BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.03.2021
PRONOUNCED ON : 01.04.2021

CORAM
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.9981 of 2016
and
CRL M.P(MD)No.5006 of 2016
and
Crl.R.C.(MD)No.451 of 2016
and
Crl.MP(MD)No.5190 of 2016

1.Shanu Sheik ... Petitioner / A4 in Crl.OP.No.9981/2016

2.S.Ghouse Yacoob Hussain ... Petitioner/A6 in Crl.RC.No.451 of 2016.

Vs.

1.The State through
The Deputy Superintendent of Police
Economic Offences Wing - II,
Madurai. ... Respondent / Complainant R1,2 both in Crl.OP.9981/2016 and in Crl.RC.No.451 of 2016.

2. S.Deivendran
3.S.John Basha
4.A.Shabina
5.A.Abdul Rahim
6.M.Aabitha Banu
7.M.Shameem Banu
8.M.Jamruth Bevi
9.S.Hasina Begum
10.K.Ameer Basha
11.S.Basira
12.Mehar Banu
13.S.R.Sharfudeen
14.Shabiya Begum
15.Anarkali
16.R.Wahitha Banu
17.S.Jamila Begum ... Respondents / Complainants both in Crl.OP.9981/2016 and in Crl.RC.No.451 of 2016.

*(R3 to R17 impleaded vide order of this Court, dated 17.03.2021)

PRAYER IN CRL OP(MD)No.9981/2016: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records Pertaining to C.C.No.3 of 2016, on the file of the Hon'ble Special Judge for TNPID Act cases at Madurai and quash the charge sheet filed by the 1st respondent and consequential all future proceedings as against the petitioner.

PRAYER IN CRL.RC(MD)No.451 of 2016: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to the order taking cognizance as C.C.No.3 of 2016, on the file of the Hon'ble Special Judge for TNPID Act cases at Madurai, dated 01.06.2016 and set aside the same.

For Petitioners	:	Mr.A.Ramesh, Sr.Counsel For Mr.D.Shanmugaraja Sethupathi
For Respondent-1	:	Mr.K.Suyambulinga Bharathi Govt.Advocate
For Respondent-2	:	Mr.S.T.Sasidharan Tamil Kani
For Respondents/ Intervener / Victims/ Depositors (R3 to R17)	:	Ms.P.Yasmin Begum

COMMON ORDER

The Criminal Original Petition has been filed praying to quash the proceedings in C.C.No.3 of 2016, on the file of the learned Special Judge for TNPID Act cases at Madurai.

2. The Criminal Revision is filed to set aside the order taking cognizance as C.C.No.3 of 2016, on the file of the learned Special Judge for TNPID Act cases at Madurai.

3. Petitioner in Crl.O.P.(MD)No.9981 of 2016 is arrayed as A4 and the petitioner in Crl.R.C.(MD)No.451 of 2016 is arrayed as A6 in C.C.No.3 of 2016. There are totally seven accused in this case. A1 is Company, A2 is Proprietaryship Firm, A3 is Managing Director and Proprietor of A2; A4 is the wife of A3 and she is neither a Director nor a Partner of A1 Company and A2 Firm; A5 & A6 are the sons of A3 and A4, A5 is the Director of A1 Company, A6 is the other son of A3 and A4, who is neither a Director nor a Partner of A1 Company and A2 Firm and A7 is a relative of A3, who is reported no more.

4. Since the issue involved in the Criminal Original Petition and the Criminal Revision Case are one and the same, they are taken up together and disposed of by this common order.

5.The case in hand has got a long chequered history, in view of the same, a brochure is necessary for the purpose of clarity.

