



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.04.2022

PRONOUNCED ON : 29.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.13624 of 2020

and

Crl.M.P(MD)No.6255 of 2020

WEB COPY

N.Vanchimuthu

... Petitioner/Accused No.5

Vs.

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

... 1st Respondent/Complainant

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

... 2nd Respondent/
Defacto complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the impugned proceedings in C.C.No.20 of 2010 on the file of the Special Court, TNPID Act, Madurai concerned in Crime No.1 of 2005 on the file of the Deputy Superintendent of Police, Economic Offence Wing - II, Dindigul, quash the same as against the petitioner.

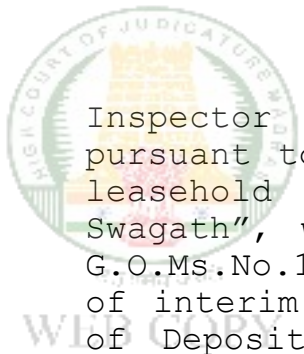
For Petitioner : Mr.G.Prabhakaran

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

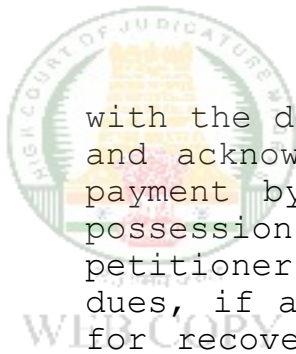
This Criminal Original Petition has been filed to quash the proceedings in C.C.No.20 of 2010 on the file of the Special Court, TNPID Act, Madurai, in Crime No.1 of 2005 on the file of the Deputy Superintendent of Police, Economic Offence Wing - II, Dindigul as against the petitioner.

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 petitioner/5th 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 the petitioner/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 the petitioner/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.5. 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.

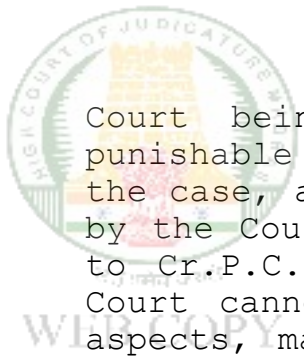
3.The learned counsel appearing for the petitioner would submit that the petitioner, being a lessee, had absolutely no knowledge about the attachment against the subject property. From the total consideration, a sum of Rs.45,50,323/- has to be settled by the petitioner in respect of the claim of 70 private money lenders. The balance sale consideration was duly received by Accused Nos.1 to 4 and executed sale deed, dated 11.08.2003. Only thereafter, the petitioner came to know about the attachment of the property and the petitioner was directed by the competent authority, namely the District Revenue Officer, to continue to pay a sum of Rs.50,000/- per month till March 2005 to the credit of the original case of depositors pending in C.C.No.1 of 2008 on the file of the Special Court, TNPID Act, Madurai. So far, the petitioner paid a sum of Rs.27,50,000/-. The present complaint is registered for the allegation that the subject property was purchased by the petitioner during attachment with dishonest intention to defraud the depositors by Accused Nos.1 to 4 and the registering authority having knowledge about service of notice of attachment have involved in the sale of the subject property and the attachment. In pursuant to the registration of F.I.R, the subject premises was seized from the possession of the petitioner and as such, the petitioner had settled the dues of the depositors and sought for handing over the



with the depositors and produced the list of 297 depositors receipts and acknowledgments from 296 depositors in proof of settlement of payment by the petitioner on behalf of Accused Nos.1 to 4. The possession of the subject property was also handed over to the petitioner and in fact, the petitioner also amicably settled the dues, if any, to discharge. Again the subject property was attached for recovery of financial dues of Rs.21,94,860/- and aggrieved by the same, the petitioner filed a Writ Petition before this Court in W.P(MD)No.4124 of 2016 for a direction to remove the seal and hand over possession of the property with an undertaking to pay the entire dues. This Court, by an order, dated 29.02.2016, directed the petitioner to pay a sum of Rs.22,00,000/- to the credit of O.A.No.19 of 2011 and further directed the petitioner to deposit a sum of Rs.50,000/- per month for three months and further, the entire dues were fully settled by the petitioner and the subject property had been handed over to the petitioner. In view of the above settlement, the Special Court under TNPID Act acquitted all Accused Nos.1 to 5 in C.C.No.1 of 2008 by Judgment, dated 29.12.2016. Now, the trial Court proceeded with the trial on the subsequent complaint registered in Crime No.1 of 2005 for the offences under Sections 406, 418, 420, 423 and 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 money 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. The present impugned proceeding is nothing double jeopardy, abuse of process and without jurisdiction. After the final Judgment passed by the Special Court, there is no further cause of action for continuation of any other proceedings with regard to the case of attachment of the property therein.

