



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the First day of March Two Thousand and Twenty One

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.1531 of 2021
in
CRL A(MD)No.87 of 2021

CHITHIRASENAN

... PETITIONER/APPELLANT/
ACCUSED No.2

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
ECONOMIC OFFENCES WING -II,
KARUR DISTRICT, KARUR.
CRIME NO.1 OF 2018.

... RESPONDENT/RESPONDENT/
COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Sentence imposed one me vide judgment dated 27.01.2021 made in C.C No.4/2019 on the file of the Special Court under the Tamilnadu Protection interest of Depositors (IN Financial Establishments) Act 1997 at Madurai and enlarge the Appellant on bail pending disposal of the above Criminal Appeal.

PRAYER IN CRL A(MD)No.87 of 2021:

Pleased to call for records and set aside the Judgment dated 27.01.2021 made in C.C.No.4 of 2019 on the file of the Special Court under the Tamil Nadu Protection Interest of Depositors(In Financial Establishments)Act, 1997 at Madurai in so far as the conviction and sentence as against the Appellant.

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.A.BALAJI, Advocate for the petitioner and of Mrs.S.BHARATHI, Government Advocate on behalf of the Respondent, while admitting the Criminal Appeal, the court made the following order:-

This petition has been filed to suspend the sentence imposed by the Special Court under the Tamil Nadu Protection Interest of Depositors (In0 Financial Establishments) Act, 1997, 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 A3/ G.N.S.Moorthy and A2/ Chithirasanen (petitioner herein) executed a partnership deed, on 24.06.2010 and started a partnership Firm viz.,A1/ Anuram Capitals. Both A3 and the petitioner herein/ A2 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. The petitioner / 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 for 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 / A2 and A3 under Section 406 I.P.C and sentenced them to undergo one year rigorous imprisonment and sentenced them to undergo five year rigorous imprisonment and 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.87 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 the petitioner /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. The petitioner /A2 and A3 each have to repay one group of the creditors. Ex.P1 to Ex.P21 revealed that A3 had settled the amount to the creditors. The petitioner / A2 filed insolvency petition, before his arrest. There is a delay of seven months in lodging the complaint. There was no proper enquiry. 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 not 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, the petitioner / A2 has deposited Rs.1,00,000/- (Rupees One Lakh only). The petitioner is in custody from 27.01.2021 onwards. There are much more points to be argued in the main appeal and prayed the sentence to be suspended till the appeal.



4. On the side of the prosecution, it is stated that A3 and the petitioner/A2 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 A2 in the case. It is stated that the petitioner/A2 and A3 paid some of the creditors. Sentence against the co-accused / A3 was already suspended by this Court in Crl.M.P.(MD)No.930 of 2021, dated 16.02.2021. There are some arguable points for consideration in the appeal. 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 under the Tamil Nadu Protection Interest of Depositors (In Financial Establishments) Act, 1997, Madurai ;

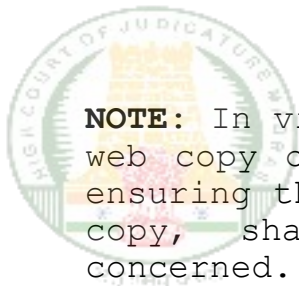
(ii) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of any valid identity proof to ensure their identity ;

(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.

sd/-
01/03/2021

/ 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.

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TO

- 1.THE SPECIAL COURT UNDER THE TAMIL NADU
PROTECTION INTEREST OF DEPOSITORS
(IN FINANCIAL ESTABLISHMENTS)ACT 1997,
MADURAI.
- 2.THE INSPECTOR OF POLICE,
ECONOMIC OFFENCES WING -II,
KARUR DISTRICT, KARUR.
- 3.THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 4.THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.1531 of 2021
in
CRL A(MD)No.87 of 2021
Date :01/03/2021

LS
TK/PN/SAR.3/26.02.2021/4P/5C