



BAIL SLIP

CRL.A.No.492 OF 2022

The Appellant herein / 6th Accused namely S.Palanisamy, S/o.Subban @ Subramani aged 50 years was directed to be released on bail as per order of this Court dated 02.06.2022 made in Crl.M.P.No.6397 of 2022.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.490 of 2022 and Crl.M.P.No.6394 of 2022

&

Crl.A.No.492 of 2022 and Crl.M.P.No.6397 of 2022

1.M/s.Sakthi Emu Farms, Rep. By A2,
100, Amu Complex,
Kunnathur Road,
Perundurai, Erode District.

2.S.Ramasamy

3.R.Samiyathal

4.S.Thangavel @ Chenniappan

5.T.Devi @ Devika

6.P.Chandran @ Sampath

...Petitioners / Accused 1 to 5 & 7
(in Crl.A.No.490 of 2022)

S.Palanisamy,
S/o. Subban @ Subramani

...Petitioner / 6th Accused
(in Crl.A.No.492 of 2022)

Versus

State rep. by
Inspector of Police,
Economic Offences Wing II,
Erode.

...Respondent
(in both Appeals)



Common Prayer: Criminal Appeals are filed under Section 374(2) of the Code of Criminal Procedure, to release the petitioners on bail by suspending the sentence appealed against in C.C.No.15 of 2012 on 05.04.2022 on the file of the learned Special Judge, Special Court under The Tamil Nadu Protection of Interests of Depositors Act Cases, Coimbatore, pending the disposal of the above appeals.

For Petitioners : Mr.G.Murugendran
(in both appeals)

For Respondent : Mr.S.Vinoth Kumar
(in both appeals) Government Advocate (Crl. Side)

COMMON JUDGMENT

These Criminal Appeals are filed against the conviction and sentence imposed by the learned Special Judge, Special Court under TNPID Act, Cases, Coimbatore, by Judgment dated 05.04.2022 in C.C.No.15 of 2022.

2.Since both the Criminal Appeals have arisen out of the common order the appeals are taken up for disposal by this Common Judgment.

3.On conclusion of the trial, the Trial Court found the appellants/A2 to A7 guilty for the offence under Section Section 120 B r/w Section 420 of IPC, Section 420 and Section 5 of TNPID Act, and convicted them as under:-

(i) for the offense under Section 120B r/w Section 420 of I.P.C., to undergo One day Simple Imprisonment with fine of Rs.50,000/- each, in default of payment of fine to undergo further one and half years Simple Imprisonment ;

(ii) for the offense under Section 420 of I.P.C., to undergo One day Simple Imprisonment with fine of Rs.50,000/- each, in default of payment of fine to undergo further one and half years Simple Imprisonment ;

(iii) for the offense under Section 5 of TNPID Act, to undergo One day Simple Imprisonment with fine of Rs.50,000/- each, in default of payment of fine to undergo further period of two years Simple Imprisonment.

(iv) However, all the sentences were ordered to run concurrently and the period already if any, undergone by them was ordered to be given set off as per Section 428 of Cr.P.C.



4. Aggrieved by the said Judgment of conviction and sentence imposed on the accused/A2 to A7, the Criminal Appeal in Crl.A.No.490 of 2022 is filed by the accused A1 to A5 and A7, and the Criminal Appeal in Crl.A.No.492 of 2022 is filed by the accused A6, before this Court.

5. The primary contention of the learned counsel for the appellant is that there are a total of 62 depositors out of which 26 depositors have admitted during the cross-examination that they have been fully settled. In respect of the remaining 36 depositors, earlier, Crl. O.P.No.15052 of 2020 was filed before this Court and the factum of settlement to the remaining 36 depositors was also recorded. As a matter of fact, the Trial Court recorded the entire proceedings relating to the settlement and compounding in paragraph No.42 in the Judgment, which is extracted hereunder for reads reference:-

