



C.M.A. Nos.2273-2301/2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
11.12.2023	22.12.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NOS.2273 & 2301 OF 2015

AND

M.P. NOS. 1 OF 2015 (2 NOS.)

State of Tamil Nadu, rep. by
The Inspector of Police
Economic Offences Wing – II
Villupuram.

.. Appellant in both appeals

- Vs -

1. Sri Arun Finance
Rep. By A-2, A-3 and A-4
71A, North Street
Thirukoilur, Villupuram Dist.

2. N.Sekar
3. N.Sankar
4. N.Ravi
5. V.Alaganandam
6. R.Ashok Kumar

.. RR-1 to 4 in both appeals
.. R-5 in CMA 2301/2015
.. R-5 in CMA 2273/2015



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C.M.A. No.2301 of 2015 filed under Section 11 of the TNPID Act, 1997, praying this Court to set aside the judgment and decree dated 11.07.2014 made in O.A. No.88 of 2010, passed by the Special Judge under TNPID Act, 1997, Chennai.

C.M.A. No.2273 of 2015 filed under Section 11 of the TNPID Act, 1997, praying this Court to set aside the judgment and decree dated 22.07.2014 made in O.A. No.5 of 2012, passed by the Special Judge under TNPID Act, 1997, Chennai.

For Appellant : Mr. P.Harish, GA (CS)

For Respondents : Mr. M.V.Seshachari for R-3 in both appeals
Ms. Kirthika Kamal for R-4 in both appeals
Mr. G.Vijayakumar for R-5 in CMA 2301/2015
No Appearance for RR-1 & 2 in both appeals
No Appearance for R-5 in CMA 2273/2015

COMMON JUDGMENT

Assailing the judgment and decree passed by the Court below, in and by which the court below, in O.A. No.88/2010, declined to interfere with the sale of



the properties by respondents 2 and 3 in favour of the 5th respondent, but directed the 5th respondent to deposit the balance sale consideration with the Court, and in respect of O.A. No.5/2012, the interim order of attachment passed by the Government having been raised, the appellant is before this Court by filing the present appeals.

2. The brief facts, which are necessary for the disposal of these appeals are as under :-

It is the allegation of the appellant that on the basis of the complaint given by one Sekar on 2.5.2003 against the respondents 1 to 3 alleging that the deposit made by him in the 1st respondent company, being run by respondents 1 to 3, has not been repaid as promised, inspite of the fact that while canvassing respondents 1 to 3 promised to repay the amount along with higher rate of interest. Therefore, the default in payment of the said amount, the appellant registered a case in Crime No.7/2003 u/s 406 and 420 IPC. It is the further case of the appellant that during the course of investigation, many other persons came forward and made complaints with regard to the deposits made by them in the 1st respondent company. The case was taken on file by the Chief Judicial



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Magistrate, Villupuram in C.C. No.22/04. Pending trial, as the depositors were making frantic demands for repayment of their amount and as respondents 2 and 3 having alienated the schedule property by way of sale in favour of the 5th respondent in O.A. No.88/2010 on 10.02.2003 and 22.10.2003 for valuable sale consideration of Rs.3,00,000/- and Rs.3,25,000/-, the present application was filed by the appellant for passing an order of interim attachment of the property, which had been sold to the 5th respondent in O.A. No.88/2010.

3. On the same lines and alleging that the 4th respondent was also involved in the activities of the 1st respondent company by canvassing and obtaining deposits, which have not been repaid, the schedule property standing in the name of the minor son of the 4th respondent, viz., the 5th respondent in O.A. No.5/2012, proposal was sent to the Government seeking attachment of the property and the Government, vide G.O. Ms. No.910 (Home Police XIX) Dept., dated 30.12.2011 had ordered interim attachment of the property standing in the name of the 5th respondent represented by the 4th respondent, O.A. No.5/2012 was filed by the appellant to make the order of interim attachment absolute.



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4. The trial court, by separate judgment and decree, as aforesaid, passed the orders, by refusing to interfere with the sale made by respondents 2 and 3 in favour of the 5th respondent, but directing the 5th respondent to make the deposit of the amount of Rs.1,25,000/- to the Court and raised the order of interim attachment ordered by the Government, the present appeals have been preferred by the appellant challenging the said orders.

5. Learned Government Advocate appearing for the appellant submitted that the order passed by the court below clearly reveals the lack of application of judicial mind while passing the said orders. Pointing out that the court below had held that the amount, which have been received by way of deposits have not been utilised for the improvement of the property and further the property itself was not purchased with the amount, which has been received by way of deposits from the depositors, the trial court had dismissed the prayer sought for by the appellant, which is clearly not made out by any materials available on record. It is the further submission of the learned Government Advocate that the transfer of the property by respondents 2 and 3 itself is with a mala fide intent and that



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being the case, the sale has to be necessarily set aside as otherwise, the huge amounts, which have been collected from the general public, who are poor people, cannot be realised and repaid back to them.

