IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM :

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.6278 of 2021
and
Crl.M.P.Nos.4147 & 4146 of 2021

1.P.Sadasivam
2. S.Kamala Kannan
3. M.Boopathi .. Petitioners

Vs.

1. State, Rep. by,
Deputy Superintendent Police, EOW-II,
Thiru-vi-ka SIDCO Industrial Estate,
Guindy, Chennai – 600 032.

2. R.Balachandran .. Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No. 10 of 2013 pending on the file of the Learned Special Judge under TNPID Act, Chennai, quash all further proceedings in the said case in C.C.No. 10 of 2013 as against them.

For Petitioners : Mr.R.Baskar

For Respondents
R1 : A.Gopinath
Government Advocate (Crl. Side)
R2 : No appearance

ORDER

This Criminal Original Petition has been filed to quash the case in C.C.No. 10 of 2013 on the file of the Learned Special Judge under TNPID Act, Chennai.

2. The case of the prosecution is that the second respondent lodged a compliant alleging that he has invested money through bank deposit with the accused/petitioners on the assurance given by them that after maturity it would be returned with interest. However, after maturity of the deposit, the accused/petitioners failed to pay the interest as well as the matured amount. On receipt of the said complaint, the first respondent registered the First information Report in Crime No. 2 of 2011 for the offences under punishable under Section 120B, 406 & 420 of IPC and Section 5 of the

TNPID Act. After registration of the First Information Report there were so many similar complaints from various branches run by the accused/petitioners. In respect of other branches of the accused/petitioners (i) Economic Offences Wing -II, Dindigul registered a case in FIR Crime No. 1/2011 for the offence punishable under Section 420 of IPC and Section 5 of TNPID Act, (ii) Economic Offences Wing -II, Erode registered a case in FIR Crime No. 1/2011 for the offence punishable under Section 420 of IPC and Section 5 of TNPID Act. (iii) Economic Offences Wing -II, Chennai, registered a case in FIR Crime No. 1/2012 for the offence punishable under Section 120(B), 406, 420 of IPC and Section 5 of TNPID Act (iv) Economic Offences Wing -II, Tirunelveli, registered a case in FIR Crime No. 1/2011 for the offence punishable under Section 420 of IPC and Section 5 of TNPID Act and (v) Economic Offences Wing -II, Nagercoil registered a case in FIR Crime No. 8/2011 for the offence punishable under Section 420 of IPC and Section 5 of TNPID Act.

3. The first and second accused are the companies. The accused 3 to 21 including the petitioners herein are the Directors of the first and second

accused herein. In all the cases, allegations levelled against the accused are that they cheated victims and committed breach of trust while inviting the huge sums of deposits from the General Public and inducement with false assurance that they would give exorbitant rate of interest on their deposits, Even though, they know the fact that provision of 10% with commission as 1% not at all possible in genuine business. The accused in order to grab the money from the General public under the guise of deposits commenced the following financial establishments:-

1) M/s. Tycoons Portfolio Management Private Limited, 1st Floor, 1/8, ECR Road, Mercantile Bank Building Kottivakkam, Chennai- 41.

2) M/s. Tycoons Empire Infra Development (India) Private Limited, 1st Floor, 1/8, ECR Road, Mercantile Bank Building Kottivakkam, Chennai-41

3) M/s. Tycoons Empire Financial Services Private Limited, 1st Floor, 1/8, ECR Road, Mercantile Bank Building Kottivakkam, Chennai 41.

4) M/s. Tycoons Empire Foundation, 1st Floor, 1/8, ECR Road, Mercantile Bank Building Kottivakkam, Chennai -41.

5) M/s. Tycoons Empire Tours and Travels Private Limited, 1st Floor, 1/8, ECR Road, Mercantile Bank Building Kottivakkam, Chennai – 41.

6) M/s. Tycoons Empire Technologies Private Limited, 1st Floor, 1/8, ECR Road, Mercantile Bank Building Kottivakkam, Chennai – 41.

7) M/s. Sai Jeevandhara Financial Limited, BSC listed company.

8) M/s. Saran Forea Ltd., lie up company U.K. & U.S.

9) M/s. Tycoons Empire MLM India Limited, 1st floor, 1/8, ECR Road, Mercantile Bank Building Kottivakkam, Chennai – 41.

10) M/s. Tycoons Empire Holdings (Private) Limited, Republic Singapore.

