IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2023

PRONOUNCED ON : 01.12.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.5111 of 2021
and
Crl.M.P.No.3261 of 2021

K.Santhanam .... Petitioner

Vs

State Represented by
Deputy Superintendent of Police,
Economic Offences Wing-II,
Chennai. .... Respondent

Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the entire records in the above C.C.No.8 of 2020 on the file of the Special Judge TNPID Cases, Chennai and quash the final report so far as the petitioner / accused No.11 is concerned.

For Petitioners : Mr.K.Sridhar

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.8 of 2020 on the file of the Special Judge TNPID Cases, Chennai.

2. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

3. The case of the prosecution is that one of the depositor lodged a complaint alleging that the accused induced the general public by providing high rates of interest. Therefore, the petitioner deposited money and after maturity period, the accused failed and refused to return the deposited amount with interest. Hence, the complaint.

4. On receipt of the complaint, the Inspector of Police, Elephant Gate Police Station, registered FIR in Crime No.267 of 2005 for the offences under Sections 417, 418, 419, 420, 506(ii) of IPC and Section 5 of TNPID Act, 1997 as against four accused. Another FIR was registered for the very same set of allegations in Crime No.12 of 2005 as against 14 accused persons. Pending investigation, A2, A3, A13 & A14

died and the charges abated as against A9. Thereafter, the respondent had proceeded with the investigation and filed final report on the following charges :

> *“**Charge-1***
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> *In pursuance of the conspiracy at the same time and place between 1989 and 2005 A2 to A14 gave advertisements in Tamil dailies and Handouts representing that Al M/s. The Oriental Benefit & Deposit Society Ltd, company would provide 10% to 12.50% interest on the deposit amounts of the general public in the schemes namely (i) Cash Certificate, (ii) Fixed Deposits, (iii) Cash Cumulative, (iv) Vamana Viswaroopa Deposit Scheme Certificate, (v) Oriental Jeevan Deposit, (vi) Long Term Cumulative Deposit, (vii) Re-Investment Deposit, (viii) R.D. (ix) S.D floated by the company and thereby induced the general public to invest their money with Al M/s. The Oriental Benefit & Deposit Society Ltd. On believing the advertisements, 65 depositors deposited their money with Al M/s. The Oriental Benefit & Deposit Society Ltd. company to the tune of Rs.85,20,061.10/- in the various said schemes between 1989 and 2005. After maturity of the deposits between 2004, and 2017, A2 to A14 defaulted in returning the matured deposit amount of Rs. 1,00,85,137.10/- (Rupees One Crore Eighty Five thousand One hundred and thirty seven & 10 Paise) to 65 depositors and accused refunded Rs.84,000/- and defaulted to settle the balance maturity amount of Rs. 1,00,02,637.10/-misappropriated the same for their personal gain. Therefore, A2 to A14 appear to have committed the offences punishable u/s 120(B), 420, 409 IPC and 5 of TNPID Act.*
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> ***Charge-2***

In pursuance of the conspiracy at the same time and place between 1989 and 2005, A2 G.H.Krishnakumar, President and Director of M/s. The Oriental Benefit & Deposit Society Ltd (expired) and A3 to A14 dishonestly and fraudulently issued advertisements, Pamphlets representing that the company would provide 10% to 12.50% interest on the deposit amounts of the general public in the schemes namely (i) Cash Certificate, (ii) Fixed Deposits, (iii) Cash Cumulative, (iv) Vamana Viswaroopa Deposit Scheme Certificate, (v) Oriental Jeevan Deposit, (vi) Long Term Cumulative Deposit, (vii) Re- Investment Deposit, (viii) R.D. (ix) S.D floated by the company. Thereby A2 to A14 induced the depositors to make investment their money with Al M/s The Oriental Benefit & Deposit Society Ltd company. On believing the representation of A2 to A14 as genuine, 65 Depositors invested their money in the various schemes of the A.1 company between 1989 and 2005 to the tune of Rs. 85,20,061.10/-. The A2 to A14 defaulted to return the principal amount along with maturity amount to 65 Depositors to the tune of Rs. 1,00,85,137.10/- and accused refunded Rs.84,000/- and defaulted to settle the balance maturity amount of Rs. 1,00,02,637.10/- as they promised and cheated the depositors. Therefore, A2 to A14 appear to have committed an offence punishable u/s 420 IPC.

Charge-3

In pursuance of the conspiracy at the same time and place between 1989 and 2005, 65 depositors entrusted their money with Al M/s The Oriental Benefit & Deposit Society Ltd. in which A2 G.H.Krishnakumar, President and Director of M/s. The Oriental Benefit & Deposit Society Ltd (expired) and A4 Gopakumar joined in the company on 27.12.2003 as Director had domain

over the entrusted deposit amount of Rs. 85,20,061.10/- of the depositors. A2 Krishnakumar (expired) & A4 Gopakumar misappropriated the deposit amount made in the various schemes of the A1 M/s The Oriental Benefit &
Deposit Society Ltd for their personal gain by purchasing property in the name of the company and to settle the maturity amount of Rs 1,00,85,137-10- and accused refunded Rs.84,000/- and defaulted to settle the balance maturity amount of Rs. 1,00,02,637.10/-. Therefore, A2 Krishnakumar, A4 Gopa kumar appears to have committed an offence punishable u/s 409 IPC.

