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Crl.RC.Nos.1093, 1094,1099,1104,1105, 1106 & 1108 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.RC.Nos.1093, 1094,1099,1104,1105, 1106 & 1108 of 2023

Viswapriya Financial Services and
Securities Limited
rep by. R. Subramanian
2/583 Singaravelan Road I Cross
Chinna Neelangari, Chennai 600 041 ... Petitioner in Crl.R.C.No.1093/2023

Viswapriya (India) Limited
rep by. R. Subramanian
2/583 Singaravelan Road I Cross
Chinna Neelangari, Chennai 600 041 ... Petitioner in Crl.R.C.No.1094/2023

R. Subramanian
2/583 Singaravelan Road I Cross
Chinna Neelangari, Chennai 600 041 ... Petitioner in Crl.R.C.No.1099/2023

Viswapriya Financial Services and
Securities Limited
rep by. R. Subramanian
2/583 Singaravelan Road I Cross
Chinna Neelangari, Chennai 600 041 ... Petitioner in Crl.R.C.No.1104/2023

Viswapriya (India) Limited
rep by. R. Subramanian
2/583 Singaravelan Road I Cross
Chinna Neelangari, Chennai 600 041 ... Petitioner in Crl.R.C.No.1105/2023

R. Subramanian
2/583 Singaravelan Road I Cross
Chinna Neelangari, Chennai 600 041 ... Petitioner in Crl.R.C.No.1106/2023

R. Subramanian



Crl.RC.Nos.1093, 1094,1099,1104,1105, 1106 & 1108 of 2023

2/583 Singaravelan Road I Cross
Chinna Neelangari, Chennai 600 041

... Petitioner in Crl.R.C.No.1108/2023

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Vs.

State represented by
The Deputy Superintendent of Police
EOW-II, Guindy, Chennai 600 032

PRAYER in Crl.R.C. No.1093 of 2023: Criminal Revision Petition filed under Section 397 r/w 401 Criminal Procedure Code, 1973 to set aside the order dated 29.05.2023, passed in C.A. No.227/2023 in CC No.6/2020, by the Special Court for TNPID Act, Chennai, and consequently direct them to not close the prosecution evidence pending final disposal of the petition.

PRAYER in Crl.R.C. No.1094 of 2023: Criminal Revision Petition filed under Section 397 r/w 401 Criminal Procedure Code, 1973 to set aside the order dated 30.05.2023, passed in Memo Sr 811/2022 in CC No.6/2020, by the Special Court for TNPID Act, Chennai, and consequently direct them to not close the prosecution evidence pending final disposal of the petition.

PRAYER in Crl.R.C. No.1099 of 2023: Criminal Revision Petition filed under Section 397 r/w 401 Criminal Procedure Code, 1973 to set aside the order dated 29.05.2023, passed in Crl.M.P. No.1933 of 2023 in CC No.6/2020, by the Special Court for TNPID Act, Chennai, and consequently direct them to not close the prosecution evidence pending final disposal of the petition.

PRAYER in Crl.R.C. No.1104 of 2023: Criminal Revision Petition filed under Section 397 r/w 401 Criminal Procedure Code, 1973 to set aside the order dated 29.05.2023, passed in C.A. No.236/2023 in CC No.6/2020, by the Special Court for TNPID Act, Chennai, and consequently direct them to not close the prosecution evidence pending final disposal of the petition.

PRAYER in Crl.R.C. No.1105 of 2023: Criminal Revision Petition filed under Section 397 r/w 401 Criminal Procedure Code, 1973 to set aside the order dated 30.05.2023, passed in Crl.M.P. No.231 of 2023 in CC No.6/2020, by the Special Court for TNPID Act, Chennai, and consequently direct them to not close the prosecution evidence pending final disposal of



the petition.

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PRAYER in Crl.R.C. No.1106 of 2023: Criminal Revision Petition filed under Section 397 r/w 401 Criminal Procedure Code, 1973 to set aside the order dated 30.05.2023, passed in Crl.M.P. SR. No.1970 of 2023 in CC No.6/2020, by the Special Court for TNPID Act, Chennai, and consequently direct them to not close the prosecution evidence pending final disposal of the petition.

