



Crl.A.No.467 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

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1. M/s.Mathi Emu Farms @ Mathi Farms
No.157, Mattankadu,
M.Thottipalayam,
Nadupatty Post,
Vijayamangalam,
Erode District
Represented by the second petitioner

2. C.Thangavel

...Appellants

Vs.

The State represented by
The Inspector of Police,
Economic Offences Wing-II,
Erode.

... Respondent

Prayer:Criminal Appeal filed under Section 374(2) of CrI.P.C, to set aside the order of conviction dated 27.08.2021 in C.C.No.32 of 2013 on the file of the Special Judge, Special Court under TNPID Act, Coimbatore.

For Appellant : M/s.R.Shase
for Mr.M.Guruprasad

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor.

J U D G E M E N T



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This Criminal Appeal has been filed to set aside the order of conviction dated 27.08.2021 passed in C.C.No.32 of 2013 on the file of the Special Judge, Special Court under TNPID Act, Coimbatore.

2. The respondent police registered a case against the appellants herein and yet another person in Crime No.1072 of 2012, based on the complaint given by P.W.1, who is the defacto complainant. After investigation, laid a charge sheet before the Special Court under TNPID Act, Coimbatore and the same was taken on file in C.C.No.32 of 2013. The learned Special Judge, after trial has come to the conclusion that third accused was not found guilty for the offence under Sections 120(B) and 420 of I.P.C and Section 5 of TNPID Act and acquitted him and found the second appellant guilty for the offence under Section 5 of TNPID Act and 420 of IPC and sentenced him to under three years simple imprisonment and to pay fine of Rs.1,00,000/- for each counts, in total Rs.51,00,000/- for the offence under section 420 I.P.C, in default to undergo further period of one year simple imprisonment and also sentenced him to undergo ten years simple imprisonment and to pay fine of Rs.1,00,000/- for each counts and in



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total Rs.51,00,000/- for the offence under Section 5 of TNPID Act, in default to undergo further period of one year simple imprisonment. The Special Court ordered the said fine amount to be distributed to the victims P.W.1 to P.W.45, P.W.50 and L.Ws.5,6,9,22 & 40. However, the second accused was not found guilty for the offence under Section 120(B) I.P.C. Challenging the said judgment of conviction and sentence, the first and second accused are before this Court by way of this Appeal.

3. The case of the prosecution is that the appellants had given frequent advertisements about their schemes 1 and 2 through daily news papers, television channels, pamphlets etc., and canvassed and explained their schemes. They collected Rs.1,33,78,500/- from 51 depositors on false promise that they would return the deposited money with higher rate of interest ie., at 66% per annum approximately for the deposit amount of Rs.1,50,000/- in Scheme-I and 70% per annum approximately in VIP Scheme for the deposit amount of Rs.2,00,000/- in the form of monthly salary, yearly bonus and they promised that they will return the deposited amount after the maturity period. Since they had no intention to pay the



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money and they defaulted in payment of interest and also to return back the deposit amount to the depositors, the appellants and yet another accused who was arrayed as A3 are collectively liable to be punishable under Sections 120(B) and 420 IPC and also under Section 5 of TNPID Act. After investigation, the respondent police laid a charge sheet before the Special Court under TNPID Act, Coimbatore and the same was taken on file in C.C.No.32 of 2013. The Trial Court convicted the appellants as stated above and acquitted the third accused.

4. In order to substantiate the case of the prosecution, almost all the depositors were examined as the prosecution side witnesses. On the side of the prosecution, totally 59 witnesses have been examined as P.W.1 to P.W.59 and 121 documents have been marked as Exs.P1 to P121. After completing the examination of the prosecution witnesses, incriminating circumstances were culled out from the evidence of the prosecution witnesses and put before the accused by questioning under section 313 Crpc., with reference to the incriminating circumstances appear on the side of the prosecution witnesses and the same was denied by the accused as



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false and pleaded not guilty. On the side of the defence, no witness was examined and no document was marked.