(i). The case in Crime No.28 of 2010 came to be registered on 06.05.2010, for the offence under Sections 406, 420, r/w 120-B of IPC., and under Section 5 of Tamil Nadu Protection of Interests of Depositors (In Financial Establishment) Act, 1997, against the accused. The FIR came to be registered on the complaint of S.Deivendran / R2 in this case. The FIR was registered against (1) G.Sheik Mohidheen, Managing Director of P.M.C; (2) S.Shanu Sheik, W/o.Sheik Mohidheen; (3) Ghouse Sardhar Hussain S/o.Sheik Mohidheen; (4).S.G.Yaboob Hussain S/o. Sheik Mohidheen; Sivakumar, Director of P.M.C. and (6) M.Mubarak Ali S/o.Mohammed Ali. Subsequent to the complaint, A1/ Sheik Mohidheen was arrested. The petitions in Crl.O.P.No.8194 of 2010 and Crl.O.P.(MD)No.11135 of 2010, seeking anticipatory bail were filed by S.Shanu, G.Ghouse Sharthar Hussain, Ghouse Yusuf Hussain, Sivakumar, Mubarak Ali / A2 to A6 in FIR No.28 of 2010. Further, the Criminal Original Petition in Crl.O.P.(MD)No.10477 of 2010 was filed by G.Sheik Mohidheen, S.Shanu, S.Ghouse Sardar Hussain, S.Ghouse Yacoob Hussain, N.Sivakumar / A1 to A5 in FIR No.28 of 2010. All the petitions were heard together and dismissed by this Court, by a common Order , dated 13.11.2010.

(ii). Thereafter, A2 and A4 in Crime No.28 of 2010, viz., S.Ghouse Yacoob Hussain and Shaanu filed Criminal Original Petitions in Crl.O.P.(MD)No.4890 and 4892 of 2011, seeking to quash the said FIR. This Court, by order dated 30.07.2012, quashed the FIR, as against A2 and A4 alone in Crime No.28 of 2010. Aggrieved over the same, the State preferred Special Leave Petitions in SLP No.9855 and 9856 of 2015, before the Hon'ble Apex Court. The Hon'ble Apex Court, by order dated 27.11.2015 set aside the order of this Court, dated 30.07.2012.

(iii) Thereafter, after completion of investigation, the 1st respondent filed the final report in Crime No.28 of 2010, under Section 173(2) of Cr.P.C., before the Special Court for TNPID Act Cases, Madurai, on 21.11.2012, which returned on 10.11.2012 pointing out certain defects, latter represented on 08.01.2013. The charge sheet filed against five persons viz., PMC Mercantile Private Limited, represented by A3 and A4 (2) M/s.Paramount Marketing Corporation, represented by A3; (3) G.Sheik Mohideen (4) Ghouse Sardhar Hussain and (5) Mubarak Ali, which was taken on file as C.C.No.10 of 2013, on 23.02.2013.

(iv) Challenging the cognizance taken by the trial Court, Criminal Revision Case in Crl.R.C(MD)No.231 of 2013 filed before this Court and this Court, by order dated 31.07.2014, finding error apparent on the face of the record, which is liable to be corrected, allowed the Revision by observing that 'further investigation is being conducted, the same to be taken as continuation of the investigation, which is yet to culminate in the Police report as contemplated under Section Section 173(2) of Cr.P.C., and that on completion of such investigation and submission of the report, the Special Judge for TNPID Act Cases, Madurai, shall act in accordance with the provisions of law'.

(v) Thus, the High Court in Crl.R.C.(MD)No.231 of 2013 set aside the cognizance taken and allowed the continuation of investigation and to file a final report. The Supreme Court permitted the investigation to proceed further. In view of the same, the respondent, on collection of materials, found the involvement and complicity of the accused by devising various schemes and also assuring the general public, collected crores of rupees, as deposits from the general public and totally, 44,537 depositors have been cheated and their money has been misappropriated to the tune of Rs.65,46,87,508/- and all the accused in conspiracy, committed the offence. Hence, Section 5 of TNPID Act and Sections 406, 420 and 120-B of IPC., have been committed by A1 to A7, against whom charge sheet filed, which is pending before the lower Court and due to pendency of the above petition, the stage of Section 207 Cr.P.C., proceedings could not be completed.

6. I have heard the submissions of learned counsels for the parties at length and carefully gone through the materials available on record.

7. The crux of the contention of Mr.A.Ramesh, the learned Senior Counsel for the petitioners is that the 1st Petitioner / A4 is the wife of A3 and the 2nd petitioner / A6 is the son of A3. A3 is the Managing Director of A1 Company, proprietor of A2 Firm. A5 is the Director of A1 Company. The prosecution had roped in the petitioners, since they belonged to one family. Admittedly, the petitioners are neither Directors nor partners of A1 company and A2 Firm and they have nothing to do with any of the transactions of A1 and A2. Just because, they are from one family they cannot be arrayed as accused. Further, Section 5 of the TNPID Act is akin to Section 141 of Negotiable Instruments Act, wherein it is clearly mentioned that persons, who sought to be made should be vicariously liable for criminal offence and Section 5 of the TNPID Act, contemplates that persons, who are responsible for the Management of the affairs of the financial establishment is liable to be prosecuted. On the facts and circumstances of the case, the petitioners are not responsible for the affairs of the Management of A1 and A2.