6. It is the further submission of the learned Government Advocate that the raising of the order of interim attachment made by the Government insofar as the property, which is the subject matter of O.A. No.5/2012 is concerned, the finding recorded by the trial court that settlement deed itself was executed much prior to the filing of the FIR is wholly erroneous as the court below has not taken into consideration that the settlement deed was created only for the purpose of escaping from the liability to pay the depositors, which is done with a fraudulent intention and, therefore, the order of interim attachment, ordered by the Government requires to be made absolute. Accordingly, he prays for allowing the appeals.

7. In support of the aforesaid submission, learned Government Advocate placed reliance on the decision of a learned single Judge of this Court in the case



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of *A.Hafeezur Rahman – Vs – Dy. Superintendent of Police, EOW-II, Vellore & Ors. (CMA No.96/2012 – Dated 24.03.2021).*

8. Per contra, the respective learned counsel appearing for respondents 3 and 4 in both the appeals submitted that the property, which is the subject matter of attachment is the ancestral property of respondents 2, 3 and 4, which were partitioned amongst them way back in the year 1993. It is the submission of the learned counsel that the said properties were neither bought with the alleged deposits nor were the properties developed with the alleged deposits and, therefore, the said properties could not be attached as they were not the proceeds of the crime. It is the further submission of the learned counsel that insofar as the construction put on the property partitioned in favour of the 4th respondent, which was settled in favour of the 5th respondent in O.A. No.5/2012, the said construction was put up after obtaining necessary loan from the society, which has been established before the court below. Therefore, the attachment ordered as an interim measure is wholly without appreciating the facts and materials available on record.



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9. It is the further submission of the learned counsel that even otherwise, respondents 3 and 4 in the appeals were in no way connected with the 1st respondent. Therefore, attaching the properties of respondents 3 and 4 is wholly unsustainable, as on the mere ground that they were relatives of the 2nd respondent, who had floated the 1st respondent, the properties of respondents 3 and 4 cannot be attached for settling the depositors of the 1st respondent.

10. It is the further submission of the learned counsel that the respondents 3 and 4, through necessary materials in the form of Exs.P-3 and P-4 as well as Ex.R-4 and also through the oral evidence of R.W.s 2 and 3 has established that the property was developed by the 4th respondent by obtaining loan from the society. Therefore, the properties insofar as respondents 3 and 4 cannot be attached and rightly appreciating the aforesaid facts, the court below had negated the claim of attachment made by the appellant, which does not warrant interference.

11. In support of the aforesaid submissions, learned counsel for the respondents placed reliance on the following decision :-



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- i) *Ravindra Shah – Vs – State of Maharashtra (SLP (Crl.) Diary Nos.10560/2023 – Dated 17.03.2023); and*
- ii) *Tmt. Prasannadevi – Vs – State of Tamil Nadu (2009 (3) MWN (Crl.) 32)*

12. Learned counsel appearing for the 5th respondent in O.A. No.88/2010 submitted that the properties of respondents 2 and 3 are ancestral properties, which were partitioned amongst them in the year 1993 and the same was purchased in the year 2003 by the 5th respondent and he has been in possession and occupation since then and the revenue records have also been mutated in his name. The said properties having not been purchased by respondents 2 and 3 out of the deposits made by the depositors, the stand of the appellant that the said properties require to be attached is wholly misconceived and rightly the court below had negated the case of the appellant, which does not warrant interference.

13. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record as also the decisions relied on by the parties.



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14. The claim of the appellant for attachment of the property, which was sold by respondents 2 and 3 in favour of the 5th respondent in O.A. No.88/2010 and that of the 4th respondent, which was settled in favour of the 5th respondent in O.A. No.5/2012 stems from the complaint given by the depositors due to non payment of the principal and interest deposited by the said depositors in the 1st respondent financial institution.

15. It is not the case of the appellant that the 1st respondent is a partnership firm of which respondents 2, 3 and 4 are partners. In fact, it is not even averred by the appellant as to the capacity of respondents 3 and 4 in the 1st respondent. However, it is the case of respondents 3 and 4 that they have no association of any form with the 1st respondent. However, the whole genesis for pulling in respondents 3 and 4 is on the basis of the allegation that they also canvassed with the depositors for depositing the amount in the 1st respondent firm.



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16. If mere canvassing could be the basis in which the property of an individual could be roped in towards the non-payment of the dues by the financial institution, even many persons, who do not have any association with the 1st respondent firm, but who had invested amounts in the 1st respondent, who, through word of mouth had informed about the deposits and had asked others to invest in the 1st respondent firm could also be brought within the ambit of persons, who had canvassed deposits in favour of the 1st respondent. Giving such an interpretation would be a grave error, which has been done by the appellant. The mere fact that respondents 3 and 4 are brothers of the 2nd respondent, who is alleged to have run the 1st respondent firm, the said respondents 3 and 4 cannot be fastened with any liability for repayment of the deposits so long as it is not established that the properties acquired by them or developed by them are through the proceeds obtained by way of deposits from the depositors.

