IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.8456 of 2021
and
Crl.M.P.No.8456 of 2021

C.Sankar ... Petitioner

-Vs-

1. The State,
   Represented by DSP.
   (Economic Offence Wing-II)
   Erode District.

2. Mr. Ramasamy ... Respondents

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records pertaining to the proceedings in CC.No.10 of 2012, on the file of the Special Judge for the cases under Tamil Nadu Protection of Interest of Depositors Act 1997, Coimbatore and quash the III Additional Final Report dated 30.07.2016 with respect to the present petitioner.

For Petitioner : Mr.A.Parthasarathy

For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)

For R2 : No Appearance

ORDER

This petition has been filed to quash the proceedings in Crime No.10 of 2012, on the file of the Special Judge for the cases under Tamil Nadu Protection of Interest of Depositors Act 1997, Coimbatore and to quash the III Additional Final Report dated 30.07.2016 in respect of the petitioner.

2.The case of the prosecution is that the victim had deposited in the accused company namely, Susi EMU farms, on the assurance given by the accused. Thereafter, the accused failed to return the deposit amount as agreed by the accused. On receipt of the said complaint, 1st respondent registered an F.I.R. in Crime No. 02 of 2012 under Section 120(b), 406, 420 of IPC and 5 of TNPID Act against 10 accused persons. Some of the accused were arrested and some of the accused surrendered and remanded to Judicial Custody. After completion of investigation, 1st respondent filed first Final Report on 25.10.2002 as against ten accused persons for the charges alleging that the accused had collected a sum of Rs. 14,14,25,734/- from 520 victims as deposits and failed to repay the same as per the agreement. The same has been taken cognizance in

CC.No.10 of 2012 on the file of the TNPID Court, Coimbatore. There are totally 3304 witnesses, out of which, 215 were already examined. While being so, on receipt of subsequent complaint as against the very same accused persons on the very same set of allegations, the respondent conducted further investigation and filed 1st additional charge sheet on 13.12.2012. Thereby defrauded the 2187 depositors to the tune of Rs.64,42,73,920/-. Once again, 1st respondent received complaint from 105 depositors and after completion of investigation, filed second Additional Final Report on 15.04.2014, thereby defrauded the victims to the tune of Rs.3,93,66,000/- Further, on receipt of complaint from 492 depositors, 1st respondent conducted further investigation and filed third Additional Final Report on 30.07.2016 and thereby defrauded the victims to tune of Rs.12,33,99,930/. Subsequently, A11 and A12 were implicated as accused as per the third Additional Final Report. So far, 3304 depositors were cheated by the accused and defrauded to the tune of Rs.94,84,64,954/-. Even then, there are complaints from the depositors and as such, 1st respondent filed application in C.M.P.No.215 of 2018 seeking further investigation before the trial court on 27.09.2018. On the permission, fourth Additional Charge Sheet was laid and thereby defrauded to the tune of Rs.9,15,46,000/- in respect of 375 victims.

3. The learned Counsel for the petitioner has raised specific grounds in pursuant to the additional final reports dated 24.12.2012 and 15.04.2014. The trial court commenced the trial on 05.08.2015 against A1 to A10. The prosecution also had examined witnesses from 14.08.2015, however, the respondent keep on filing additional final reports even after commencement of trial. In fact, when the trial court ordered for further investigation, it shall not examine the witnesses until cognizance is taken. The trial court is not permitted to take cognizance on an incomplete final report. After examining the witnesses on the basis of the third additional final report, petitioner has been implicated as an 11th accused along with 12th accused. In support of his contention, he relied upon the judgment of **Hon'ble Supreme Court of India** reported in **(2019(3) MWN (Cr.) 349 supra SC)** wherein, it is held that, once the learned Magistrate takes the cognizance and, considering the materials on record submitted along with the report forwarded by the police under Section 173(2)(i) Cr.P.C, the learned Magistrate in exercise of the

powers under Section 227 Cr.P.C., discharges the accused, thereafter, it will not be open for the Magistrate to suo motu order for further investigation and direct the investigating officer to submit the report. Such an order after discharging the accused can be said to be made at the post-cognizance stage. There is a distinction and/or difference between the pre- cognizance stage and post-cognizance stage and the powers to be exercised by the Magistrate for further investigation at the pre-cognizance stage and post- cognizance stage. The power to order further investigation which may be available to the Magistrate at the pre-cognizance stage may not be available to the Magistrate at the post-cognizance stage, more particularly, when the accused is discharged by him. However, as per Section 173(8) of Cr.P.C.,it is always open for the investigating agency to file an application for further investigation and thereafter to submit the fresh report and the Court may, on the application submitted by the investigating agency, permit further investigation and also permit the investigating officer to file a fresh report and the same may be considered by the learned Magistrate thereafter in accordance with law. The Magistrate cannot suo motu direct for further investigation under Section 173(8) Cr.P.C., or direct reinvestigation into a case at the post-cognizance stage.

4. In the case on hand, after filing the first final report, the trial court has taken cognizance in C.C.No.10 of 2012 as against the Accused No. 1 to 10. After filing the second Additional final report, the first respondent received so many complaints from victims for the very same set of allegations. Therefore, first respondent filed petition for further investigation under Section 173(8) Cr.P.C. in C.M.P.No.1280 of 2015. It was allowed and accordingly further investigation was conducted and third Additional Final Report was filed. As per the statements recorded from the victims namely list of witnesses No.2907, 2909, 2911, 2999, 3101, 3085 and 3264, petitioner and others were implicated as accused. They also produced documents, in which the petitioner is an authorized signatory of the first accused's company. They also stated that, petitioner along with A2 to A10 were looking after the administration of the 1st Accused's Establishment by meeting the customers and depositors. They introduced various schemes to the general public and induced them to deposit money. On receipt of the money, they issued fixed deposit receipt on behalf of the 1st Accused's Establishment. That apart, the petitioner herein introduced himself as Managing Partner of the 1st

Accused's Establishment. There were incriminating materials and as such he was implicated as 11th Accused. Though, after taking cognizance, the 1st respondent conducted further investigation and filed 3rd Additional Final Report, it was duly permitted by the trial court in C.M.P.No.1280 of 2015. That apart, after knowing the trial proceedings, the general public and victims who had not already lodged complaint, lodged fresh complaints. In fact 1st respondent is receiving complaints almost daily from general public. Therefore, the above judgment is not applicable to the case on hand. That apart, petitioner herein after implicating him as an accused, filed a petition to discharge in C.M.P.No.555 of 2018 before the Trial Court and it was dismissed. Aggrieved by the same, petitioner did not file any revision petition. Instead, he filed this petition to quash the entire proceedings. Further, petitioner also involved in another two cases for similar allegations and he is facing trial in C.C.No.13 of 2012 and C.C.No.17 of 2012. In respect of C.C.No.17 of 2012 is concerned the petitioner was acquitted on the ground that he had settled the entire amount to the depositors. Another case in C.C.No.13 of 2012 is pending trial on the file of the TNPID Court, Coimbatore.

5. In view of the above discussion, this court is not inclined to quash the proceedings in C.C.No.10 of 2012 on the file of the under Tamil Nadu Protection of Interest of Depositors Act 1997, Coimbatore and it is liable to be dismissed.

6. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

04.10.2023.

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order

To

1. Special Judge for the cases under
   Tamil Nadu Protection of Interest of
   Depositors Act 1997, Coimbatore

2. DSP (Economic Offence Wing-II)
   Erode District.

3. The Public Prosecutor,
   Madras High Court.

G.K.ILANTHIRAIYAN, J.

Sma/Spp

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