8. Adding further, the learned Senior Counsel for the petitioners would submit that the Scheme devised by A1 and A2 is only for sale of "Thirukural" books and receipts issued for the same. It is only an incentive by way of commission for the persons, who added as commission agents and nowhere deposits of money was the sole criteria. He further submitted that the lower Court mechanically taken the case on file, when it initially returned the charge sheet stating one of the reason that "how the accused A1 to

A3 released on bail". Admittedly, in this case, A1 is the Company and A2 is the Firm. That being the case, such return would exhibit the non-application of mind. Further, taking cognizance is without a reasoned order the lower Court before taking the case on file, observed as follows:-

> "Seized book, "Thirukural Telivurai". Perused. In the Book - headings Scheme II Conditions, in Crime, Investment Perused. Take this case on file."

9. Continuing further, the learned Senior for the petitioner would submit that in the FIR, the petitioners herein originally shown as A2 and A4, against which, they filed quash petitions in Crl.O.P.(MD)No.4890 and 4892 of 2011, seeking to quash the said FIR. This Court, by order dated 30.07.2012, quashed the FIR, as against A2 and A4 in Crime No.28 of 2010. Against which, the State preferred Special Leave Petitions in SLP No.9855 and 9856 of 2015, before the Hon'ble Apex Court. The Hon'ble Apex Court, by order dated 27.11.2015 set aside the order of this Court, dated 30.07.2012. In the meanwhile, the prosecution completed the investigation and filed final report in C.C.No.10 of 2013. The remaining accused A1 to A3 in this case filed a Criminal Revision in Crl.R.C.(MD)No.231 of 2013, which was allowed, by finding error apparent on the face of the record, which requires to be corrected, by setting aside the cognizance taken in C.C.No.10 of 2013.

10. The only rendition given by the prosecution, both before this Court as well as Hon'ble Apex Court is that since further investigation is in progress under Section 173(8) Cr.P.C., the investigation shall proceed as per law. The prosecution is at liberty to proceed with the investigation and depending upon materials, file a final report. Taking advantage of this, the prosecution filed yet another charge sheet in C.C.No.3 of 2016, in which, the petitioners herein arrayed as A4 and A6. From the charge sheet there is nothing to show the role of the petitioners, how the prosecution is to prove the case against them and with what witnesses. Thus, there is no iota of materials against the petitioners / A4 and A6 and they have been falsely implicated in this case. Hence, the learned Senior Counsel prayed for discharge and quash.

11. The learned Senior Counsel in support of his contention relied on the Judgment of this Court in ***Shanmugam Vs. Inspector of Police*** reported in ***(2019 SCC Online Mad 2667)*** and in the Judgment of the Hon'ble Apex Court in ***Sunil Bharti Mittal Vs. CBI*** reported in ***(2015 (4) SCC 609)*** in respect of order to taking cognizance is bad in law. Further, the learned Senior Counsel relied on the Judgment of the Hon'ble Supreme Court in ***Pepsi Foods Ltd., Vs. Spel.Judicial Magistrate*** reported in ***(1998 (5) SCC 749)*** for the proposition that the order of summons is bad in law. Further, in the Judgment

Allahabad High Court in ***Komal Vs. State of U.P. and others*** reported in ***(2018 (105) ALLCC 92),*** in the Judgment in ***DeochandDurlabh Jogi Vs. Madanlal Gopikisan Sharma*** reported in (1968 Mah LJ 113) for the proposition that deposit of money does not amount to entrustment. Further, the learned counsel relied on the Judgment of the Supreme Court in ***State of Madhya Pradesh Vs. Mir Basit Ali Khan*** reported in ***(1971 (2) SCC 96);*** in ***Ramaswamy Nadar Vs. State of Madras*** reported in ***(AIR 1958 SC 56);*** in ***National Small Industries Corporation Limited vs. Harmeet Singh Paintal*** reported in ***(2010 (3) SCC 330);*** in ***S.M.S. Pharmaceutical Vs. Neeta Bhalla*** reported in ***(2005 (8) SCC 89).*** Further, in the judgment of the Hon'ble Apex Court in ***Mehmood UI Rehman Vs. Khazir Mohammed Tunda*** reported in ***(2015 (12) SCC 420);*** in the Judgment of this Court in ***Anamallai's Motors Private Ltd., and Ors. Vs. R.Subbaiah and Ors.;*** reported in ***2019-2-LW(Crl)416 ;*** in ***A.Rajendran and Ors. Vs. The State and Ors*** reported in ***(2019 (1) LW (Crl.771);*** in ***Movements Digital India Private Ltd., and Ors Vs. Raj Television Network Ltd.,*** made in ***Crl.O.P.Nos.1235, 1236 and 1237 of 2017,*** dated 16.02.2021; in the Judgment of Apex Court in ***R.K.Vijaysarathy Vs. Sudha and ors*** reported in ***2019 (3) ALT (Crl.) 387 (A.P);*** in the Judgment of Punjab and Haryana High Court in ***Sat Narain and Ors Vs. The State of Punjab*** reported in ***(1974 (CriLJ 232).***

