IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.5792 of 2022

1.S.Gowthaman
2.K.Sambooranam
3.P.Mohan
4.P.Boopathy
5.P.Palanisamy
6.S.Radha
7.B.Vijayalakshmi
8.E.Sasikala
9.T.Sathya ... Petitioners

Vs.

1.State represented by
Deputy Superintendent of Police,
EOW-II,Salem.
[Crime No.24/2012]

2.P.Kandasamy
3.T.Manikandan
4.C.Kumar
5.P.Palanisamy
6.P.Subramani
7.C.Rajendran
8.G.Thukka Gounder,
9.P.Kumar
10.G.Kandasamy

11.V.Elumalai
12.C.Sundaram
13.T.Nagarathinam
14.P.Prakash
15.R.Sivaraj
16.P.Duraisamy
17.P.K.Doss @ Kirubai Doss ... Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to direct the Special Judge, Special Court under TNPID Act, Coimbatore to club the cases in C.C.No.34 of 2013 and C.C.No.10 of 2021.

For Petitioners	:	Mr.T.Sai Krishnan
For R1	:	Mr.A.Gokulakrishnan Additional Public Prosecutor

ORDER

The petitioners who are listed witnesses/victims in C.C.No.34 of 2013 filed this petition seeking direction, directing the learned Special Judge, Special Court under TNPID Cases, Coimbatore to club the cases in C.C.No.34 of 2013 and C.C.No.10 of 2021 and to proceed with the trial.

2.The gist of the case is that on 26.05.2012 several persons preferred complaints against M/s.Jenith Herbals, its proprietor B.Jegatheesan and their agents Kandasamy, Manikandan, Kumar, Palanisamy, Subramani, Rajendran, Thukkagoundar, Kumar, Kandasamy, Elumalai, Sundaram, Nagarathinam, Prakash and others. The complainants were mostly residents of Nalikkalpatty in Salem District. M/s.Jenith Herbals frequently contacts the villagers and deceived them to deposit money in M/s.Jenith Herbals in order to receive huge returns. They also promised that returns can be 1½ times the deposit and that too, within a span of 30 days. Deceived by the same, several persons made deposits by selling their jewels and disposing of their lands. Thus, a total amount of Rs.2,92,47,500/- deposited, one month prior to 26.05.2012. Later it was found that totally from 119 persons Rs.4,29,84,500/- collected as deposits. On receipt of the complaint, the respondent DCB, Salem registered a case in Crime No.24 o 2012 under Section 420 IPC and Sections 4 and 5 of Prize Chits and Money Circulating Scheme [Banning] Act, 1978. Later the case was transferred to Economic Offences Wing [EOW], Salem. The Deputy Superintendent of Police, EOW collected materials and examined the depositors, there were totally 283 depositors who were cheated and the total amount collected by A1 M/s.Jenith Herbals so far has been calculated to Rs.16,52,80,000/-. On conclusion of investigation, charge sheet filed against A1/unregistered Firm, A2/proprietor and A3 to A18, the active agents who acted as brain of the entire clandestine operation, hence committed the offence under Sections 420, 406 r/w. 120(b), 107 of IPC and Section 5 of Tamil Nadu Protection of Interest of Depositors Act [TNPID Act], 1997.

3.The contention of the petitioners is that the accused in this case gave justification for giving such huge returns for the deposits that A1 Company intended to export medicinal plants from Kolli Hills to foreign countries and there is great demand and the accused in this case would receive huge money. In this case, A3 to A18 are the agents who assured and promised to the depositors to remit the amount in the name of M/s.Jenith Herbals in any one of the Bank, produce the receipt to them for an onward action like getting receipts, statement of account from M/s.Jenith Herbals. Further the depositors were provided with promissory note in non-judicial stamp papers in which A2 and Manager Duraisamy would give an undertaking to return 1½ time of deposit amount within 30 days. A2 parted the misappropriated and cheated amount with A3 to A18 as per their collection in the name of commission. Huge receipt of payment in the name of commission by the Agents would clearly prove that it can neither be salary nor commission and the parted amount was such that all knew even at the initial stage that the amount cannot be repaid by A1 and A2. Further, there was no processing of any medicinal herbs and no steps taken for exporting the same. The entire scheme was devised only in paper, the same was spread by way of mouth to mouth canvass and public have been cheated to Crores of rupees.

4.After filing of the charge sheet, the accused appeared before the Trial Court and thereafter, they have been absenting themselves alternatively and dragging on the proceedings. Though charge sheet has been filed during November 2013, till date the depositors yet to see the light and the case has been kept pending. Further, in this case copies were furnished to all the accused on 02.04.2014 and NBW was pending against A2 from 13.04.2015. Thereafter, case against A1 and A2 got split up, taken on file as C.C.No.10 of 2021 and the case against A3 to A18 in C.C.No.34 of 2013 is proceeding. The primary contention of the petitioner is that it is

A1 and A2 who are the prime accused in this case who cheated and misappropriated substantial sums of money who have been left and allowed to go scott free. Further, the property so far attached is meagre with less value and no major properties of A1 and A2 attached. The respondent police not taken any effective steps to secure A1 and A2 by allowing the trial to proceed without clubbing C.C.No.10 of 2021 with C.C.No.34 of 2013 would only make the case easy for A1 and A2 to escape from the misdeeds. Hence, the present petition is filed.