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



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.The learned counsel appearing for the petitioner would further submit that asfar as the petitioner is concerned, he is not a party to the attachment proceedings. The final report does not contain any material to show that the petitioner had knowledge about the attachment proceedings during the relevant point of time. After verification of Encumbrance Certificate, the petitioner purchased the property on 11.08.2003, whereas the attachment by the TNPID Court came to be entered in the Encumbrance Certificate on the subject property only on 23.01.2004. Therefore, the petitioner is the bonafide purchaser of the subject property without knowledge of the attachment proceedings. Already the petitioner settled the entire depositors and as such, no deception was practiced by the depositors and there is no wrongful loss caused by the petitioner. Therefore, the ingredients of the offences charged against the petitioner were not made out, since nothing entrusted to the petitioner to charge him under Section 406 of I.P.C. There is no circumstance prevails to show that the petitioner had acted with deceptive intention right from the inception of the transaction and with such intention, he had made inducing representations to anyone to part with any property or to do an illegal act which could not have been done but for an inducement and as such, the charge for the offences under Sections 418 and 420 of I.P.C fails. Insofar as the offence under Section 423 of I.P.C of I.P.C is concerned, it would come into play only when the deed of transfer contains false statements of consideration. Hence, the charge under Section 423 of I.P.C cannot be maintained as against the petitioner.

7.The very order of taking cognizance itself is illegal in view of the bar under Section 195(1)(b)(i) of Cr.P.C. The allegation levelled as against the petitioner is that the illegal transfer of the property under attachment with intent to prevent such property from being taken for passing orders by a Court of justice in execution of any final order that may be passed would at best amount to an offence under Section 206 of I.P.C which exclusively deals with such nature of transfer of properties with regard to which the proceedings were pending before Court of justice. Therefore, such transfer would not attract any offences under Sections 406, 418, 420, 423 and 120(b) of I.P.C. The provision under Section 195(1)(b)(i) of Cr.P.C mandates that the cognizance for an offence under Section 206 of Cr.P.C could be taken only upon the



complaint in writing filed by the Court concerned and not otherwise including final report by police pursuant to investigation. In the present case, the TNPID Court, Chennai alone is the competent to prefer complaint in writing and as such, the entire impugned proceedings are vitiated and liable to be quashed.

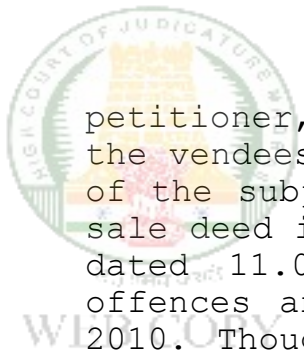
WEB COPY

8.The learned counsel appearing for the petitioner would further submit that the commencement of trial is not a bar to quash the proceedings, since the TNPID Court, Madurai lacks statutory jurisdiction to try the offences of the subject matter of the case falls within the ambit of the bar contained under Section 195(1)(a) (i) of Cr.P.C. Therefore, the very order of taking cognizance of the offences itself is illegal and invalid. In support of his contention, he relied upon 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".

9.He also relied upon 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".

10.He also relied upon 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".

