IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.2969 of 2021
and Crl.M.P. Nos.1674 & 1675 of 2021

1. M/s. Pranu Chits and Finance,
   A firm rep.by its
   Managing Partner P.Divya,
   314, First Floor, Nisha Towers,
   Sathy Road,
   Saravanampatti,
   Coimbatoe – 35.

2. P.M.Swaminathan
3. P.Divya
4. P.Manjula
5. R.Thulasidass ... Petitioners

Vs.

1. The State represented by
   The Inspector of Police,
   Economic Offences Wing II,
   Crime No.4 of 2019,
   Coimbatore.

2. P.Jeyakumar ... Respondents

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the case in C.C. No.2 of 2020 on the file of the learned Special Judge, Special Court for TNPID Act cases, Coimbatore, quash the same by allowing this Criminal Original Petition.

For Petitioners : Mr.N.Manoharan

For Respondent-1 : Mr. A.Gopinath
Government Advocate (crl.side)

ORDER

This petition has been filed to call for the records relating to the case in C.C. No.2 of 2020 on the file of the learned Special Judge, Special Court for TNPID Act cases, Coimbatore and quash the same by allowing this Criminal Original Petition.

2. The petitioners are the accused A1 to A5 respectively. The case of the prosecution is that the petitioners collected a sum of Rs.19,50,000/- from the second respondent on various dates between 29.01.2016 and 16.07.2016 on the assurance that they would give higher interest at the rate of Rs.3.25/- per Rs.100 per month and after maturity period they assured to repay the deposit amout as well; beleiving their words, one Samuthiram (L.W.2) has deposited a sum of Rs.2,00,000/- thorugh bank transaction to the second accused on 25.01.2017; initially the interest was paid but very shortly the petitioners stopped paying the interest; since the petitioners have committed breach of trust and threatened the second respondent and L.W.2 when they claim back their money, a petition has been filed by the second respondent against the accused for the offence under Section 156(3) Cr.P.C. On direction by the learned Judge, First Information Report has been registered in Cr. No.4 of 2018 for the offences under Section 120B, 406 & 506(i) IPC. After investigation has been completed, charge sheet has been filed against the petitioners in C.C. No.2 of 2020 before the learned Special Judge, Special Court for TNPID Act cases, Coimbatore for the offence under Section 120B, 406 & 506(i) IPC & Section 5 of Tamil Nadu Protectin of Interest of Depositors (In Financial Establishment) Act, 1997.

3. The learned counsel for the petitioners submitted that all the transactions in respect of a total sum of Rs.19,50,000/- is relatable only to the second accused and the rest of the accused have got nothing to do with this case; even the transaction of L.W.2 to the tune of Rs.2,00,000/- was also made to the second petitioner / second accused and for that transaction also the rest of the petitioners are not liable; the second accused had availed a total loan of Rs.19,50,000/- from the second respondent and had issued undated signed cheques for the respective amounts towards the discharge of the same; he had also entered into a loan agreement in this regard; ultimately at the request of the second respondent, the second petitioner had issued a consolidated cheque for a sum of Rs.19,50,000/- vide cheque No.057604 dated 07.08.2017 drawn from his account at Federal bank, Saravanampatti, Coimbatore; accordingly the second petitioner had also executed a loan agreement in favour of L.W.2 for a sum of Rs.2,00,000/- availed by him as loan from L.W.2 on 27.01.2017; after having given the consolidated cheque for a sum of Rs.19,50,000/- the cheque was presented by the second respondent for collection and the same was returned as “Insufficient funds” on 07.10.2017; subsequently the second respondent has given the present complaint; the second petitioner has filed a suit in O.S. No.1165 of 2017 on the file of Sub Court, Coimbatore against the second respondent for seeking the relief of permanent injunction against the second respondent from misusing the consolidated cheque issued for consolidated amount of Rs.19,50,000/-; despite the transactions are civil in nature, a criminal colour has been given by the second respondent and subsequently the first respondent has freezed the various accounts of the petitiones lying in various banks; even though A1, A3, A4 A5 were not related to the transactions, all their bank accounts were freezed.; thereafter A2 to A5 have filed a petition in Crl.O.P. No.14659/2018 before this Court for defreezing the accounts and the same was allowed on 25.06.2018 on the observation that the receipts issued by the first accused / Pranu Chits and Finance to its depositors does not mention anything about the interest and the accounts of the petitioners have been freezed unnecessarily; even though the other petitioners have got nothing to do with the transactions done by the second accused with the second respondent and L.W.2, they have been unnecessarily implicated in this case; since the civil transaction has been exaggerated as criminal offence and there is no prima facie materials available to make out the offences against the accused, the FIR should be quashed.

4. The learned Government Advocate (Crl.side) submitted that a sum of Rs.5,00,000/- in the month of May 2016 and an another sum of Rs.7,50,000/- on some other date have been transferred by the second respondent to the first accused through RTGS; the 3, 4 and 5th petitioners / A3 to A5 have also canvassed and enticed the second respondent and L.W.2

that if they deposit the amount, they would receive a higher rate of interest; only on believing their words, the second respondent and L.W.2 have deposited the amount on the first accused / Pranu chits and finance and the petitioners have committed criminal breach of trust; when the second respondent and L.W.2 demanded their money back, they were threatened by the accused; a civil suit was filed by the second petitioner in O.S. No.1165/2017 and the same was dismissed for default on 14.09.2009 itself; the second and third accused are habitual cheaters and they have collected huge amounts by cheating the public and enticing them on the assurance of giving higher interest and thereafter swindled the amount; except fifth petitioner, petitioners 2 to 4 are residing in the same address and they are all responsible for the day-to-day financial matters and they actively participate in the management; since the materials available on records would make out a case against all the petitioners, the petition should be dismissed.

