BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Twenty Ninth day of August Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD). No.8628 of 2022
in
CRL.A.(MD).No.260 of 2022

1 V.RAVIBALAN

2 V.RAMESH KUMAR ... PETITIONERS/APPELLANTS/ ACCUSED NOS.4 & 5

Vs

THE STATE REP.BY,
THE DEPUTY SUPERINTENDENT OF POLICE,
ECONOMIC OFFENCE WING - II,
DINDIGUL.
CRIME NO. 03 OF 2012. ... RESPONDENT/RESPONDENT/ COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the execution of sentence in CC.No.33 of 2013 dated.03.03.2022 on the file of the Honble Special Court under Tamilnadu Protection of Interest of Depositors (in Financial Establishment) Act 1997,Madurai enlarge the Petitioners/Appellants/ Accused on bail pending disposal of the above appeal in Crl.A(MD) No.260 of 2022.

PRAYER IN CRL.A.(MD).No.260 of 2022:
To call for the records from the file of the trial court (Special Court under tamilnadu Protection of Interest of Depositors (in Financial Establishment) Act 1997, Madurai), hear the submissions of the Appellants/Accused 4 and 5 and the prosecution, set aside the judgment of the trial court passed in C.C.No.33/2013 dated 03rd March 2022 by allowing this appeal and acquit the Appellant/Accused 4 and 5.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S GOPALAN.T.K, Advocate for the petitioners and of M/S.B.NAMBISELVAN, Additional Public Prosecutor, on behalf of the Respondent, the court made the following order:-

RESERVED ON	24.08.2022
PRONOUNCED ON	29.08.2022

This petition has been filed to suspend the sentence passed in C.C.No.33 of 2013, dated 03.03.2022 on the file of the Special Court under Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997, Madurai, till the disposal of this Criminal Appeal.

2.The case of the prosecution is that the first accused is a registered Financial Establishment, that the accused 2 to 5 had conspired together at Dindigul between 22.03.2012 and 14.11.2012 and they have entered into an agreement to commit the offences, with a common intention to collect huge amount from the public in the name of the first accused and to swindle the amount and in pursuance of the same, they created make believe Deposit Schemes-I, II and III with attractive high rates of interest knowing fully well that they are not going to repay, that the accused 2 to 5 started to canvass the general public that as per Scheme-I, they will supply 6 EMU birds along with shed, food, free insurance cum free medical check up and also promised to pay Rs.9,000/- per month for 24 months along with Rs.15,000/- yearly bonus for two years, after which, they will refund the deposit amount of Rs.1,50,000/-, that in the II Scheme, they will allot 6 EMU birds and maintain themselves and also promised to pay Rs.10,000/- per month for 24 months along with Rs.15,000/- yearly bonus for two years, after which, they will refund the deposit amount of Rs.1,50,000/- and that as per Scheme-III, they will supply 24 goats along with shed, food, free insurance cum free medical check up and also promised to pay Rs.9,000/- per month for two years along with Rs.10,000/- yearly bonus for three years, after which, they will refund the deposit amount of Rs.1,00,000/-. It is the further case of the prosecution that by widely publishing the said schemes, a sum of Rs.4,00,29,000/- was received from 164 depositors and thereafter, Rs.24,00,000/- from 5 depositors and Rs.40,80,000/- from 8 depositors in the name of the company and utilised for the benefit of the accused and converted the said money as assets and spent lavishly and that after the period of maturity, the accused closed the company and absconded while the depositors were left on the street.

3.On the basis of the complaint lodged by one of the victim, FIR came to be registered in crime No.3 of 2012 on 29.12.2012. After completing the investigation, the respondent police has laid the charge sheet for the alleged offences under Sections 409, 420, 120(b), 468 and 471 IPC and Section 5 of the Tamil Nadu Protection of Interest of the Depositors (in Financial Establishment) Act 1997 and the case was taken on file in C.C.No.33 of 2013 before the Special Court under Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997, Madurai.

4.During the trial, the prosecution had examined 195 witnesses as P.W.1 to P.W.195 and exhibited 452 documents as Ex.P1 to Ex.P452. The defence had examined 2 witnesses as D.W.1 and D.W.2 and adduced no documentary evidence.

5.The learned Special Judge, upon considering the evidence and on hearing the arguments of both sides, has passed the impugned Judgment, dated 03.03.2022 and found the petitioners guilty, convicted and sentenced them as detailed below:-

Accused	Convicted under Section	Sentence of Imprisonment/fine imposed
A4 & A5	Section 5 of TNPID Act	Rigorous Imprisonment for 10 years each and to pay a fine of Rs.1,00,000/- each, in default to undergo Simple Imprisonment for one year each.
	120(B) IPC	Rigorous Imprisonment for 10 years each and to pay a fine of Rs.1,00,000/- each, in default to undergo Simple Imprisonment for one year each.
	406 IPC	Rigorous Imprisonment for 3 years each and to pay a fine of Rs.10,000/- each, in default to undergo Simple Imprisonment for 3 months each.
	420 IPC	Rigorous Imprisonment for 7 years each and to pay a fine of Rs.10,000/- each, in default to undergo Simple Imprisonment for 6 months each.
	468 IPC	Rigorous Imprisonment for 7 years each and to pay a fine of Rs.10,000/- each, in default to undergo Simple Imprisonment for 6 months each.
	471 IPC	Rigorous Imprisonment for 7 years each and to pay a fine of Rs.10,000/- each, in default to undergo Simple Imprisonment for 6 months each.