12. Mr.K.Suyambulinga Bharathi, the learned Government Advocate (crl.side) appearing for the State filed a counter and submitted that in this case, there are 44537 persons / depositors, who are deprived of their deposits to the tune of Rs.65,46,87,508/-, due to the diabolic orchestration of A3 / Shiek Mohideen, the husband of A4 and father of A6. The investigation by the Police revealed that A3 along with his family members floated fraudulent Companies, and started luring the innocent public by giving false promise by announcing five delusive schemes. The investigation also revealed that blatant diversion of major funds collected from the depositors were routed through his bank accounts and of his family members for the personal benefits and misappropriated huge sums of money, creating a financial crunch and now A1 and A2 are not in a position to return the deposits. Further, with regard to A4 wife of A3 it is seen that on 08.08.2009 at HDFC Bank, Madurai in A/C.No.01238640000024 with a single cheque to the value of Rs.10,00,000/- credited to her account from the ICICI Bank account of the Paramount Marketing Corporation / A2, the cheque was signed by A3. The account was in operation only for 14 days and within a short period, huge sums of money to the tune of Rs.27,98,130/- was credited to the account of petitioner / A4. All the amounts were from the Companies Account and the amounts were converted into jewels, costly consumer articles and immovable properties were purchased by using the money.

13. It is his further submission that as regards the petitioner / A6, it is seen that the conspiracy and complicity of A6 with the

main accused is proved. A6, by registered sale deed, dated 27.01.2010 and 03.03.2010, as power of attorney, sold the property to one Gomathi, yet another property to another person, which was siphoned out, thereafter, other property was purchased. These properties were purchased with ill-gotton money of A1 and A2, no explanation could be given by A6 for these transactions and no documents produced to show that the petitioner / A6 had only acted as an agent and nothing more. Further, the petitioner is staying in one of the properties purchased from the ill-gotton money and he admitted the same by filing a petition against attachment of the said property, in the above case.

14.The contention of the learned Senior Counsel for the petitioner that filing of the second final report is improper. When there was a specific direction to the prosecution from this Court as well as the Hon'ble Apex Court, to proceed with the investigation and to file a final report, it cannot be stated that filing of the subsequent charge sheet is improper and illegal. Further, the petitioners are not only charged under Section 5 of TNPID Act, but also they charged for the offence under Section 120-B, 406 and 420 of IPC. The TNPID Act is a self-contained Code. The validity of the Act and the purpose for what it has been brought had been earlier tested and decided by this Court by various decisions and the validity of the Act is not disputed now. The lower Court had clearly stated while taking cognizance, what are the offences and who are the offenders reflect clear application of mind which cannot be termed improper. Since innocent persons in the name of depositors had been cheated the Act provides that a Special Court to be formed in the rank of District Judge for the reason that the trial could be completed in a time bound manner. The act of the petitioner by filing one petition or other, had completely defeated the purpose for which the act has been brought in.