11.Per contra, the learned Additional Public Prosecutor appearing for the respondents would submit that after interim attachment in respect of the subject property vide G.O.Ms.No.1362 of 2000, dated 18.12.2000, the competent authority, namely the second respondent, communicated a letter to the Sub Registrar stating that the subject property should not be further alienated to the third parties and the same was duly acknowledged by the authority. Further, the second respondent filed a petition in O.A.No.8 of 2001 to made the attachment as absolute and the same was allowed on 19.05.2003. In fact, Accused Nos.1 to 4 participated in the said proceedings and had full knowledge about the interim attachment made absolute and executed sale deed in favour of the petitioner in respect of the subject property. In fact, in the recital of the sale deed also categorically says that the amount due to the depositors about 297 and the amounts deposited in their financial establishment had to be settled from the said sale consideration. Therefore, the



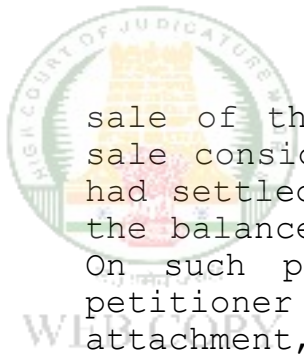
petitioner, the Sub-Registrar as well as Accused Nos.1 to 4, namely the vendees, had full knowledge about the attachment made in respect of the subject property. Thereafter, they fraudulently executed the sale deed in favour of the petitioner vide Document No.1546 of 2003, dated 11.08.2003. Therefore, all the accused persons committed offences and the trial Court has taken cognizance in C.C.No.20 of 2010. Though the earlier proceedings in C.C.No.1 of 2008 ended in acquittal as against Accused Nos.1 to 4, the present proceeding is completely different from the earlier case. The trial already commenced and the prosecution have already examined 7 witnesses as L.W.1 to L.W.7 and in fact, the matter is posted for questioning under Section 313 of Cr.P.C. Therefore, after commencement of trial, the quashment of proceedings cannot be entertained and liable to be dismissed.

12.The learned Additional Public Prosecutor would further submit that insofar as the jurisdiction is concerned, the trial Court has no jurisdiction to try the I.P.C offence under the TNPID Act and he conceded to transfer the trial from the file of the Special Court under TNPID Act to any other competent Court.

13.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents and perused the materials available on record.

14.On a perusal of the records revealed that there are totally six accused, in which the petitioner is arraigned as Accused No.5. Accused Nos.1 to 4 were originally charged for the offences under Sections 406, 418, 420, 423 and 120(b) of I.P.C in pursuant to the F.I.R registered in Crime No.1 of 2005 on the complaint lodged by the second respondent. In pursuant to the said case, the property comprised in Survey Nos.2572 to 2577 admeasuring 15,000 square feet with constructed area of 6000 sq.ft, namely Swagath Hotel was attached vide G.O.Ms.No.1362 of 2000, dated 18.02.2000. At the time of interim attachment, the petitioner was in possession and enjoyment of the subject property as a lessee. The interim attachment was duly informed to the Sub-Registrar of Nagalnayakkanpatty, Dindigul District vide Roc.No.745 of 2001, dated 25.01.2001.

15.In pursuant to the interim attachment, the second respondent filed a petition in O.A.No.8 of 2001 to made absolute the interim attachment order. While pending the said application, interim attachment was challenged in W.P.No.5342 of 2001 and this Court by an order, dated 02.07.2001, disposed of on condition that Accused Nos.1 to 4 to deposit a sum of Rs.50,000/- per month till further orders passed by the Special Court and permitted to run the Hotel business in the subject property. Thereafter, interim order of attachment was made absolute by the Special Court on 19.05.2003 in O.A.No.8 of 2001. Thereafter, Accused Nos.1 to 4 approached the



sale of the property in order to settle their dues for the total sale consideration of Rs.1,15,00,000/-. Accordingly, the petitioner had settled a sum of Rs.45,50,323/- to 70 private money lenders and the balance sale consideration has been paid to Accused Nos.1 to 4. On such payment, the sale deed was executed in favour of the petitioner on 11.08.2003. When the petitioner came to know about the attachment, he was directed to continue to pay a sum of Rs.50,000/- per month till March, 2005 to the credit of C.C.No.1 of 2008 on the file of the Special Court under TNPID Act, Madurai. While so, a sum of Rs.27,50,000/- is lying to the credit of attachment paid by the petitioner as lease amount and he is in possession and enjoyment of the subject premises even after attachment made absolute. After having been received the amount, the competent authority lodged a complaint alleging that while the attachment made absolute in respect of the subject property, it was purchased by the petitioner with the knowledge of attachment. It was purchased by the petitioner with dishonest intention to defraud the depositors by Accused Nos.1 to 4. The registering authority, namely the sixth accused, having been knowledge about the service of notice of attachment, registered the property in favour of the petitioner herein. Thereafter, the subject property was again seized from the possession of the petitioner and as such, the petitioner was forced to settle the dues of the depositors of Accused Nos.1 to 4.