PRAYER in Crl.R.C. No.1108 of 2023: Criminal Revision Petition filed under Section 397 r/w 401 Criminal Procedure Code, 1973 to set aside the order dated 29.05.2023, passed in Cr.M.P.1932 of 2023 in CC No.6/2020, by the Special Court for TNPID Act, Chennai, and consequently direct them to not close the prosecution evidence pending final disposal of the petition.

For Petitioner

(in all the petitions) : Mr.Prakash Goklaney, Senior Counsel

for Mr.T. Sugirtha

For Respondent

(in all the petitions) : Mr. Babu Muthumeeran

Additional Public Prosecutor

Assisted by Mr. J. Subbiah, GA (Crl. side)

COMMON ORDER

Challenging the orders dated 29.05.2023 passed by the Special Judge under the Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997 (hereafter referred as TNPID Court) in C.A. No.227/2023, Crl.M.P. No.1933 of 2023, C.A. No.236/2023, Crl.M.P.1932 of 2023 in CC No.6/2020 and orders dated 30.05.2023 in Memo Sr 811/2022, Crl.M.P. No.231 of 2023 and Crl.M.P. SR. No.1970 of



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2023 in CC No.6 of 2020, the present Criminal Revision Petitions are filed.

2. The revision petitioners are the accused 1 and 4 in CC No.6/2020 on the file of TNPID Court. They filed the abovesaid petitions before the said court under Sections 91, 207, 173 Cr.P.C., and under Rule 43, for a direction to the respondent police to produce all the records of the complaints and documents connected with the case but not included in final report filed on 16.10.2020. All the abovesaid petitions were dismissed by the trial Court. While dismissing the petition in Crl.M.P. No.1932/2023, the trial court had observed thus:

8. The final report shows that initially it was filed on 17.07.2019 and subsequently it was returned on 28.08.2019. Again it was represented on 10.10.2019. Again this court returned the final report on 15.10.2019. The charge sheet was again represented on 07.10.2020. Again it was returned on 14.10.2020. Finally it was represented on 16.10.2020 and taken on file on the same day. Initially the charge sheet has been filed by including 775 depositors with their documents. But this court returned the charge sheet as there was some differences in the list of witnesses and statement of account and in calculation. After rectification of all discrepancies



final report has been filed with 600 witnesses out of which 587 depositors. The Investigation Officer has filed their clear documents mentioned in Sl.No.1 to 606. Now a days the Final report is not returned to the Investigation Officer. Instead of returning the final report memorandum alone is issued to the Investigation Officer mentioning the defects. This Final Report was filed in the year 2019 and my predecessor returned the report to the investigation Officer. So the corrected version of final report alone filed in the court and taken on file. The copies of final report dated 16.10.2020 was furnished to all the accused with documents.

9. It is the case of the prosecution that further investigation is going on in respect of defective papers.

10. As already stated this case has been conducted on daily basis as per order of the Hon'ble Supreme Court of India. Therefore at the time of disposal of this case this court can pass suitable orders in respect of pending complaints if any with the police.

11. In the circumstances the petitioner has filed the petitions under Section 91 and 173 Cr.P.C. Now this court has to decide whether the petitions are maintainable at the stage.



12. *As already stated copies of all the records furnished to all the accused. The copies of document and list of documents also given for additional documents produced during the trial. The prosecution has stated that no other documents available in the police station except records connected with further investigation. The present petition and relief sought for is not relating to 587 depositors and their documents. It is relating to further investigation. This Court has framed charges in respect of 587 depositors and their documents. The petitioner wants to place the records which are unconnected to the charges framed against the accused. When the Investigating Officer conducting further investigation under Section 173(8) Cr.P.C. We cannot call for documents piecemeal without any charge. Each deposit certificate creates fresh cause of action and count. Therefore the attempt of the petitioner is nothing but to confuse the trial and also violation of the order of Hon'ble Supreme Court of India. The relief sought for by the petitioner is against the ambit of the Section 173(8) Cr.P.C. Therefore, the petition is liable to be dismissed.*

3. Heard Mr.Prakash Goklaney, learned senior counsel assisted by Mr.T.Sugirtha, learned counsel for the petitioner and Mr.Babu Muthumeeran, learned Additional Public Prosecutor assisted by



Mr.J.Subbiah, learned Government Advocate (Criminal side).