Charge-4

In pursuance of the conspiracy at the same time and place A3, A5 to A14 facilitated A2 G.H.Krishnakumar, President and Director of M/s. The Oriental Benefit & Deposit Society Ltd (expired) & A4 Gopakumar (Co-opted Director) misappropriated the entrusted deposit amount of Rs. 85,20,061.10/- of 65 depositors and to settle the maturity amount of Rs. 1,00,85,137.10/-and accused refunded Rs.84,000/- and defaulted to settle the balance maturity amount of Rs. 1,00,02,637.10/-. Therefore, A3, A5 to A14 appear to have committed the offences punishable u/s 409 / 109 IPC.

Charge-5

In pursuance of the conspiracy at the same time and place between 1989 and 2005, A2 G.H.Krishnakumar, President and Director of M/s. The Oriental Benefit & Deposit Society Ltd (expired) and A3 to A14 as directors of Al issued advertisements in the Dailies, Pamphlets representing that the company and the directors would provide interest from 10% to 12.50% on the deposit amounts of the depositors made in *various schemes of Al company. On believing the advertisements, 65 Depositors deposited their money to the tune of Rs.85,20,061.10/-between 1989 and 2005 in the various schemes floated by the Al company. Even after maturity period of the deposits between 2004 and 2017, Al to A14 in returning the deposit amount with maturity of Rs.1,00,85,137.10/- and accused refunded Rs.84,000/- and defaulted to settle the balance maturity amount of Rs. 1,00,02,637.10/- to 65 depositors. Therefore, Al to A14 appear to have committed an offence punishable U/s 5 of TNPID Act."*

5. The learned counsel appearing for the petitioner would submit that the petitioner is arrayed as A11. Though the petitioner was Director of the first accused Company, during March 2002 he resigned his Directorship and his resignation was duly accepted by the Board of Directors of the first accused Company. Form 32 was also filed before the Registrar of the Companies. During his Directorship, there was no issue in settling the depositors and there was no complaint whatsoever from the depositors. He further submitted that the provisions of the TNPID Act were extended to Companies registered under the Companies Act, 1956 only from 10.11.2003 as per amendment to Section 2(3) of TNPID Act under Amendment Act 30 of 2003. The said amendment, not being retrospective, the provision of TNPID Act would not apply to the first accused before the amendment dated 10.11.2003. In fact, the petitioner was ceased to be a Director even 18 months prior to the

amendment.

6. A perusal of the counter reveals that the President and Director of the first accused Company had collected a sum of Rs.8,53,900/- from 33 depositors with false inducements from 03.08.1993 to 27.04.2002 and committed default. Insofar as the applicability of the provision is concerned, the provision under Section 2(2) of the TNPID Act means "Deposit" either in one lump sum or by instalments made in the financial establishments like the first accused for the fixed period for interest or returns in any kind or for any service and thus includes even the service as consideration for deposit of money. Therefore, the petitioner cannot escape on that ground. Even assuming that the first accused is not liable to be added as an accused as a Director, the petitioner has collected a sum of Rs.8,53,900/- by giving false inducement to the general public and failed to repay the said amount. Therefore, there are specific allegations as against the petitioner in order to attract the offences under Sections 417, 418, 419, 420, 506(ii) of IPC and Section 5 of TNPID Act, 1997. Further, the petitioner and other accused persons committed very serious offence as against the Society.

7. In this regard, it is relevant to rely upon the judgment of the

Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.,*** as follows:-

> *" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.*
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> *13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.*

8. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Invstigation Vs. Arvind***

Khanna, wherein, it has been held as follows:

> *"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.*
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> *20.In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."*

9. Further the Hon'ble Supreme Court of India also held in the order dated ***02.12.2019*** in ***Crl.A.No.1817 of 2019*** in the case of ***M.Jayanthi Vs. K.R.Meenakshi & anr,*** as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage..................."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under

Section 482 Cr.P.C.

10. In view of the above discussions, this Court is not inclined to quash the proceedings in C.C.No.8 of 2020 on the file of the Special Judge TNPID Cases, Chennai and it is liable to be dismissed. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

01.12.2023

Index:Yes/No
Internet:Yes/No
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To

1. The Special Judge TNPID Cases,
   Chennai

2. Deputy Superintendent of Police,
   Economic Offences Wing-II,
   Chennai.

3. The Public Prosecutor,
   High Court, Madras.

G.K.ILANTHIRAIYAN,J.

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