



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 26.04.2022
PRONOUNCED ON : 29.04.2022
CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

WEB COPY

Crl.O.P. (MD)No.1173 of 2021
and
Crl.M.P(MD)Nos.564 & 565 of 2021

P.Anbalagan

... Petitioner/Accused No.6

Vs.

1.The State represented by,
The Deputy Superintendent of Police,
Economic Offence Wing - II,
Dindigul.
(Crime No.1 of 2005).

... 1st Respondent/Complainant

2.The Competent Authority/
District Revenue Officer,
Dindigul.

... 2nd Respondent/
Defacto complainant

Prayer: Criminal Original Petition filed under Section 407 Cr.P.C., to order transfer of the case in C.C.No.20 of 2010 now pending on the file of the Special Court under TNPID Act, Madurai for criminal trial to the learned Chief Judicial Magistrate, Dindigul for fair trial within a reasonable time.

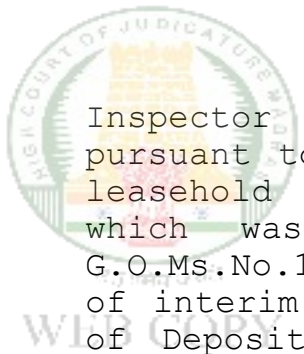
For Petitioner : Mr.K.P.S.Palanivel Rajan

For Respondents : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to order transfer of the case in C.C.No.20 of 2010 now pending on the file of the Special Court under TNPID Act, Madurai for criminal trial to the learned Chief Judicial Magistrate, Dindigul for fair trial.

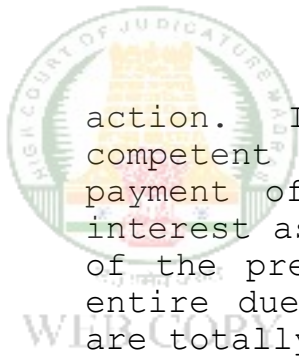
2.The case of the prosecution is that Accused Nos.1 to 4 were running a Finance Company in the name and style of "Ravi & Co. Bankers" as a partnership business. They collected deposits from the general public by promising to repay with interest and committed default in repayment of deposits. On the complaint, the F.I.R has been registered in Crime No.1 of 2005 for the offences under Sections 406, 418, 420, 423 and 120(b) of I.P.C on the file of the



Inspector of Police, Economic Offences Wing - II, Dindigul. In pursuant to the registration of F.I.R, the Government attached the leasehold premises of the fifth accused, namely "Hotel Swagath", which was originally belonged to Accused Nos.1 to 4, by G.O.Ms.No.1326, Home (Courts-2A) Department, dated 18.12.2000 by way of interim attachment under the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1987 (in short hereinafter referred to as "TNPID Act"). In the meanwhile, Accused Nos.1 to 4 filed a Writ Petition in W.P.No.5342 of 2001 before this Court challenging the interim attachment and it was disposed of by the Principal Bench of this Court on 02.07.2001 on condition to deposit a sum of Rs.50,000/- per month by Accused Nos.1 to 4, till further orders passed by the Special Court. The interim attachment of the property was made absolute, by an order, dated 19.05.2003 by the Special Court under the TNPID Act, Madurai. While being so, Accused Nos.1 to 4 approached Accused No.5 lessee with a proposal for sale of the said property in order to settle their dues. Accordingly, they sold out the hotel premises to Accused No.5 by the registered sale deed, dated 11.08.2003 for the sale consideration of Rs.1,15,00,000/-. Hence, the District Revenue Officer preferred a complaint and the same has been registered in Crime No.1 of 2005 for the offences under Sections 406, 418, 420, 423 and 120(b) of I.P.C, in which, the petitioner is arraigned as Accused No.6 on the allegation that while he was serving as District Registrar, Dindigul, registered the sale deed, dated 11.08.2003 executed by Accused Nos.1 to 4 in favour of the fifth accused. After completion of investigation, the first respondent filed the final report and the same has been taken cognizance in C.C.No.20 of 2010 on the file of the Special Court for TNPID Cases, Madurai.

3.The learned counsel appearing for the petitioner would submit that after satisfying the settlement of dues payable to the complainant, the Special Court under TNPID Act, Madurai has passed a final Judgment, dated 29.12.2016 made in C.C.No.1 of 2008, acquitting all the accused and thus, the entire criminal case attained finality as early as on 29.12.2016. While so, the Special Court has now commenced further trial with regard to the sale, purchase and registration of property during attachment at the instance of the first respondent in Crime No.1 of 2005 on the file of the Deputy Superintendent of Police, Economic Offence Wing-II, Dindigul for the offences under Sections 406, 418, 420, 423 r/w 120 (b) of I.P.C.

4.The learned counsel appearing for the petitioner would further submit that the Special Court under the TNPID Act is established with the object to try the complaint against the defaulting financial companies which committed default in repayment of their deposit amount to take recovery proceedings, safeguard the interest of depositors and to return the deposit after maturity. Thus, the aim of the Act is to protect the interest of the depositors and to return the deposit after maturity without driving the depositors to take civil



action. In fact the offence of default may be compounded by the competent authority with the permission of the Special Court on payment of entire amount due to the depositors with or without interest as per Section 5(1) of the Act. Therefore, the continuation of the present impugned proceedings, that too after settlement of entire dues to all the depositors and after Judgment of acquittal are totally unwarranted and abuse of process of Court.