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4. Mr.Prakash Goklaney, learned senior counsel for the revision petitioner drew the attention of this court to the evidence of P.W.89, the Investigating Officer, wherein he had deposed during the course of cross examination that he did not file complaints of 250 depositors since he could not annexe proper documents in support of their complaints and that he did not also take steps to get those documents from the complainants. The specific contention of the learned counsel for the petitioner is that unless all the documents connected with the case against the accused are furnished, the trial court cannot proceed further with the case.

5. Per contra, Mr. Babu Muthumeeran learned Additional Public Prosecutor assisted by Mr.J. Subbiah, learned Government Advocate (Criminal side) contended that the Supreme Court of India in S.L.P. (C) No.014808 of 2020 had directed the trial court to post the case in CC No.6/2020 on day to day basis and dispose of the matter within a period of six months and should not allow any frivolous applications or petitions to impede the progress of the trial. He would further contend that the complaints and the documents mentioned in the petition are not available



with the trial court and that all the documents filed along with the final report were furnished to the present accused under Section 207 Cr.P.C.

According to him the present accused is adopting delaying tactics and hence all the petitions should be dismissed.

6. In the counter filed by the Deputy Superintendent of Police, EOW, Ashok Nagar, it is stated thus:

10. It is humbly submitted that, in December 2015, there was a flood in Chennai due to continuous and very heavy rains. The EOW office in Guindy, Chennai, was flooded and many documents of different cases were badly damaged in the flood.

11. It is humbly submitted that, a complaint was registered for this purpose vide Cr.No.3761/2015 dated 08.12.2015 in J3 Guindy Police Station (L&O), Chennai and the copy of the same was submitted to the Special Court.

12. It is submitted that, whatever documents that could be salvaged from the floods by the then Investigating Officer, were stored in a single place in the office of the EOW. These included the documents of various cases and as a result many documents got mingled together. Later the documents also



got mingled during the shifting of the EOW office from Guindy, Chennai to the current place in Ashok Nagar, Chennai.

13. It is submitted that, the final report along with the related documents were initially filed in the Special Court under TNPID Act, 1997, Chennai on 17.07.2019 by the then Investigating Officer, along with the documents of 775 complainants.

14. It is submitted that, the final report was returned back to the then Investigating Officer on 28.08.2019 for rectification of defects in the report and the related documents as there were some differences in the list of witnesses and statement of account and in the calculations.

15. It is submitted that, there was a change in the Investigating Officer in the case during this period. The final report and related documents were further updated based on the further investigation by the new Investigating Officer.

16. It is submitted that, the final report and related documents were then re-presented by the then Investigating Officer to the Special Court on 10.10.2019 after making the rectifications to the documents.



17. *It is submitted that, the final report and related documents were returned back again to the Investigating Officer on 15.10.2019 for rectification of further defects found during the review in the list of witnesses and statement of account and in the calculations.*

18. *It is submitted that, the then Investigating Officer and his team tried contacting the complainants for verification of their complaints and records submitted along with the complaints.*

19. *It is submitted that, the COVID-19 pandemic struck India in the year 2020 due to which there were many restrictions that came to effect and thus bringing the investigation to a grinding halt. The COVID pandemic created a havoc in the lives of the poor victim depositors.*

20. *It is submitted that, once the COVID restrictions were gradually started to be lifted, the Investigation started to pick up.*

21. *It is submitted that, many of the complainants whose records needed re-verification were not reachable, which might have been to due to various factors ranging from*



change of address and contact details, relocation of complainants to other parts of India, death during the COVID pandemic etc., and also due to the geographical spread (across India) of the complainants.

22. It is submitted that, it was found during further investigation on the pending complaints that some of the complainants were dead and their complaints were merged with the complaints of the kin of the deceased complainant, or the kin of the deceased were asked to submit a fresh complaint with the deposit details of the deceased depositor.