15. Adding further, the learned Government Advocate (crl.side) for the State submitted that the petitioners having actively participated in commission of the above offence, cannot now attempt to wriggle out on the ground that they are not Directors and Partners of A1 and A2 Firms and hence, no offence is made out, is not proper. On the other hand, the prosecution collected enough evidence during investigation, which unerringly point towards the petitioners, who played an active role along with the other accused in siphoning out of the public money, running to several crores. The offence took place in the year 2010, the petitioners and his family members are flushed with ill-gotton, misappropriated money, till today they are enjoying the same and further, they have approached this Court by filing one petition and other and successfully dragging on the proceedings. They have a set of Advocates, who on instructions, regularly filing the one petitions or other successfully stalling the trial sofar. The pattern of the petition and the legal experts advising them and defending them, would show how powerful and mighty they are. The petitioners played

a vital role in cheating the innocent depositors, mostly the retired persons, who deposited their hard earned money, are now in the street and not even a single paise paid to them. Despite an amount of Rs.1,39,59,186/- attached in the bank accounts of the accused nothing could be disbursed. As on date, even Section 207 Cr.P.C., proceedings could not be completed and further prayed that this Court to dismiss the quash and Revision Petition, to complete the trial within a time bound manner. In support of his contention, the learned Government Advocate (crl.side) relied on the Judgment of the Hon'ble Apex Court in ***Chilakamarthi Venkateswarlu & Anr Vs. State of Andhra Pradesh and Anr*** reported in 2019 SCC Online SC 948, wherein it has been held as follows:-

> “"In exercising jurisdiction under Section 482 it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused.”

16. The learned counsel for the defacto complainant / R2 has filed a counter. Strangely from the counter, it is seen that the defacto complainant shows no interest in proceeding with the case and to get back his money and also the other depositors. On the contrary, he speaks in the voice of the accused that the final report dated 28.04.2016 to be quashed.

17. The defacto complainant in the earlier quash in Crl.R.C.(MD)No.231 of 2013, who was impleaded as 25^{th} respondent had not contested and left the matter in lurch, without any representation. It shows that the defacto complainant has been won over. Luckily, in this case, the depositors / victims have filed impleading petition and produced typed set enlisting the various orders obtained by the petitioners, using loopholes in the Law. The 3^{rd} respondent earlier got impleaded in Crl.R.C.(MD)No.231 of 2013 made their submissions.

18. In this case, Ms.P.Yasmin Begam, the learned counsel appearing for the depositors vehemently opposed the petitions of the petitioners and sought for dismissal of the petitions with a direction to the trial Court to complete the trial within a stipulated period. She apprehends that there is some complacency between the petitioners' family with the first respondent, since A1 in this case earlier served in Finger Print Department and he got good acquittance with the police personnel and through his contacts, A3 seems to be the brain behind, using his family members cheated and misappropriated 44000 depositors running to 65 corres, due to

which the depositors are now in streets. Further, the learned counsel produced pamphlets, which shows how A1 and A2 camouflaged the scheme of receiving deposits in another form. These pamphlets prepared at the initial stage and is the basis reflects the clear idea to cheat the public. Other than these two establishments, they also have 3 more entities through which money has been siphoned out. The entire family members have joined together in cheating the public money. Whenever the schemes have been launched, the entire family members were present. The petitioners herein took active participation. The petitioner A4, wife of A3 would only light (Kuthuvilakku), with the participation of the entire family. The entire family would address the depositors, make promises, lure the general public to invest in the schemes by sugar coated words. Hence, all deceived the public.

19. The entire family members of the petitioners initially filed a quash petition together, while filing the anticipatory bail petition, and the same was dismissed. Thereafter, filed another quash petition separately before this Court in Crl.O.P.(MD)No.4890 and 4892 of 2011, which was allowed. Though in the said order it is mentioned about the various dismissal, in the second petition and various other points have been raised, what are the new points raised in the second quash petition is not found. Further, the prosecution had taken up the matter upto the Supreme Court, the Supreme Court setting aside the finding of the High Court.

20. Further, the primary findings of this Court is that the petitioners have no connection whatsoever with the constitution of administration of the Company as well as the proprietorship Firm as could be found in the advertisement. Thereafter, it was taken to the Hon'ble Supreme Court and the Supreme Court set aside the order of this Court in quashing the proceedings against these petitioners and further, it has clearly given a direction that the investigation shall proceed as per law. Hence, the respondents police had continued their investigation.

21. In the meanwhile, charge sheet has filed against the remaining accused. A1 to A3, who filed a petition in Crl.R.C.(MD) No.231 of 2013 seeking setting aside the order of taking cognizance and the revision was allowed and the Silver line is that ***"However, it is made clear that since the police report itself contains a statement to the effect that further investigation is being conducted, the same will be taken as continuation of investigation, which is yet to culminate in a police report as contemplated under Section 173(2) of Cr.P.C., and that on completion of such investigation and submission of the report, the Special Judge for TNPID Act cases, Madurai, shall act in accordance with the provisions of the Law".*** The Apex Court earlier directed the prosecution to continue the investigation. Thereafter, charge sheet has been filed in C.C.No.3 of 2016.