4. All the accused persons had collected a sum of Rs.2,92,84,665/- between 2008 to 2011 from general public and defaulted without refunding the deposit with interest to the tune of Rs.3,19,20,285/-. All the accused persons have fraudulently and dishonestly misappropriated the deposit amount of the innocent depositors. As far as, the petitioners are concerned they are arrayed as A3, A4 and A5 in all the cases.

5. The learned counsel for the petitioners would submit that though they were Directors of the first and the second accused company, they were continued only till 23.04.2010 thereafter they were resigned from their Directorship from that date. Thereafter, they ceased to have any control over the management of the first and the second accused company. After their resignation, they duly informed the same to the Registrar of companies vide Form No. 32 dated 6th and 10th of May, 2010. In fact, from 07.07.2009 till 23.04.2010, whenever the deposits made by the general public were duly paid with agreed interest. Once the petitioners ceased to hold the office of the directorship of first and second accused, they are not responsible for any default in payment to the depositors by the first and second accused. The learned Counsel for the petitioners further submitted that the statements recorded from the witnesses\depositors would categorically go to show that they have deposited only after June 2010 namely much after resignation of petitioners. The petitioners also submitted Form -32 before the Registrar of Companies and the same were duly acknowledged by the Registrars of Companies. Therefore, there is no question of committing the offences

under Sections 120B, 406, 420 of IPC and under Section 5 of TNPID Act against the petitioners.

6. Therefore, the continuation of proceedings as against the petitioners would amount to abuse of process of law. In support of his contention, the learned Counsel for the petitioners relied upon the judgement of this Court reported in 2015 SCC Online Mad 8890 in ***Crl.OP.No.24767 of 2014*** dated ***05.10.2015*** in the case of **Dr.George Neelankavil *Vs. Dr.Lily Neelankavil,*** in which, this Court held that "*under Section 5 of TNPID Act, persons who were in the management of the financial establishment at the time when the offence was committed can alone made criminally liable*".

7. On perusal of the statements from the depositors revealed that even before the resignations of the petitioners so many persons were deposited huge money after seeing advertisements floated by the petitioners under the assurance that they would repay the deposit money as double after a period of 36 months and for which, they would give monthly interest of 10% along

with commission through the bank accounts of the depositors which works out to be 100% utter contravention to the guidelines of the Reserve Bank of India as per its frequent Master Circulars and notification through its website.

8. The petitioners and the other accused neither paid principal nor interest as promised by them. That apart, they purposely had induced the depositors with false promises to make deposit of their hard earned money in their fake companies with an intention to cheat them and swindled the deposits made by them for their personal again. Therefore, the offences under Sections 120(B) 406, 420 of IPC and Section 5 of TNPID Act are clearly attracted against the petitioners.

9. The only contention raised by the petitioners that they had resigned from their directorship from the first and second accused companies on 23.04.2010 and as such, whatever the deposits collected by first and second accused and other Directors after their resignation, they could not be fixed as responsible for any default committed by them. He also contended that

till their resignation whatever the deposits received by them those deposits were returned to the respective depositors with agreed interest.

10. Therefore, the judgement cited by the petitioners, is not applicable to the case on hand. Since, even before the petitioners resignations, they actively participated in the day to day affairs of the first and second accused company and induced the general public to deposit into the first and second accused companies. They are also held responsible even after their resignation since they had issued documents such as guarantees/undertakings for the payments to the creditors by way of many Preference share certificate in the capacity as Directors of the first and second accused companies during their tenure. They had also issued Preference Share Certificate in the name of Tmt.D.Mala for purchasing 3750 shares, face value of each share is Rs.10/- and Preference Share Certificate in favour of Tr.S.Rajendran for purchasing 1000 share, face value of each share is Rs.10/- in the name of M/s. Tycoons Empire MLM India Private Limited. It is none other than one among the sister's concern of the first and second accused companies.

11. The petitioners were duly signed in the said share certificates. Therefore, even before their resignation, they had collected so many deposits and failed to repay the deposits amount and interest to the general public. Hence, they are very much held liable for prosecution for the charges under Sections 120(B), 406, 420 of IPC and Section 5 of TNPID Act. Therefore, this court is not incline to quash the entire proceedings in C.C.No. 10 of 2013 pending on the file of the Learned Special Judge under TNPID Act, Chennai as against the petitioners.

12. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

12.10.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
nsl/veda

G.K.ILANTHIRAIYAN,J.

nsl/veda

To

1. Learned Special Judge, Chennai.
2. Deputy Superintendent Police, EOW-II,
   Thiru-vi-ka SIDCO Industrial Estate,
   Guindy, Chennai – 600 032.
3. The Public Prosecutor,
   High Court, Madras.

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