23. It is submitted that, it was found during the further investigation on the pending complaints, that some of the complainants were very severely affected by the COVID pandemic and were not in a position to travel. Such complaints were are merged into the complaints of the kin of the affected complainants based on their request.

24. It is submitted that, since many people were dying during the COVID pandemic, the then Investigating Officer decided, in the interest of justice, to file the updated final report and related documents with the complaints that are complete in nature.



25. *It is submitted that, when the Investigating Officer approached the Special Court and explained the situation, the Special Court was gracious enough to allow the final report to be filed with the list of complainants for whom the document re-verification was completed and those of which were complete in nature. The rest of the records/documents were kept aside for further investigation.*

26. *It is submitted that, the Investigating Office then re-presented the updated final report and related documents to the Special Court on 07.10.2020 after rectification of the defects.*

27. *It is submitted that, the final report and the related documents were again returned back to the Investigating Officer on 14.10.2020 for rectification of certain defects observed during the review.*

28. *It is submitted that, the then Investigating Officer rectified the defects and re-presented the final report and related documents to the Special Court on 16.10.2020 and the final clean copy of the final report and related documents were taken on the file of the court and C.C. No.6 of 2020 was assigned to the case.*



29. *It is submitted that, there are 34 accused (17 individuals and 17 Financial Establishments) in C.C. No.6 of 2020 out of which 3 individuals are dead and 1 individual was absconding. The charges against the 3 deceased accused have been abated and the person who has been declared as a proclaimed offender.*

30. *It is submitted that, the final clean copy of the Final Report was submitted on 16.10.2020 with details of 587 complaints comprised of 24 pages. The final clean copy of the List of documents submitted with the final report contained Sl.No.1 to 606 items, with details of deposits of 587 complainants comprised of 64 pages. The list of witness document submitted along with the final report contained details of 587 complainants and total of 600 witnesses comprising of 30 pages. The Memo of Evidence document submitted along with the final report contained details of 587 complainants and total of 600 witnesses comprising of 43 pages. All these documents were only taken on file in C.C.6 of 2020 on 16.10.2020. The copies of these documents were only furnished to all the accused u/s 207 Cr.P.C.*

8. At the outset it may be observed that right of accused to ask for all the documents that he may be entitled to is one of the facets of just, fair and



transparent investigation. However, as per the counter of the Investigation Officer, he had filed the final report along with the available records and the case was taken on file by the concerned trial court judge. It is seen from the records that the process of questioning the accused under Section 313 Cr.P.C has already commenced. However, the Investigating Officer had not concluded the investigation with regard to the remaining depositors under Section 173(8) Cr.P.C. The documents, the copies of which are sought for by the present accused, are the complaints of 250 depositors along with documents of proof. These documents, as already observed, are not in the custody of the court. However, I fail to understand how the present accused would be prejudiced if he is not furnished with the copies of those complaints. Mr.Prakash Goklaney, learned senior counsel for the revision petitioner contended that the police might file another charge sheet with regard to the same offences and the present petitioner may have to face another trial. As already observed, the process of questioning the accused under Section 313 Cr.P.C had commenced and till date the prosecution had not concluded their investigation as it is seen from their counter. In the circumstances, all the Criminal Revision Petitions are dismissed as devoid of merits.



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9. In the result,

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- i. all the Criminal Revision Petitions are dismissed. No costs.
- ii. the orders dated 29.05.2023 passed by the Special Judge under the Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997 in C.A. No.227/2023, Crl.M.P. No.1933 of 2023, C.A. No.236/2023, Crl.M.P.1932 of 2023 in CC No.6/2020 and orders dated 30.05.2023 in Memo Sr 811/2022, Crl.M.P. No.231 of 2023 and Crl.M.P. SR. No.1970 of 2023 in CC No.6 of 2020, are confirmed. No costs.

19.07.2023

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Index : yes/no

Speaking /Non speaking Order

To

1. The the Special Judge under the TNPID Court.



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R.HEMALATHA, J.

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