6.Challenging the above said conviction and sentence, the petitioners have preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

7.The learned counsel for the petitioners would submit that there is absolutely no record in support of the allegations that the petitioners collected any money from the company for having received the amounts directly everything was entered into through the

Managing Director of the first accused company from the agent holders, that there is absolutely no document said to have been signed by the petitioners and that the prosecution has also not chosen to file or exhibit any memorandum of articles of the first accused company. He would further submit that even according to the prosecution, the accused is a company and not a partnership firm and if that be so, there was no explanation as to how the petitioners were implicated as the partners. He would further submit that the prosecution is duty bound to prove that the petitioners were also involved in the day-to-day administration/management of the first accused company and in the absence of any such evidence, the petitioners cannot be made responsible and convict them under Section 5 of TANPID Act and also relied on the decisions of this Court in ***S.Thamayanthi Vs. State of Tamil Nadu*** reported in ***CDJ 2013 MHC 2019*** and ***Laila Christobal Vs. State Rep. by the Inspector of Police*** reported in ***2020 Crl. LJ 2029.*** In ***S.Thamayanthi's case***, this Court has held that the family member, who has nothing to do with the financial bungling of the institution cannot be roped in on the mere allegation that she canvassed for deposit for the financial institution. In the ***Laila Christobal's case,*** this Court has observed that the trial Court while convicting the appellant therein has not delved into the aspect as to whether what was the role of the appellant therein in managing the affairs of the accused firm and the trial Court had not spared any efforts to go into those aspects which are very crucial for convicting the persons under the provision of the TNPID Act.

8.The learned Additional Public Prosecutor would submit that the trial Court has given a specific finding that the petitioners/A4 and A5 had participated in all the affairs by collecting deposits and failed to repay the amount as promised and that the ingredients of entrustment, domain and conversation for their use were proven. He would further submit that the trial Court has also observed that there were evidence for illegal secret agreement between the accused to commit the offence of cheating and that the accused 2 to 5 were involved in preparing pamphlets, agreements as well as make depositors believe such forged documents as genuine and induced them to deposit.

9.No doubt, the petitioners' earlier application for suspension of sentence was ordered to be dismissed by this Court, vide order dated 27.04.2022 and while dismissing the petition, this Court has observed as follows:-

> "...10.On perusal of records revealed that there are totally five accused and the petitioners are arrayed as A4 and A5. The crux of the complaint is that all the accused persons promised and canvassed the general public that they will supply 6 EMU birds and they will provide foods and also provide free insurance and provide free medical check

up. Further they assured them that they wil Rs.9,000/- per month for 24 months and they will also pay Rs.15,000/- as years bonus for two years. Thereafter, they will refund the deposited amount of Rs.1,50,000/- after 24 months. They have collected a sum of Rs.4,00,29,000/-, Rs.24,00,000/- and Rs.40,80,000/- from the depositors in the name of first accused Company. Thereafter, they failed to pay any amount as assured by them and committed the offence under Section 5 of the TNPID Act and Sections 120(B), 406, 420, 468 and 471 of IPC. As far as the petitioners are concerned, though they are not partners of the first accused firm, they actually participated in the activities of the first accused Company and assured the general public by collecting the deposits from them and failed to repay the amount as promised by them. That apart, they involved in preparation of fabric agreement documents and made the depositors to believe such documents are genuine and induced them to deposit the amount in the first accused Company. Therefore, the petitioners failed to make out prima facie for suspension of sentence and this Court is not inclined to suspension of sentence imposed by the trial Court. That apart they were convicted and sentence and undergo imprisonment only on 03.03.2022.

10.Considering the above facts and circumstances of the case and also considering the seriousness and gravity of the offence alleged and also the quantum of the amount involved and also the fact that the petitioners have been in incarceration from the date of Judgment i.e., on 03.03.2022, this Court is not inclined to grant suspension of sentence to the petitioners.

11.In the result, this Criminal Miscellaneous Petition is dismissed.

sd/-
29/08/2022

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/09/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

1.THE JUDGE,
SPECIAL COURT UNDER TAMILNADU PROTECTION OF INTEREST OF DEPOSITORS (IN FINANCIAL ESTABLISHMENT) ACT 1997,MADURAI.

2.THE DEPUTY SUPERINTENDENT OF POLICE,
ECONOMIC OFFENCE WING - II,
DINDIGUL.

3.THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.

4.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S GOPALAN T.K Advocate SR.No.9216

ORDER
IN
CRL MP(MD). No.8628 of 2022
in
CRL.A.(MD).No.260 of 2022
Date :29/08/2022

RK/SVR/SAR-IV (01/09/2022) 6P/6C