5.The learned counsel appearing for the petitioner would further submit that the TNPID Court is a Special Court constituted to try the offences under the TNPID Act alone and to deal with the other matters, for which the Act applies. As per Section 6(4) of the Act, only when the TNPID Court tries the offence under Section 5 of the Act can try the other offences which could be charged and tried at a same trial as provided under Chapter XVIII of Cr.P.C. The TNPID Court being a Special Court not empowered to try the cases punishable under I.P.C independently. The I.P.C offences charged in the case, as provided under Section 26 of Cr.P.C could be tried only by the Court of Magistrate as shown in the First Schedule appended to Cr.P.C. Therefore, the Special Court tried by the Magisterial Court cannot be equated at any rate and substantially differs in aspects, maximum punishment that could be awarded, quantum of fine and in respect of Appellate forum. Therefore, the trial Court has no jurisdiction to try the present case and it would result in grave prejudice.

6.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondents and perused the materials available on record.

7.The main ground raised by the learned counsel appearing for the petitioner is that the trial Court has no jurisdiction to try the offences under Sections 406, 418, 420, 423 and 120(b) of I.P.C., since the TNPID Court is a Special Court constituted to try the offences under TNPID Act alone and to deal with the other matters for which the Act applies. It is relevant to extract the provision under Section 6(4) of the TNPID Act, which reads as follows:-

"6.Special Court.- (4) When trying any case, the Special Court may also try any offence, other than an offence specified in Section 5, with which the accused may, under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), be charged, at the same trial."

Thus, it is clear that only when the TNPID Court tries the offence under Section 5, can try the other offences which could be charged and tried at a same trial as provided under Chapter XVIII of Cr.P.C. The trial Court being a Special Court is not empowered to try the cases punishable under I.P.C. The I.P.C offences charged in the case, as provided under Section 26 of Cr.P.C could be tried only by



the Court of Magistrate as shown in the First Schedule appended to Cr.P.C.

8.As rightly pointed out by the learned counsel appearing for the petitioner that the trial by the Special Court and the trial by Magisterial Court cannot be equated at any rate and substantially differs in aspects maximum punishment that could be awarded, quantum of fine and in respect of appellate forum. Thus, the trial Court has no jurisdiction to try the offences under the I.P.C exclusively.

9.The learned Additional Public Prosecutor appearing for the respondents would submit that already the trial commenced and so far the prosecution have examined all the witnesses and posted the matter for questioning under Section 313 of Cr.P.C and as such, the proceedings cannot be quashed under Section 482 of Cr.P.C. In this regard, the learned counsel appearing for the petitioner relied on the following Judgments:-

(i) In the Judgment in **1992 LW (Cri) 156**, in which, this Court held that "the commencement or pendency of trial proceedings would not be bar to exercise powers under Section 482 of Cr.P.C when the very trial Court has no jurisdiction to try the case".

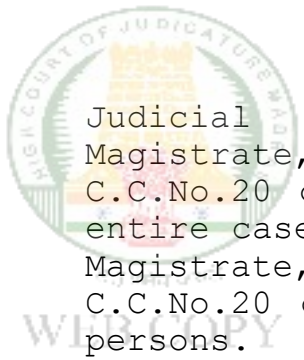
(ii) In the Judgment in **Fatima Bibi Ahmed Patel Vs. State of Gujarat and another** reported in **(2008) 6 SCC 789**, in which, the Honourable Supreme Court of India held that "where the jurisdictional issue goes to the root of the matter, would not allow injustice to be done to a party. The entire proceedings having been initiated illegally and without jurisdiction, all actions taken by the Court were without jurisdiction, and thus are nullities".

(iii) In the Judgment in **Abhijit Pawar Vs. Hemant Madhukar Nimbalkar** reported in **2017 (3) SCC 528**, in which the Honourable Supreme Court of India held that "it is a settled proposition of law that a pure legal issue can be raised at any stage of proceedings, more so, when it goes to the jurisdiction of the matter".

These Judgments are squarely applicable to the case on hand and as such, this Court can very well exercise the jurisdiction under Section 482 of Cr.P.C even after commencement of trial when the trial Court has no jurisdiction to try the case.

10.As stated supra, the trial Court has no jurisdiction to try the offence under the Indian Penal Code exclusively without including the offence under the TNPID Act.

11.In view of the above, the proceedings in C.C.No.20 of 2010 pending on the file of the Special Court under TNPID Act, Madurai is hereby withdrawn and transferred to the file of the learned Chief



Judicial Magistrate, Dindigul. The learned Chief Judicial Magistrate, Dindigul is directed to dispose of the proceedings in C.C.No.20 of 2010 within a period of six months on receipt of the entire case bundle. It is made clear that the learned Chief Judicial Magistrate, Dindigul is directed to conduct de novo trial in C.C.No.20 of 2010, after issuance of summons to the other accused persons.

12. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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 Special Judge,
TNPID Act,
Madurai.
2. The Chief Judicial Magistrate, Dindigul.
3. The Deputy Superintendent of Police,
Economic Offence Wing - II,
Dindigul.
4. The Competent Authority/
District Revenue Officer,
Dindigul.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Order made in
Crl.O.P(MD)No.1173 of 2021
29.04.2022

SA(12.05.2022) 5P 6C