IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2022

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN,J.

Crl.R.C.No.184 of 2022
&
Crl.M.P.No.1781 of 2022

P.Vijayakumar

...Petitioner / A8

Versus

State rep.By
Inspector of Police,
Economic Offences Wing-II,
Vellore. Crime No.01/2012

...Respondent / Complainant

PRAYER: Criminal Revision Case has been filed under Section 397 and 401 of Criminal Procedure Code to call for the records and set aside the order in Criminal Miscellaneous Petition No.796 of 2017 in C.C.No.01/2017 in Crime No.01/2012 dated 26.10.2021 on the file of the Special Judge, Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997, Chennai.

For Petitioner : Mr.G.M.Shankar

For Respondent : Mr.Leonard Arul Joseph Selvan
Government Advocate (Crl.Side)

ORDER

Today, this criminal revision has come up for hearing under the caption “for admission.”

2.Heard the learned counsel appearing for the revision petitioner.

3.The present revision has been filed praying to call for the records and set aside the order passed in criminal miscellaneous petition No.796 of 2017 in C.C.No.01 of 2017 in Crime No.01 of 2012 dated 26.10.2021 on the file of the Special Judge, Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997 Chennai.

4.The case of the petitioner is that he is arrayed as accused No.8 in C.C.No.1 of 2017. The said case is posted for framing charges. It is stated in the petition that the petitioner was neither a Partner nor a Manager of Sri Subasri Finance. The petitioner did not work under A1 Sri Subasri Finance and A2 Sri Subasri Finance and Chits Funds, Vellore. The petitioner is relative of A4 Kanchana and he has been falsely implicated on the basis of relationship. In the alleged complaint, the defacto complainant Chandru nowhere stated about the involvement of the petitioner in the alleged occurrence. Now, some of the witnesses examined on the side of the prosecution falsely stated that the petitioner was working under A1. The prosecution has not filed any document to show that the petitioner was a partner or a manager in A1 & A2. According to the petitioner, the other accused Elumalai, arrayed as A3 alone had participated in all transactions of chit fund. The petitioner did not sign any documents and did not receive any money from the public and other witnesses. There was no material available in the final report filed by the prosecution for framing charges as against the petitioner and therefore, the petitioner has filed a petition before the trial Court for discharging. Later, after elaborate enquiry, the learned Special Judge under the Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997, by order dated 26.10.2021 dismissed the application filed by the petitioner, against which, the petitioner preferred the criminal revision.

5.The learned counsel appearing for the petitioner would submit that in the final report filed by the respondent police, there is no incriminating substance available as against the revision petitioner. Without considering the same, the trial Court rejected the contention raised by the petitioner saying that in 161 Cr.P.C. statement, the name of the petitioner was reflected and otherwise, in order to show that the petitioner was working as Manager in A2 Firm, no material is collected during the time of investigation. Accordingly, the order passed by the Special Judge is liable to be set aside and the petitioner/accused No.8 is liable to be discharged from the entire case.

6.Per contra, the learned Government Advocate (Crl.side) appearing for the respondent police raised objection stating that in the impugned order itself, the learned trial Judge, after considering 161 Cr.P.C statements, recorded from the witnesses categorically held that the petitioner also played a vital role in the alleged transactions and therefore, it cannot be said the petitioner is no way connected with the alleged occurrence.

7.Both side submissions considered.

8.It is settled law that at the stage of consideration of an application for discharge, the Court has to proceed with the assumption that a material brought on record by the prosecution is true and evaluate the materials to find out whether the case, taken on the face value, disclosed existence of ingredients constituting the offence.At this stage, only the probative value of the materials has to be gone into and the Court is not expected to go deep into, to hold a mini trial. Further, in the case of Naval Vs. State reported 1996 criminal Law Journal 2842, it was held that where from the statement of the complainant and other witnesses interrogated under Section 161Cr.P.C. a prima facie case is made out, the framing of charge is justified.

9.Accordingly, at the stage of framing charge, the Court is not to judge meticulously the evidence proposed to be adduced by the prosecution. By following the said principles in the case on hand, now on going through 161 Cr.P.C. statements recorded from the witnesses LW2 J.Karthikeyan and LW3 M.Manoharan, they have categorically stated that the petitioner herein had collected money from the depositors, out of which 50% of money only given to A3 deceased Elumalai and 50% of money utilised by himself and purchased the property in his name. The said statement given by the witnesses is more than sufficient to hold that the petitioner has also played a vital role in collecting the deposits from the customers of A1 & A2. Therefore, in the said circumstances, the veracity of the said submission has to be decided only at the time of trial. In other words, I am of the considered opinion that there are sufficient materials available in the final report filed by the prosecution for framing charges against the accused. Therefore, the revision petition is dismissed. Thus, in view of the abovesaid observation, this Court is not inclined to interfere with the order passed by the Special Judge and accordingly, Criminal Revision Petition is dismissed. Consequently, connected M.P.is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Special Judge,
   Tamil Nadu Protection of Interest of Depositors
   (in Financial Establishment) Act, 1997,
   Chennai.

2. The Inspector of Police,
   Economic Offences Wing-II,
   Vellore. Crime No.01/2012.

3. The Public Prosecutor,
   High Court, Madras.

Crl.R.C.No.184 of 2022

SKM[co]
NSK 02/05/2022