22. The family members of the petitioner had been filing one petition or other before this Court. Earlier, Criminal Revision in Crl.R.C.(MD)No.882 of 2010 was filed before this Court, seeking to return of the vehicles, by A1. Crl.R.C.(MD)No.328 of 2011 has been filed seeking custody of property by these petitioners and A5; Crl.O.P.No.13360 of 2011 was filed not to harass the petitioners; A1 filed C.M.A.(MD)No.367 of 2012 with a prayer to set aside the order made in O.A.No.21 of 2011, seeking interest from the seized Bank accounts of the fraudulent Companies. It was the submission of the appellant that the prosecution frozen an individual account standing in the name of the appellant therein, all the above 11 Bank Accounts are Current Accounts, maintained in various Banks at Madurai and having a balance in aggregate Rs.1,35,59,186/-. Since all the Bank accounts have been frozen, the appellant has no other source of income to maintain himself, his family and also to meet the legal expenses, made a claim under Section 10 of the TNPID Act. This Court, by order dated 27.06.2012, directed the trial Court to grant Rs.1,00,000/- per month to the appellant therein, for maintenance as and when the petition for withdrawal is filed by A1.

23. Though this arrangement was to continue, till the competent authority is vested with the property or until further order of this Court whichever is earlier, even today it is continuing despite an interim attachment order has been passed in G.O.Ms.No.817/Home/Police/X1X, dated 19.12.2012. The order of this Court was granted on 21.11.2012, and within six months, the attachment order has been passed and the payment of maintenance money ought to have been denied to A1, but strangely it continues which is improper. Further, A1 in this case had also filed a complaint against R2 / defacto complainant before TNPID Court, which was dismissed against which, he had filed a Revision before this Court. A Division Bench of this Court by order dated 07.06.2018 dismissed the same. The petitioners' one of the defence that the scheme devise on selling of 'Thirukural' book would not amount to business of receiving deposits on the promise of returning them with interest and which would only attract the Sale of Goods Act and not under the TNPID Act, which was not considered. Further, A5 had filed a petition challenging G.O.No.215, dated 01.04.2013 which was latter withdrawn. Thus, for drop of a hat for all the reasons, the petitioners and his family members have been filing one petition or other and succeed in stalling the investigation and now the trial.

24. Further, the learned counsel relied on the Judgment of this Court in ***M/s.Helios and Matheson Information Technology Ltd., rep by its Authorized Signatory Mr.D.Sathasivam Vs. The State rep.by the Deputy Superintendent of Police, DOW-II, Anna Nagar, Chennai*** reported in **(2015 SCC Online Mad 7398)**, wherein, the Division Bench of this Court, following the Full Bench of this Court and the Apex Court Judgment clearly held that the TNPID Act is a self-contained

Code and the Police has got all the powers to investigate and the competent authorities have powers of attachment and adjudication of the property and also enlisting the importance of Section 14 of the Act, thereby, the points raised by the Senior Counsel for the petitioners already decided by this Court. Further, in the recent Judgment of this Court with regard to the stand that chit will not fall under the TNPID Act, and held that the TNPID Act was introduced from the stand point of protecting the interest of depositors. The nature of transactions involving in receipt of deposits from the general public and obligation to the persons who receive his return to the persons, who made deposits on holding that all these types of transactions will come under TNPID Act.

25. I have considered the rival submissions and perused the materials available on record.

26. It is seen that the petitioners herein are wife and son of A3, the prime accused in this case; A1 is the Company; A3 and A5 are its Directors; A2 is the Firm; A3 is the proprietor, they all belong to one family and they have been actively participating in running the institution. The accused actively participating in all the programs of the Companies and thereby, instrumental in traversing the business, huge sums of money has been received from large number of depositors. The pamphlets of A2 reveals that it is only deposit of money, with a caveat the pamphlet issued in which it is mentioned that is not Multi Level Marketing or Pyramid Concept of Business System and it is not Money Circulation or Price Chits activities, which would not fall under any of these categories and fall under the Sale of Goods Act, 1930, thus, right from the inception, it is very clear and certain that cheating to be committed, amounts to be misappropriated and hence, by clear message the pamphlets have been distributed, creating a defence that no criminal offence will be attracted. It is only in anticipation to safeguard themselves from their illegal design for the future benefits, the pamphlets, broucher have been designed.