16.While being so, one of the depositor challenged the sale deed executed in favour of the petitioner in W.P(MD)No.3989 of 2013 before this Court and it was allowed. Aggrieved by the same, the petitioner filed review application in Review Application No.42 of 2013 and it is pending before this Court. In the meanwhile, the petitioner settled the dues of the depositors and handed over the possession of the subject property. The second respondent convened a meeting and enquired with the depositors concerned to verify the settlement made by the petitioner. During the enquiry, the petitioner produced the list of 297 depositors, receipts and acknowledgments from 296 depositors in proof of settlement of payment by the petitioner on behalf of Accused Nos.1 to 4. While pending enquiry, the subject property was handed over to the petitioner and entire revenue records were mutated in his favour. In fact, the petitioner also undertook to pay the dues, if any, to discharge, by Accused Nos.1 to 4. Under these circumstances, the petitioner filed a petition in I.A.No.3 of 2016 before the Special Court to permit him to deposit the entire dues, if any to the depositors. The second respondent filed a counter-affidavit stating that still 87 depositors are yet to be settled to the tune of Rs.49,44,680/- and a sum of Rs.27,50,000/- is lying to the credit of attachment paid by the petitioner and prayed for appropriate orders. However, again the subject property was seized for recovery of final balance due of Rs.21,94,860/-. Therefore, the petitioner filed a Writ Petition before this Court in W.P(MD)No.4124 of 2016 for removal of seal and hand over possession of the property with an
<https://hcservicesetorka.com/hcservicesetorka.com/> pay the entire dues. This Court directed the



petitioner to pay a sum of Rs.22,00,000/- and further directed the petitioner to deposit a sum of Rs.50,000/- per month for three months pending further enquiry. It was duly complied with by the petitioner and the subject property again handed over to the petitioner. Thus, the entire dues to the depositors have been settled and there is no outstanding or due payable by the petitioner to any one of the depositor under Accused Nos.1 to 4. Considering the above, the Special Court acquitted all the accused persons by Judgment, dated 29.12.2016 in C.C.No.1 of 2008. Insofar as the present proceedings are concerned, the only allegation as against the petitioner is that he purchased the subject property which was under attachment with knowledge to defraud the depositors.

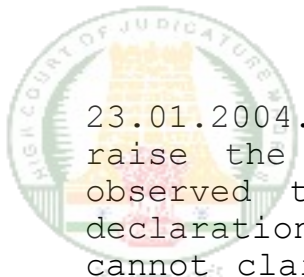
17.The main ground raised by the learned counsel appearing for the petitioner is that the trial Court has no jurisdiction to try the offences under Sections 406, 418, 420, 423 and 120(b) of I.P.C., since the TNPID Court is a Special Court constituted to try the offences under TNPID Act alone and to deal 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.

18.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.

19.Insofar as the knowledge of the attachment of the subject property is concerned, though the petitioner was lessee under Accused Nos.1 to 4, there is no material to show that the petitioner had knowledge about the attachment while purchasing the subject property. The subject property was purchased by the petitioner by registered sale deed, dated 11.08.2003, whereas the attachment by the TNPID Court came to be endorsed in the Encumbrance on



23.01.2004. That apart, when Accused Nos.1 to 4 filed a petition to raise the attachment, the trial Court allowed the petition and observed that the petitioner can approach the civil Court for declaration of the sale deed as valid one. Otherwise the petitioner cannot claim any right or title over the property on the basis of null and void sale deed, dated 11.08.2003. Hence, the Court below ordered that the other Accused persons are entitled to seek the raising of attachment and the attachment is raised over the subject property. It shows that the petitioner had no knowledge about the attachment of the property by the competent authority.