5.Learned Additional Public Prosecutor submitted that in this case on the complaint of the depositors initially a case registered by DCB, Salem, thereafter finding that several depositors have been cheated and huge sums of money running to several Crores collected, case was transferred to EOW, Salem. He would submit that huge sums of money collected from the depositors on the scheme of exporting medicinal herbs to foreign countries and the depositors were assured that they would be paid 1½ times of the deposit amount within a period of 30 days. Thus lured depositors/innocent Villagers who sold their jewels and properties and made deposits. There were totally 18 accused in this case, A1 is the proprietorship firm, A2 is the kingpin who along with A3 to A18 connived, conspired and conceived a scheme, canvassed to the innocent public, lured them to deposit and deposit amounts misappropriated and shared among all the accused. Now A3 to A18 projected themselves as agents, they acted more than agents as co-conspirators and shared the booty. In this case, since the cheated amount is by way of deposit invoking Section 5 of TNPID Act charge sheet filed before the Special Court for TNPID Act, Coimbatore on 22.11.2013 listing witnesses and documents. The Trial Court furnished the copies to the accused and trial commenced. He would further submit that on 02.04.2014, copies to the accused furnished under Section 207 Cr.P.C., thereafter A2 got absconded from 13.04.2015 and for securing A2, case was periodically adjourned. The respondent police took all effective steps but unable to find A2 and later petition under Section 82 Cr.P.C. filed to declare A1 and A2 as absconding accused. Thereafter, the Trial Court split up the case against A1 and A2 assigning C.C.No.10 of 2021 and the case against A3 to A18 has been proceeding in C.C.No.34 of 2013. In the meanwhile, due to Pandemic situation case got further delayed.

6.He further submitted that all steps taken, available properties got attached and by filing the above petition it would only further delay the progress of trial. If the petitioners are with particulars with regard to the properties purchased from the cheated and misappropriated amount of A1 Firm by A2 or others, the same can be furnished by the petitioners, immediate appropriate steps would taken to attach the left out properties and the properties will be brought to auction and the amount derived from the auction can be paid to the depositors. He further submitted that the apprehension of the petitioners that A2 would take advantage of the proceedings against A3 to A18 is on a wrong premise, sufficient evidences are available to prove that A3 to A18 are not mere employees and agents. All these accused actively took part, connived with A1 and A2 and they are part of the large group. He further submitted that against the absconding accused B.Jegadeesan two more cases in C.C.Nos.35 of 2013 and 36 of 2013 are pending and in the said two cases also due to abscondness of A2 cases got split up and C.C.Nos.11 of 201 and 12 of 2021 assigned. Therefore, clubbing of split up cases C.C.No.10/2021 along with

C.C.No.34/2021 will not be possible and further it will only further delay the progress of trial in C.C.No.34 of 2013. Hence, he prayed for dismissal of this petition.

7.Considering the submissions made and on perusal of the materials, it is seen that the petitioners who are the depositors/victims have misconceived, seeking clubbing of C.C.No.10/2021 along with C.C.No.34 of 2013 without securing the accused A1 and A2. From the materials, it is seen that proclamation steps under Section 82 Cr.P.C. taken and after finding that all steps taken to secure A2 have ended in vain, following the procedures A1 and A2 were declared as proclaimed offenders. Further, whatever properties known to the Investigating Agency has been attached and if there are any other properties which can be identified as property derived from the ill-gotten money, necessary steps would be taken by the Investigating Agency to attach the properties. The trial is at the crucial stage, stalling the trial at this stage by filing this petition would only prolong the agony of the petitioners/depositors and on the other hand, it would be beneficial to the accused. From the report submitted by Deputy

Superintendent of Police, EOW, Salem, it is seen that extensive steps have been taken to secure the absconding accused, enquiry has been made with his wife and in-laws in Turicorin District and with his parents at Kallakurichi but no useful clues could be obtained. Further, the relatives have given undertaking to inform the Police as and when the absconding accused surfaces. The report in this regard has been filed in Exc.A1 in the proclamation proceedings.

8.In view of the above, this Court is not inclined to club the cases in C.C.No.10/2021 along with C.C.No.34/2013 as sought for by the petitioners. Accordingly, the Criminal Original Petition stands dismissed.

26.06.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
cse

To

1.The Deputy Superintendent of Police,
EOW-II,Salem.

2.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

cse

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