27. The five schemes envisaged therein would clearly show that it is only deposit of money in the guise of selling 'Thirukkural' book and further, huge sums of money had been collected running to crores and thereafter, the same has been misappropriated. It is to be seen that within a short period from 08.08.2009 to 21.08.2009 a sum of Rs.27,98,130/- had been transferred from the other accused account and on single day ie., on 20.08.2009, an amount of Rs.70,98,130 was credited to the account of A4 from the Paramount Marketing Company. For receipt of money, there is no explanation. This money has been used to purchase gold jewels and other valuables. Likewise, the other petitioner acted as power agent for A3, sold two properties, received huge sums of money, for which, no explanation could be given.

28. On the other hand, these two petitioners residing in the

property of the Company, enjoying the same which is now under attachment. All the accused in connivance with each others, cheated the general public. The petitioner had relied upon various judgments with regard to order of taking cognizance is bad in law, these cases pertaining to private complaint. The procedures *prima facie* satisfaction with regard to taking cognizance in a private complaint is not same for the cognizance on the police report. The entrustment is clearly proved on the materials produced and now it is for the petitioners to prove that there is no misappropriation in this case. The petitioner were unable to given any plausible explanation.

29. Further, for the point of incharge and active participation under Section 141 of Negotiable Instruments Act, which is akin to Section 5 of the TNPID Act, cannot be accepted. The offence under Section 141 of the Negotiable Instruments Act is a private compliant procedures where before filing private complaints, notice has to be given to the Directors and persons incharge so that they can give explanation and justification. The above case is a police case. The Police after thorough investigation found the role played by each of the petitioners filed the final report against the petitioners and filing of the final report is proper and the petitioners' attempt seeking tutelage of the earlier proceedings is not sustainable. Further, for the case of conspiracy, the materials collected from the charge sheet, a clear inference is seen pointing towards the petitioners. In view of the same, there is no merits in the contentions putforth by the petitioners.

30. That apart, a sharp increase in the volume of deposits held by A1 and A2 is proved. The non-banking financial companies started issuing catchy and misleading advertisements, soliciting deposits from the general public, offering tempting schemes, but without giving any information regarding the scheme of Multi Level Marketing or Pyramid Concept of Business System. Uninformed and gullible small depositors, fall prey to such *mala fide modus operandi* of augmentation of deposits. Such unfair growth of deposits, outside the banking system and proliferation of institutions both financial and non-financial, depending mainly or wholly on the deposits from the general public. Such companies should not have unlimited and unrestricted access to the public funds. Such unfettered augmentations of deposits from the general public creates unhealthy situation for the depositors created lots of problems in the implementation of monetary and credit systems of the Country.

31. In view of the forgoing discussions, this Court is not inclined to grant any relief as prayed for by the petitioners. Accordingly, both the Criminal Original Petition and the Criminal Revision Case are dismissed. Considering the fact that the offence took place in the year 2010 and the charge sheet filed in the year 2016 and it is now 2021, still the case is at the stage of Section 207 Cr.P.C. taking note of the submissions of the learned

Government Advocate (crl.side) as well as the counsel for the depositors and long pendency of the case, the trial Court is directed to conduct the trial on day-to-day basis, complete the trial as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order. Needless to point out that if the accused adopt any dilatory tactics, the trial Court to take coercive action against them, by cancelling the bail. Further, the trial Court has to take all the earnest steps to distribute the money presently available, proportionately to the depositors and further to take earnest steps to dispose of the attached properties and realize the money at the earliest. Consequently, the connected miscellaneous petitions are also dismissed.

32. This Court places its appreciation to Ms.P.Yasmin Begum, learned counsel for the Depositors for making thorough preparation and putting forth effectively her points despite facing a formidable challenge.

Sd/-

Assistant Registrar (Crl)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MPK

To

1. The Special Judge for TNPID Act cases
   Madurai

2.The Additional Public Prosecutor,
   High Court, Chennai.

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+2 CC to M/s.P.YASMIN BEGUM, Advocate (SR-15324 &15325[F] dated 07/04/2021)

+2 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-15198 and 15199[F] dated 01/04/2021)

Orders made in

Crl.O.P.(MD)No.9981 of 2016
Crl.R.C.(MD)No.451 of 2016
01.04.2021.

CN(21.05.2021) 13P 9C