



CrI.O.P.(MD) No. `12141 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2022

CORAM:

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

CrI.O.P.(MD) No.`12141 of 2022

and

CrI.M.P(MD) No.7671 of 2022

1.Saroja Thirumal
2.T.S.Unnishankar

...Petitioners

Vs

State represented through
The Inspector of Police,
EOW II Nagercoil,
Kanyakumari.
in Crime No.9 of 2005

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to set aside the order passed by the learned Special Court under Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, Madurai, in Cr.M.P.No.67 of 2022, dated 25.04.2022, in C.C.No. 35 of 2010.



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For Petitioners : M/s.M.Subashh Babu
For R1 : Mr.R.Suresh Kumar
Government Advocate (Crl.Side)

ORDER

This criminal original petition has been filed seeking to set aside the order passed by the learned Special Court under Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, Madurai, in Cr.M.P.No.67 of 2022, dated 25.04.2022, in C.C.No.35 of 2010.

2.The learned Counsel for the petitioners submitted that the petitioners are the accused Nos.2 and 3, the first accused is the SUS Bankers and the fourth accused died. The petitioners herein were charged for having committed offences under Sections 109 and 420 IPC and Section 5 of Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997. and during the trial, out of fifty two witnesses, twenty three witnesses had been cross-examined. But, the witnesses PW-1 to PW-6, PW-18, PW-19 and PW-23, are not cross-examined by the petitioners. In order to cross-examine the said witnesses, the petitioners filed a recall petition under Section 311 of Cr.P.C. in Cr.M.P.No.67 of 2022, but the same was dismissed by the trial Court on the ground that the witnesses PW-1 to PW-6 were examined in



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the year 2013, and the remaining witnesses were examined in the year 2017.

The petitioners had not taken any steps to cross-examine the witnesses and only to prolong the case, they had not cross-examined the witnesses and dismissed the petition with cost of Rs.2,00,000/- payable to DLSA, Madurai. Aggrieved by the same, the petitioners filed this petition and further submitted that the petitioners are ready to settle the matter with the witnesses, who deposited the amount. Since the witnesses are not ready to receive the amount, the case is pending and pleaded to give one more chance to the petitioners for cross-examining the witnesses.

3.The learned Government Advocate (Crl.Side) submitted that the case is posted on 08.07.2022, for prosecution of witnesses and pleaded to dismiss this petition as there is no merit since the petitioners are being filed this petition belatedly only to prolong the case.

4.I have considered the matter in the light of the submissions made by both the parties.



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5. On a perusal of records, it reveals that the petitioners are accused Nos. 2 and 3 in C.C.No.35 of 2010, on the file of the Special Court under Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, Madurai. The petitioners are running a finance company in the name and style of 'SUS Bankers' at Thuckalay, they canvassed the public and promised to pay 24% of interest. Believing that, fifty two depositors had deposited in the scheme of Marriage Reinvestment Scheme Deposit (MSRD) and Public Borrowing Monthly Scheme (PBMS). Since the petitioners are not fulfilled the promise made by them, and defaulted in the payment, a complaint has been given and a case had been registered in Crime No. 9 of 2005. After investigation, charge sheet had been filed before the Special Court under Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, Madurai and the same had been taken on file in C.C.No.35 of 2010. Then, the witnesses PW-1 to PW-6 were examined in the year 2013, and the remaining witnesses were examined in the year 2017. Even though, sufficient opportunity had been given to the petitioners to cross-examine the witnesses at the time of chief examination, the petitioners did not use the opportunity. Admittedly, this criminal original petition has been filed belatedly. Now, the petitioners are facing the charge of cheating the



depositors. In order to place their defence through cross-examination and for the just decision for the case, one more chance may be given to the petitioners.

6. With regard to the recalling of witnesses for cross-examination, the Hon'ble Supreme Court laid down the principles as follows:

'In Rajaram Yadav's case the Supreme Court has summed up the legal position relating to Section 311 Cr.P.C and has enumerated the following principles which will have to be borne in mind by the Courts:

(a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

(b) The exercise of the widest discretionary power under Section 311 Cr.P.C should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

(c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

(d) The exercise of power under Section 311 Cr.P.C should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.



(e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

(f) The wide discretionary power should be exercised judiciously and not arbitrarily.

(g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

(h) The object of Section 311 Cr.P.C simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

(i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

(j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

(k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that



improper or capricious exercise of such a discretionary power, may lead to undesirable results.

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(l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

(m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

(n) The power under Section 311 of Cr.P.C must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right [Rajaram Yadav v State of Bihar, AIR 2013 SC 3081 : 2013 Cr LJ 3777 (SC) : (2013) 14 SCC 461].'

7. In view of the above facts and circumstances, the impugned order passed by the Special Court under Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, Madurai, in Cr.M.P.No.67 of 2022, is set aside. The Special Court under Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, Madurai, is directed to recall the witnesses PW-1 to PW-6, PW-18, PW-19 and PW-23 and



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enable the petitioners to cross-examine them with a condition that the petitioners should cross-examine the witnesses on the same date without seeking any further adjournment and also has to pay a day cost to all the witnesses for attending the Court below. Further, the Special Court under Tamil nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997, Madurai, is also directed to dispose of the case C.C.No35 of 2010 within a period of two weeks from the date of completion of cross-examination of the said witnesses.

8. With the above directions, this criminal original petition stands allowed. Consequently, connected miscellaneous petition is closed.

06.07.2022

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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V.SIVAGNANAM, J.

lr

To

1.The Inspector of Police,
EOW II Nagercoil,
Kanyakumari.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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