5. On completion of trial, after hearing the arguments advanced on either side, considering the materials, the trial court found the accused guilty as stated above. Challenging the said judgment of conviction and sentence, A1 and A2 have filed the present appeal before this Court.

6. Learned counsel for the appellants submitted that the second appellant has admitted his business in the name and style of “Mathi Farms”, however, he submitted that he did not collect amount from the depositors and did not cheat them. Further he submitted that the third accused is neither a director nor the partner of the Farms and further, he submitted that the agreement has been entered into between the defacto complainant and the first appellant and in which no part of the agreement assures any percentage of interest for the amount invested by the defacto complainant in the first appellant company. The first appellant company is promised to pay the amount as advanced in accordance to the amount invested by the defacto



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complainant every month for the purpose of maintenance of Emu chicks, which are as per the agreement entered into by the first appellant company with the defacto complainant. Further, he submitted that the defacto complainant and other investors have invested the amount in accordance with their desires and they advanced to the first appellant company for supplying Emu chicks, construction of sheds, supply of feeds etc., for the agreement period. The agreement also makes it clear that the fully grown emu chicks will be sold by the first appellant company and the company will pay the same to the investors, after adjusting the advance and other expenses spent by the company. Further, he submitted that all the agreements placed before the trial court under various exhibits, which clearly show that the first appellant company was doing the business relating to growing of emu chicks and it was not doing any financial establishment and the defacto complainant is the investor and not the depositor. Thus, the first appellant does not fall within the ambit of Section 5 of TNPID Act.

7. He further submitted that the defacto complainant is aware of the fact that he has invested the money with the first appellant company for the



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purpose of receiving emu chicks for growing and selling the same through the first appellant company and the first appellant would bare all expenses towards growing the emu chicks and selling the same and the first appellant would pay the investors after adjusting the expenses incurred by the company. The trial court failed to see that the first appellant has allowed P.W.19, 51 to 52 to do the work in Emu Farm which also adds to the fact that the first appellant is the company doing business towards emu chicks and not the financial establishment. The essential ingredient of Section 420 IPC would not attract and the appellant never had the intention to cheat the investors and also the appellant never agreed to pay any interest as stated by the prosecution. Therefore, as per the agreement, there is no criminal offence is involved in this case. He further submitted that during the investment of six months, the appellant regularly paid the interest to the investors and due to some false propaganda, all the investors together assembled and demanded their investment. Therefore, the appellant could not repay all the investments to the investors. The appellants have not committed any offence as alleged by the prosecution. The Trial Court failed to consider the nature of the transaction made between the appellant and the



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investors, wrongly convicted the appellants for the offence under section 420

I.P.C and Section 5 of TNPID Act., which warrants interference.

8. Learned Additional Public Prosecutor appearing for the respondent would submit that the appellants had given frequent advertisements about their schemes through daily news papers, television channels, pamphlets etc. canvassed their schemes and collected Rs.1,33,78,500/- from 51 depositors with false promise that they would return the deposited amount with higher rate of interest. They defaulted in the payment of interest as well as principal deposit amount. Hence the complaint.

9. Heard the learned counsel on either side and perused the materials available on record.

10. The specific case of the prosecution is that the appellants gave frequent advertisements about their schemes through newspaper, television channel and pamphlets canvassed the depositors on false promise that they would return their money with higher rate of interest. On believing the



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same, 51 depositors approached the appellants and invested their money.