"42. The accused alleged that they have settled 26 depositors, which has been admitted during cross examination and settled remaining depositors also. However, no evidence has been placed before the court in respect of 36 depositors or the accused have not deposited money in respect of the remaining 36 depositors the accused has not taken any steps to produce the remaining 36 depositors before the competent authority, thereby proving the said settlement of 36 depositors and request him to file an application under Sec.5A of TNPID Act. The order of the Hon'ble High Court, Madras in Crl.O.P.No.15052 of 2021, dated 17.03.2020 reveals that the accused settled 55 depositors and remaining six depositors alone have to be settled; and Rs.8,68,500/- is available with the Competent Authority, who was given direction to disburse the said amount to the 6 depositors. Further, the accused deposited Rs.2,88,000/-, before the Competent Authority, Erode on and filed a memo to that effect before this court on 31.03.2022. The said settlement recorded by the Hon'ble High Court and direction issued to the Competent Authority have also been taken care of, while convicting the accused. Having regard to totality of circumstances of the present case, this court feels that ends of justice will be served, if the accused are punished. A1 Sakthi Emu Farms, an unregistered firm, is not a legal person. Hence, A1 cannot be punished, but A2 to A7 liable to be convicted. "



6. In this view of the matter, it is useful to extract the Section 5A of the Tamil Nadu Protection of Interest of Depositors (In Financial Establishments) Act, 1997, which reads as follows:-

"[5 A. Compounding of offence.--(1) An offence punishable under Section 5 may, before the institution of the prosecution, be compounded by the Competent authority or after the institution of the prosecution, be compounded by the Competent Authority with the permission of the Special Court, on payment of the entire amount due to the depositors with or without interest.

(2) Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken or continued against the offender, in respect of the offence so compounded and the offender, if in custody, shall be discharged forthwith]"

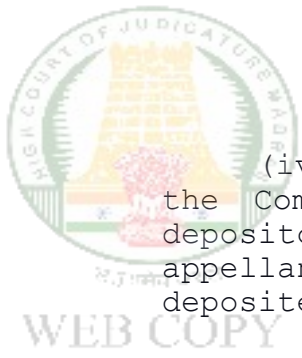
Thus, it may be seen that the offence is compoundable with the leave of the Court. However, the Trial Court, after considering the entire issue, without giving any reasons and without even expressly refusing leave, proceed to convict. While so, in the proceeding of the court below, except to state that to serve the ends of justice, no other detailed reasons have been given for refusal to accept the plea of compounding.

7. When the Act specifically makes the offense as compoundable and when the entire amount with interest has been paid to all the depositors, there was no special reason to reject the plea to compound and proceed to convict the petitioners, and that too by levying a huge amount of fine of Rs.9 Lakhs on the appellants. In that view of the matter, I am of the view that the appellants in these Criminal Appeals are entitled to succeed on the following terms:-

(i) The factum as to the settlement of the entire amount to all the 62 depositors involved in this case is recorded and the offenses are compounded under Section 5A of the TNPID Act;

(ii) The conviction and sentence including the fine imposed by the learned Special Judge, Special Court under the TNPID Act, Coimbatore, by Judgment dated 05.04.2022 in C.C.No.15 of 2012 is set aside;

(iii) Criminal Appeals are allowed accordingly. Consequently, the connected miscellaneous petitions are closed.



(iv) The amounts which were already paid and pending with the Competent Authority is directed to be disbursed to the depositors in accordance with law and at no point of time the appellants will be entitled to make any claim of the amounts deposited by them in any manner.

Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

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To

1. The Special Judge,
Special Court under The Tamil Nadu Protection of
Interests of Depositors Act Cases,
Coimbatore.
2. The Inspector of Police,
Economic Offences Wing II,
Erode.
3. The Public Prosecutor,
High Court of Madras.
4. The Superintendent,
Central Prison,
Coimbatore.

+4ccs to M/s.G.Murugendran, Advocate Sr.Nos.35250, 35251

Crl.A.No.490 of 2022 and Crl.M.P.No.6394 of 2022
&
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SJ(CO)
RVM(20/06/2022)