



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2021

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.18472 of 2021

Durai

... Petitioner

Vs.

1.The Superintendent of Police,
Economic Offence Wing-II,
Guindy, Chennai - 600 032.

2.The Deputy Superintendent of Police,
Economic Offence Wing -II,
Kanniyakumari.

3.The Inspector of Police,
Economic Offence Wing -II,
Kanniyakumari.
(Crime No.1 of 2021)

... Respondents

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to direct the respondents to set up a temporary investigation agency in any of places at Ranipet, Vellore, Tiruvannamalai, Chennai, Kancheepuram to collect the complaints or statements and documents from affected depositors/persons in connection with Crime No.1 of 2021.

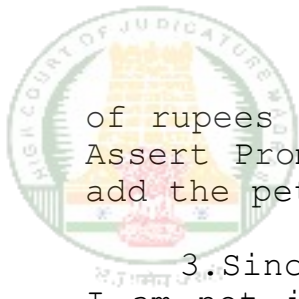
For Petitioner : Mr.D.Parthiban

For Respondents : Mr.M.Sakthi Kumar,
Govt. Advocate (Crl. Side).

O R D E R

This criminal original petition has been filed for directing the respondents to set up a temporary investigation agency in the petition mentioned places to collect further complaint, statements and documents from the affected depositors in connection with Crime No.1 of 2021 registered on the file of the Inspector of Police, Economic Offence Wing-II, Kanyakumari.

2.When the matter was taken up for hearing, the learned Government Advocate (Crl. Side) on instructions submitted that the petitioner lacks bonafides. He is based in Thiruvannamalai and he had introduced a number of depositors and he has collected 65 lakhs



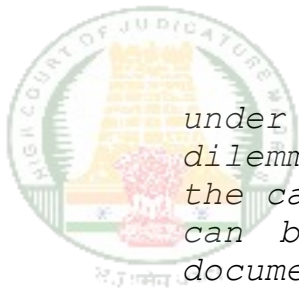
of rupees from the promoters of the accused company, namely, Unique Assert Promoters and Estates India Limited. There is a proposal to add the petitioner/Durai also as an accused in this case.

3.Since the bonafide of the petitioner has come under a cloud, I am not inclined to grant any relief to the petitioner. However, taking note of the fact that the accused company and its promoters have collected several crores of rupees from 1000 depositors situated at all over tamilnadu, it is just and necessary that the third respondent is directed to file the final report at the earliest.

4.Crime No.1 of 2021 was registered on 06.01.2021. Unique Assert Promoters and Estates India Limited is shown as the first accused. Its directors have been shown as A2 to A5. The accused are said to have floated attractive deposit scheme and induced the members of the general public to deposit money with the company. The company has been functioning from the year 2012 onwards. However, default begun to occur from January 2021 onwards.

5.I can take judicial notice of the fact that none of the cases registered under TNPID Act get concluded early. Some of the cases go on even upto 20 years. This delay is due to more than one reason. The police wait indefinitely for collecting complaint from each of the depositors. In my view, this is absolutely unnecessary. Each deposit constitutes a separate cause of action and separate criminal case can be registered. The investigation officer states that sofar some 500 complaints have been received. If any further complaints are received, a separate case can be registered. Likewise, it is not necessary that every depositors must be examined as witness by the trial Court. This aspect of the matter has already been dealt with by me vide order dated 21.12.2020 in Cont.P. (MD)No.971 of 2020. Paragraph No.8 of the said order is as follows:-

"8.As already pointed out, the accused have collected deposits from more than three thousand persons. The default amount is more than rupees nine and half crores. Only to favour the accused, in the first criminal case, only nine depositors were shown so that he can withdraw the attachment amount of Rs.56.00 lakhs. Be that as it may, there is no point in flogging the dead horse (Of course, I will not accept flogging live horses also). The pending prosecution has to be fast-tracked. I have given direction for sale of the attached properties. If in the course of next few months, substantial sums of money could be raised and at least the principal amount can be settled, an indulgent view can be taken in the matter of handing out the sentence. If that is not possible, then the prosecution has to be taken to its logical conclusion. When there are more than 3200 depositors, physical examination of each and every depositor will take not months but years. That is how the prosecutions initiated



under TANPID Act have got bogged down. I can understand the dilemma faced by the Special Judges under TNPID Act trying the cases. The Fixed Deposit receipts have to be proved. That can be done only by marking through the parties to the document. The parties to the document are either the accused or the depositors. Obviously, the accused would not come forward to facilitate marking of all the documents through them and therefore, the trial court has to examine each and every depositor. In my view, this is a futile exercise. The learned Special Judge under TNPID Act Cases, Madurai is directed to invoke Section 165 of the Indian Evidence Act, 1872. Section 165 of the Indian Evidence Act reads as follows :

"165.Judge's power to put questions or order production.-- The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question: Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved : Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted."

Of course, Section 165 of the Indian Evidence Act cannot be used to dispense with the primary evidence of any document. The court below will ensure that most of the original deposit receipts (not all of them) are marked not through each individual depositor but through the Investigation Officer. The court can issue a directive to the Investigation Officer under this provision and ask him to produce the documents at one go and most of them can be marked through him."

6.I propose to dispose of the present criminal original petition on the same lines. The third respondent is directed to
<https://hcservices.ecourts.gov.in/hcservices/>



file the final report in Crime No.1 of 2021 within a period of three months from the date of receipt of a copy of this order. The jurisdictional Special Court shall take a call on the file report to be filed by the third respondent within a period four weeks thereafter. If the jurisdictional Special Court decides to take cognizance of the offence, the trial will be conducted in terms of the directions laid down in the aforesaid order.

7.This criminal original petition is disposed of with the aforesaid directions.

Sd/-

Assistant Registrar (P&A)

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/ /2022

Sub Assistant Registrar(CS)

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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 Superintendent of Police,
Economic Offence Wing-II,
Guindy, Chennai - 600 032.
- 2.The Deputy Superintendent of Police,
Economic Offence Wing -II,
Kanyakumari.
- 3.The Inspector of Police,
Economic Offence Wing -II,
Kanyakumari.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P (MD) No.18472 of 2021
25.11.2021

MGJ(07.01.2022) 4P 5C