17. It is the specific case of the respondents 2 to 4 that the subject property was their ancestral property, which was partitioned by them way back on 4.3.1993 through a registered partition deed entered between the



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respondents and their parents. The said partition deed has also been marked as Ex.R-1 before the trial court in O.A. No.5/2012.

18. It is to be pointed out herein that there is no averment on the side of the appellant as to when the 1st respondent was floated nor the details about the persons, who had floated the 1st respondent firm. The entire application before the trial court is silent on the aspect. The whole case of the appellant hinges upon the relationship between respondents 2 to 4 and the allegation that respondents 3 and 4 canvassed for making deposits in the 1st respondent firm. Without there being any material to show that respondents 3 and 4 had any sort of link with the 1st respondent firm, the allegation that they had canvassed with the depositors to make deposit in the 1st respondent firm cannot be the basis to rope them in as defaulters, subjecting their property to attachment.

19. The Apex Court, in *Ravindra Shah case (supra)*, in identical circumstances, adverting to the view taken by the Bombay High Court in ***Wadhvani – Vs – State of Maharashtra***, wherein the decision of the Constitution Bench in the case of ***Attorney General – Vs – Amratlal Prajivandas***



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(1994 (5) SCC 54), had , in para-44, held that *“We do not think that Parliament ever intended to say that the properties of all the relatives and associates, may be illegally acquired, will be forfeited just because they happen to be the relatives or associates of the convict/detenu. There ought to be the connecting link between those properties and the convict/detenu, the burden of disproving which, as mentioned above, is upon the relative/associate”*.

20. From the above, it is implicitly clear that without there being a connecting link between the properties and respondents 3 and 4 to the extent that the said properties were obtained from the proceeds of the crime, viz., the deposits, merely because respondents 3 and 4 are blood relatives of the 2nd respondent, who was running the 1st respondent firm would not be suffice to bring the properties of respondents 3 and 4 within the ambit of attachment, more so, when respondents 3 and 4, through Ex.R-1 had established the partition of the properties way back in the year 1993 and the said properties being in no way connected with the 1st respondent, the appellant having not established any link between the acquiring of the property and the said deposits, the prayer for attachment has been rightly rejected by the trial court.



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21. If the argument of the appellant that the said property of respondents 3 and 4 should also be subject to attachment, as it was fraudulently sold/settled in favour of the respective 5th respondent, the appellant, through cogent and conclusive material ought to have established the link and in the absence of any connecting material, the same cannot be accepted and giving any such finding, as has been formulated by the appellant would be not only in the interest of justice, but would give rise to a very grave scenario, in which the properties of innocent persons, unconnected with the affairs of a firm, but on account of the fact that they are mere relatives, could be brought within the purview of attachment, which would cause grave prejudice.

22. So long as the properties are untainted and have no inkling with the 1st respondent, mere possession of the said properties at the hands of relatives would not make the said properties tainted so as to attach the same and get it liquidated to meet out the investment made by the depositors. This Court may extend its sympathy to the depositors, who could not realise their amount, but



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cannot take the properties of other persons, who have no link to the firm, to offset the loss caused to the depositors.

23. The judgment in *Hafeezur Rahman case (supra)* relied on behalf of the petitioner puts forth the proposition that even properties, which are not the proceeds of the crime, could very well be brought within the ambit for attaching the same. This Court is not for a moment saying that properties of the person, who was instrumental in collecting the deposits could not be attached so as to enable the depositors to realise their amounts even though the said amount was not utilised for the purpose of purchasing the said property. However, where the property is an ancestral property, which had been partitioned way back between the brothers, such as in the present case, the share of the brothers cannot be attached to off-set the payment to the depositors. Further, merely because there is undervaluing of the property cannot be taken to mean that it was done for the purpose of defeating the legitimate rights of the depositors. In the present case transfer of property was done not for the purpose of defeating the rights of the depositors, as there is no material to arrive at such a finding.



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Such being the undisputed position, the decision in *Hafeezur Rahman case* would have no application to the facts of the present case.

24. Further, the *mala fide* intent of the respondents 2 to 4 to defeat the legitimate rights of the depositors in collecting the deposit amount has not been established by the appellant. Mere allegation cannot partake the character of proof and it is for the appellant to establish that respondents 3 and 4 have connived to defeat the rights of the depositors. Such facts having not been established through requisite materials, the trial court was right in negating the prayer sought for by the appellant.

25. For the reasons aforesaid, both the appeals fails and, accordingly, they are dismissed confirming the judgment and decree passed by the court below. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Index : Yes / No



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To

Special Judge under TNPID Act
Chennai – 104.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY JUDGMENT IN
C.M.A. NOS. 2273 & 2301 OF 2015**

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