



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.01.2021
CORAM

THE HONOURABLE **MRS.JUSTICE J.NISHA BANU**

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Crl.O.P. (MD) No.14163 of 2020
and Crl.M.P. (MD) No.6557 of 2020

Murugan ... Petitioner/Petitioner/Accused No 3

Vs.

The State rep.by
The Inspector of Police,
EOW-II, Theni. ... Respondent/Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and set aside the order dated 05.10.2020 made in Cr.M.P.No.3370 of 2019 in C.C.No.112 of 2008, on the file of the Special Court under the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, Madurai.

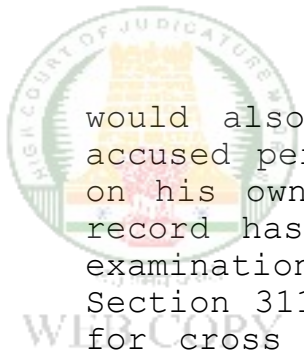
For Petitioner	: Mr.C.Muthusaravanan
For Respondent	: Mr.V.Neelakandan, Additional Public Prosecutor.

ORDER

This criminal original petition has been filed to set aside the order dated 05.10.2020 made in Cr.M.P.No.3370 of 2019 in C.C.No.112 of 2008, on the file of the Special Court under the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, Madurai.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3.The learned counsel appearing for the petitioner would submit that a case in crime No.34 of 2006 came to be registered by the respondent for the alleged offence under Sections 420, 120(B) IPC and Section 5 of TANPID Act, 1997 and after completing investigation, the respondent filed charge sheet in C.C.No.112 of 2008 before the learned Special Court under the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, Madurai. He would further submit that in the year, 2013, some of the co-accused have filed quash petition in Crl.O.P.(MD) No.7652 of 2013 before this Court and an order of stay was granted till 30.07.2016. The interim order of stay was vacated in the year 2016, and subsequently, P.W.16 was examined in the year 2017. He



would also submit that due to some misunderstanding between the accused persons, the petitioner herein decided to engage a counsel on his own to contest the case. However, the learned counsel on record has failed to inform about the consequences of the cross examination and therefore, the petitioner filed petitions under Section 311 Cr.P.C., to recall the witnesses and to reopen the case for cross examination and same were numbered as Cr.M.P.No.3369 & 3370 of 2019. After perusing the available materials, the learned Special Court under the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, Madurai was pleased to dismiss the petitions by a common order, dated, 05.10.2020. As against the same, the present criminal original petition has been filed.

4.The learned Additional Public Prosecutor appearing for the respondent would vehemently oppose this petition by stating that the recall petition was filed before the Court below after a lapse of long period. Hence, he prayed for a dismissal of this petition.

5.It is seen that the petitioner is the accused in C.C.No.112 of 2008 on the file of the Special Court under the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, Madurai. Some of the accused filed a quash petition before this Court in Crl.O.P.(MD)No.7652 of 2013 and the proceedings were stayed by this Court. Due to the same, the petitioner is not in a position to cross examine P.W.16. In the year 2016, the stay was vacated and the petitioner filed petitions under Section 311 Cr.P.C., to recall the witnesses and to reopen the case for cross examination in Cr.M.P.No.3369 & 3370 of 2019.

6.The Court below, after considering the facts and circumstances, dismissed the above petitions on the ground that witness cannot be recalled for cross examination, after long period. The stay order granted by this Court in Crl.O.P.(MD)No.7652 of 2013 is also one of the reason for the delay. Hence, to meet ends of justice, it would appropriate to allow this petition and permit the petitioner to recall the witness and cross examine them. Accordingly, the order, dated 05.10.2020 made in Cr.M.P.No.3370 of 2019 in C.C.No.112 of 2008, on the file of the Special Court under the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, Madurai is hereby set aside and the matter is remanded back to the file of the Special Court under the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, Madurai and the learned Judge is directed to recall the witness on a particular day and the petitioner shall cross-examine the witness on the same day. If the petitioner failed to utilize the opportunity, the learned Judge shall dismiss the petition for recall the witness and proceed with the case in the manner known to law.



7. Accordingly, this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)

gns

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 Court under the
Tamil Nadu Protection of Interest of Depositors
(In Financial Establishment) Act, 1997,
Madurai.

2. The Inspector of Police,
EOW-II,
Theni.

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

Crl.O.P. (MD) No.14163 of 2020
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ES (CO)

KB (05.02.2021) 3P 4C