Subsequently, the appellants failed to pay the interest. They neither paid the interest as agreed by them nor paid the principal amount. As promised by them, they did not supply food to emu chicks and due to that all the emu chicks were died. The appellants have not paid monthly salary and also bonus as agreed by them. P.W.1, one of the investor gave a complaint before the respondent police. Based on the complaint, the respondent police investigated the matter and subsequently, all the depositors nearly 51 depositors were also gave complaints towards the default payment of money by the appellants. The respondent police laid a charge sheet before the Special Court under TNPID Act, Coimbatore. In order to substantiate the charges levelled against them, totally 59 witnesses were examined. Out of which P.W.1 is the defacto complainant who sets the law into motion. Based on his complaint, the respondent police registered a case. Defacto complainant was examined as P.W.1. P.W.1 has clearly deposed that he knew the appellants and their advertisements about their Farms. At the time of depositing Rs.2,00,000/- with the appellants, the appellants company promised to provide 10 emu chicks with monthly returns of Rs.10,000/- and



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yearly bonus of Rs.20,000/- for two years. After completion of two years, the appellants promised to return the deposited amount to the depositors and they promised to supply the food to the emu chicks, to erect sheds and to provide free medical check up for the chicks. Believing their words, on 21.01.2020, P.W.1 deposited Rs.2,00,000/- in his name with the first appellant farm. Again on 10.03.2020, he deposited Rs.2,00,000/- in his father's name and received Rs.60,000/- as monthly returns for the period of six months. Later on, the appellants neither paid monthly returns nor paid the deposited amount. Hence, he preferred a complaint Ex.P1 before the respondent police. P.W.2 who is also one of the depositors, who corroborated the evidence of P.W.1 that on 21.02.2020 he deposited Rs.1.5 lakhs in the first appellant Farm, and he received Rs.35,000/- as monthly returns for the period of five months and later they did not repay the said amount as agreed by them. Likewise all the depositors who were examined as P.Ws.3 to 50, have also categorically stated about the promise made by the appellants and the amount deposited by them and stated that they have received the monthly returns only for 5 to 6 months. Therefore, appellants failed to pay any returns as agreed by them.



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11. Though the learned counsel for the appellants submitted that they deposited amount under fixed deposits and they never promised that they would pay monthly returns and bonus and also the payment for maintenance of chicks and for other superstructure and also the prosecution has not proved any documentary evidence regarding the promise made by the appellants, apart from the agreement between the appellants and the depositors, however, in this case, the prosecution had examined almost 51 depositors and they have clearly deposed that they were cheated by the appellants. Though the learned counsel for the appellants submitted that the company is not a finance company, therefore Section 5 of TNPID Act would not attract, however the agreement itself shows that the appellants under the guise of Emu Chicks Farms, they were doing finance business and advertised the same by some attractive schemes to the public and after collecting money, and raising the investment up to Rs.1,33,00,000/-, they failed to keep up their promise. Therefore, offence committed by the appellants falls under Section 5 of TNPID Act. From the beginning, the appellants had no intension to repay the amount and if at all they had the



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intension to pay the amount, they would maintain their promise. Evidence of investors clearly proved that the appellants made a false promise and cheated the investors. Therefore, they committed the offence under Section 420 IPC also. None of the witnesses have spoken that the third accused conspired with the second appellant committed fraud, hence he was acquitted for the offence under Section 120(B) I.P.C. A reading of the entire materials, evidence of P.Ws.1 to 59 and Ex.P1 to Ex.121, this Court finds that the prosecution has substantiated the charges based on the cogent evidence and there is no reason to discard the evidence of defacto complainant P.W.1 and other witnesses.

12. The appellate court is the fact finding court, it has to re-appreciate and revisit the entire evidence and give independent finding. Considering the facts and circumstances of the case, the prosecution has proved its case beyond reasonable doubt. This Court does not find any perversity or any reason to interfere with the judgment of the trial court and there is no merit in the appeal and the appeal is liable to be dismissed. Accordingly the Criminal appeal is dismissed. Judgement of conviction and sentence passed



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by the Trial Court is confirmed.

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Index:yes/No

Internet:yes/No

To

1. The Special Judge,
Special Court under TNPID Act,
Coimbatore
2. The Inspector of Police,
Economic Offences Wing-II,
Erode.
3. The Public Prosecutor,
High Court of Madras,
Chennai.

P.VELMURUGAN, J.



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