5. The records would show that the second accused is the husband of the third accused. The third and fourth accused are the partners of A2 and A5 is its Manager of A1. The allegation of the second respondent is that he has been paying various sums to the tune of Rs.19,50,000/- on various dates between 29.01.2016 and 16.07.2016 and for which the second petitioner had issued four cheques. Later the second petitioner / second accused had also issued a consolidated cheque for a sum of Rs.19,50,000/-. After having given the consolidated cheques, the second petitioner has filed a suit in O.S. No.1165/2017 for restraining the second respondent from misuing the said cheque. However, on the complaint given by the second respondent a case has been registered against all the petitioners. The specific allegation of the prosecution as against the first petitioner is that the second respondent had transferred a sum of Rs.5,00,000/- in the month of May 2016 and another sum of Rs.7,50,000/- on some other date through RTGS to him. But no records have been produced to show those transactions.

6. It is the specific contention of the learned counsel for the petitioners that the second petitioner had availed a total sum of Rs.19,50,000/- from the second respondent. In fact the second petitioner had issued four cheques to the respective sums when he had executed a respective loan agreement with the second respondent.

7. According to the learned counsel for the petitioners the consolidated cheque for a sum of Rs.19,50,000/- had been issued at the request of the second respondent, just to show the same as an irrecoverable loan in income tax returns. Whatever, may be the reason, the fact remains that the consolidated cheque for a sum of Rs.19,50,000/- and split cheques were issued on four various dates pertaining to the same transactions on loan agreements**.** Obviously these loan agreements were entered between the second petitioner and the second respondent and yet another agreement has also been executed by the second petitioner in favour of L.W.2 on 27.01.2017. None of the above quantum is mentioned in the various receipts issued by the first accused company.

8. Having restricted the liability for a sum of Rs.19,50,000/- as against the second petitioner, the second respondent has presented a consolidated cheque for collection on 16.10.2017 and the said cheque was returned for want of insufficient funds. The second petitioner would apprehend that the consolidated cheque and the split cheques would be used by the second respondent repeatedly and hence he had filed a suit for seeking certain reliefs against the second respondent.

9. The learned Government Advocate submitted that the said suit has been dismissed for default. However, the learned counsel for the petitioner submitted that the suit has got restored subsequently on the application filed by the second petitioner. Whatever may be the case, the civil suit has not got much relevance to the criminal liability on the second accused.

10. Even though the second petitioner had claimed that all these transactions are civil in nature, as assured, no interest has been paid to the second respondent. Though at the outset it appears to be a mere loan transaction, such amounts have been given by the second respondent only on the fond belief that the second petitioner would give higher interest as agreed between them. Since the entire transaction had been done only between the second petitioner and the second respondent and L.W.2, I find no reason to implicate the first accused which is a company.

11. The specific allegations made in the present case is that the consolidated sum of Rs.19,50,000/- and Rs.2,00,000/- are only loan amounts advanced by the second respondent and L.W.2 to the second petitioner in their individual capacity for the purpose of running business. Since the first petitioner is the company and the petitioners 3 and 4 are the wife and mother-in-law of the second petitioner and the fifth petitioner is the Manager of the first petitioner company, they have been implicated as accused in this case.

12. Since the grievance of any investors with the chit funds should not be mingled with the individual transactions of the parties with the second petitioner, I find it is not appropriate to pursue this case as against the petitioners 1, 3, 4 and 5. In fact while passing an order in Crl.O.P. No.14659/2018 for defreezing the accounts, it is observed by this Court that the receipts issued by the first respondent chit company does not make any mention about the payment of interest. When such is the case, it is unnecessary to complicate the matter by merging whatever transactions the second respondent or anyone else had with A1 and A2.

13. Since the transactions and issuance of cheques were done by the second petitioner in his personal capacity, I feel it is unnecessary to subject the other accused to face the trial in this case. Though there are possibilities that in the name of running a chit company, the other petitioners might have involved in swindling the amount deposited by various public, however for the said cause of action the affected person ought to have given a separate complaint by producing the relevant documents to show their deposits or substitutions to the first accused. The second and third petitioners are the partners of A1 and A5 is the managing partner of A1. In the event of any complaint is given in that nature, no doubt the said accused would have been made liable.

14. But so far as these transactions are concerned, they have got nothing to do with other petitioners except the second petitioner. Since the documents does not disclose any materials to make out a case against the petitioners 1,3,4 & 5, I feel that the proceedings should be quashed against them.

15. In view of the above stated reasons, this Criminal Original Petition is partly allowed and the proceedings in C.C. No.2 of 2020 on the file of the learned Special Judge, Special Court for TNPID Act cases, Coimbatore is quashed against all these petitioners (A1, A3, A4 & A5) except the second petitioner / second accused. The proceedings shall go on as against the second accused. Connected miscellaneous petitions are closed.

03.01.2023

Index : Yes/No
Speaking Order : Yes / No
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R.N.MANJULA, J.,

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To:

1. The Inspector of Police,
   Economic Offences Wing II,
   Crime No.4 of 2019,
   Coimbatore.

2. The Special Judge, Special Court for TNPID Act cases,
   Coimbatore.

3. The Public Prosecutor,
   High Court, Madras.

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