. So on that ground the petitioners were no way involved in the management and they were not partners and absolutely no material is available now. In the typed set of papers, a Certificate of incorporation of Thirumalai Asset Promoters (P) Limited has been enclosed. We find that the second accused namely, Suliappan and the third accused Suguna were shown as Directors. According to the petitioners, they are no way involved in the affairs of the above

said company. But no doubt that the second accused and the third accused who is the sister of the first petitioner herein are the Directors of the abovesaid company. But the witnesses have been examined. During the course of investigation, it is revealed that role has been played by the second petitioner also during the course of transaction. It is the case of the prosecution that the first petitioner is also an unregistered partner but she also actively involved in the transaction in the management.

7. The learned counsel for the petitioners would submit that only persons who are responsible with regard to day to day affairs of the company and the Directors are only responsible and none other. For that purpose they relied upon a number of judmgent in **Prasannadevi Vs. State of Tamil Nadu rep. by Deputy Superintendent of Police, (Economic Offences Wing), Cudddalore, Cuddalore District** reported in **2010(1) MLJ 742 Crl.** It has been stated that a person who has canvassed for the deposits in the financial institutions cannot be roped in for the offences under Section 5 of the Act. This Court has held that person charged should shoulder responsibility of of managing affairs of financial institutions. The canvassing agents cannot be held responsible for management of the company. So according to the learned counsel for the petitioner, the petitioner only canvassed for the deposit and nothing more. But as I mentioned earlier the witnesses were spoken during the course of investigation and they also clearly stated about the involvement of the petitionera in the affairs of the company. Section 120(B) IPC is also includwd in the final report. This is a premature stage to record any finding as to the involvement or noninvolvement of the petitioners in the whole affairs and issue of conspiracy cannot be matter for consideration in the petition filed under Section 482 Cr.P.C. It requires thorough trial and as I mentioned earlier materials have been collected during the course of investigation to rope the petitioners also into the offence. In the case in **S.Thamayanthi Vs. State of Tamil Nadu by Inspector of Police, Theni reported** in **(2013) O Surpeme Madras 1199,** unregistered firm was involved and there was no evidence to show that the petitioner in that case was also partner of the unregistered firm and because of the relationship with the main accused the petitioner was also roped in. In that case the allegation was that they were family members and they canvassed deposit so they cannot be roped in. Similarly in M.s.Jevan Emu Care India (P) Ltd. And 7 others Vs. the State of Tamil Ndu rep. by its Deputy Superintendent of Police, Dindigul, it has been held that persons, agents were also roped in. It has been consistently held by this Court in various cases to the effect that mere canvassing will not attract the offence under Section 5 of the Act and other allied offence under various provisions of IPC more particularly in **Prasannadevi Vs. State of Tamil Nadu rep. by Deputy Superintendent of Police, (Economic Offences Wing), Cudddalore, Cuddalore District** reported in **2010(1) MLJ 742 Crl.**

8. But here, as I mentioned earlier, the second petitioner is also one of the Directors of the company and first petitioner has also actively involved in the management affairs of the company. So I am of the considered view that it is not a fit case to discharge the petitioners from criminal liability, since except stating that they acted only agents no other materials have been brought on record. The total amount that has been cheated is Rs.14,24,400/-. So I find no merit in this petition and the petitioner has to undergo the process of trial which must be undertaken to arrive logical conclusion. Therefore, this petition deserves dismissal and the same is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

CM

To:

1.The Special Judge, TNPID cases, Madurai.

2.The Inspector of Police,
Economic Offence Wing-II,
Dindigul.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.P.S.PALANIVELRAJAN, Advocate (SR-31127[F] dated 05/10/2021)

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