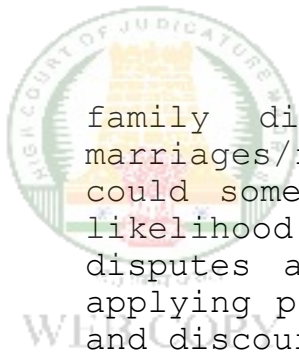
20.The delay in communicating the order of attachment to the Sub-Registrar office, which in turn resulted in non-reflection of attachment in Encumbrance Certificate and it prompted the petitioner to purchase the property with a bonafide belief. That apart, it is not the case of the prosecution that the petitioner purchased the property for lesser sale consideration to defraud the depositors. Admittedly, the petitioner had settled the entire dues of the depositors before the trial Court in C.C.No.1 of 2008.

21.In order to ascertain the veracity and contentions made by the parties herein, it is imperative to examine whether the relevant ingredients of offences in which the petitioner herein was facing with are *prima facie* made out. The relevant provisions of Sections 406 and 420 of I.P.C read as follows:-

"406. Punishment for criminal breach of trust- Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

22.Further, the Honourable Supreme Court of India in the case of ***M/s. Indian Oil Corporation Vs. NEPC India Limited and others [(2006) 6 SCC 736]***, held that the civil liability cannot be converted into criminal liability and held as under "while on this issue, it is necessary to take notice of a growing tendency in business circle to convert purely civil dispute in criminal case. This is obviously on account of prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lender/creditors. Such a tendency is seen in several



family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claim which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and discouraged".

23.Insofar as the offence under Section 418 of I.P.C is concerned, there is no material to show that the petitioner had acted with deceptive intention right from the inception of the transaction and with such intention, he has made inducing representations to anyone to part with any property or to do an illegal act which could not have been done, but for an inducement and thus the charge for the offence under Section 418 of I.P.C does not attract the petitioner.

24.Insofar as the offence under Section 423 of I.P.C is concerned, it would come into play only when the deed of transfer contains false statements of consideration. It was not even alleged in the final report as if the sale deed in favour of the petitioner contained false recitals as to the consideration. Hence, the charge under Section 423 of I.P.C also cannot be maintained as against the petitioner.

25.Further, if at all the allegations levelled against the petitioner assuming as true, the illegal transfer of the property under attachment with intent to prevent such property from being taken for passing further orders by a Court in execution of any final order that may be passed would at best may amount to attract the offence under Section 206 of I.P.C which exclusively deals with such nature of transfer of properties. Thus, no stretch of imagination such transfer would amount to attract the offences under Sections 406, 418, 420, 423 and 120(b) of I.P.C. If the The provision under Section 195(1)(b)(i) of Cr.P.C mandates that the cognizance for an offence under Section 206 of Cr.P.C could be taken only upon the complaint in writing filed by the Court concerned and not otherwise including final report by police in pursuant to investigation. Therefore, the trial Court is competent to prefer complaint to take cognizance for the offence under Section 206 of I.P.C.

26.It is also relevant to rely upon the land mark Judgment of the Honourable Supreme Court of India in the case of **State of Haryana and others Vs. Bhajanlal and others** reported in **1992 Supp (1) SCC 335**, in which, the Honourable Supreme Court of India has laid down the following categories of instances wherein inherent powers can be exercised in order to secure the ends of justice as follows:-



"(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

WEB COPY

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

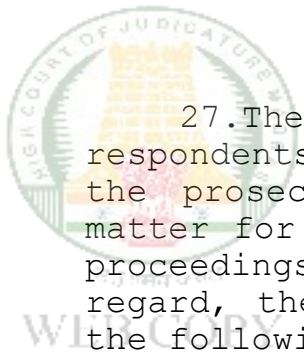
(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Applying the above dictum to the present case, it can be concluded that the present case falls within the ambit of first, third and fifth category of the seven categories enlisted in the above said Judgment. Hence, the present proceeding is nothing but clear abuse of process and without jurisdiction.



27.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. 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.

28.In view of the above, the entire proceeding is vitiated as against the petitioner and the same is liable to be quashed. Accordingly, the proceedings in C.C.No.20 of 2010 on the file of the Special Court, TNPID Act, Madurai is quashed insofar as the petitioner alone is concerned and this Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ps



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

+1 CC to M/s.G. PRABHAKARAN,Advocate (SR-23272[F] dated
02/05/2022)

Crl.O.P(MD)No.13624 of 2020
29.04.2022

MGJ(13.05.2022) 13P 6C