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Crl.O.P No.15850 c-----

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **13.02.2023**

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.15850 of 2021
and Crl.M.P. Nos.1422 of 2023 & 3702 of 2022

State represented by
Deputy Superintendent of Police,
Economic Offences Wing-II,
Guindy, Chennai – 32.

... Petitioner

Vs.

1. JBJ City Developers Private Limited,
Plot No.1742, First Floor,
18th Main Road, B-Portion,
Anna Nagar, Chennai – 40.
(Corporate Office)
JBJ City Developers Limited,
No.44/8, C-Block, 7th Street,
Anna Nagar, Chennai – 102.
(Marketing Office)
2. M/s.JBJ Builders and Promoters,
No.44/8, C-Block, 7th Street,
Anna Nagar, Chennai – 102.
3. M/s.JBJ Tours and Travels,
No.44/8, C-Block, 7th Street,
Anna Nagar, Chennai – 102.
4. M/s. JBJ Hotels and Resorts,
No.44/8, C-Block, 7th Street,
Anna Nagar, Chennai – 102.



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5. M/s.JBJ Chits Private Limited,
No.44/8, C-Block, 7th Street,
Anna Nagar, Chennai – 102.

6. M/s.JBJ Foundation,
No.44/8, C-Block, 7th Street,
Anna Nagar, Chennai – 102.

7. M/s. Abode Lee Hedges Impex Private Limited,
Plot No.1742, First Floor, 18th Main Road,
B-Portion, Anna Nagar, Chennai – 40.

8. Justin Devadoss @ David
9. Bella Justin
10. Rajan Edward
11. V.Arokisamy
12. Joseph Dinesh
13. R.Selvakumar
14. J.Thambu Rajan Sagayam
15. Samuel Knudson
16. G.Sivakumar
17. R.Natarajan
18. Mercy Stellabai Andriil
19. Prakash Balakrishnan
20. A.Anna Jebaraj
21. G.Fredrick Duraisamy
22. Tamil Selvan
23. S.Selvi

... Respondents

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to set aside the order dated 17.03.2020 made in unnumbered Final Report in Sr. No.1262/2017 passed by the learned Special Judge for TNPID Court, Chennai and direct the learned Special Judge, TNPID Court to accept the final report in order to proceed the case.



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For Petitioner

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

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For Respondent-10

: Mr.R.Ganesh Kumar

R-14

: Mr.B.Rajkumar Ashok Singh

R-16

: Mr.Thiyagarajan

R-18&20

: Mr.M.Krishna Moorthy

R-21

: Mr.S.Muthuraman

R2-R9,R11-R13,R15-R19

: No appearance

R22 & R23

: Notice not ready

ORDER

This Criminal Original Petition has been filed to set aside the order dated 17.03.2020 made in the unnumbered Final Report in Sr. No.1262/2017 passed by the learned Special Judge for TNPID Court, Chennai and direct the learned Special Judge, TNPID Court to accept the final report in order to proceed the case.

2. The case of the prosecution is that the accused had canvassed the complainant to make deposits with their Financial Establishment namely 'JBJ City Developers Limited' and its groups by giving false assurance that after the period of six months of investment, two plots would be registered in the name of the investor and after one year the principal amount would also be returned. Believing the words of the accused, the *de facto* complainant deposited a total sum of Rs.20,00,000/-. After six months the accused did not register any plots in his



name nor deposit the principal amount. On enquiry, the accused had given a post dated cheque and the same was dishonoured for want of sufficient funds. When the defacto complainant approached the accused for repayment, he refused to return the money and also threatened him with dire consequences. Hence, a case has been registered against the accused in Cr. No.9/2009 & 1/2010 for the offence under Section 420 IPC and taken up for investigation on the file of learned CMM Court, Egmore. Later Section 5 of TNPID Act was also added and the case was transferred to the file of the learned TNPID Court, Chennai.

2.2 During investigation it is revealed that the accused started several companies and announced many attracting schemes in order to attract huge deposits from the public; the accused colluded with each other and collected a total sum of Rs.38,92,59,087/- from 3682 depositors under inducement that they would either provide housing plots or deposit the principal amount with interest and later cheated all the depositors.

2.3 While filing the charge sheet, the learned TNPID Court ordered to produce the documents and case properties such as original complaints, receipts, agreements, cheque leaves, computers which were seized. Since the above



documents were washed away during the massive flood that had occurred during December 2015, the prosecution was not able to produce those documents. By receiving the charge sheet along with the available documents, the learned trial Judge had passed an order by rejecting the final report. Aggrieved over the same, the State had filed this petition.

3. The learned Government Advocate (Crl.side) submitted that without considering the unprecedented natural calamity that had occurred in the year 2015, the learned Special Judge under TNPID Act, Chennai Judge had chosen to reject the charge sheet; while rejecting the final report no notice has been given to the victims and it is against the principle of natural justice; by taking advantage of this order, the accused are evading their responsibility in repaying the deposited amount to the victims; the prosecution had collected additional documents from the victims and only if an opportunity is given, those documents can also be filed to form part of the charge sheet; the larger interest of the victim was not taken into consideration while rejecting the charge sheet and hence the order of the Special Judge under TNPID Act, Chennai, is liable to be set aside.



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4. The learned counsel for the respondents 10, 14, 16, 18, 20, 21 submitted that they are the Directors, Additional Directors and Marketing Managers of the companies involved in this case; the rightful course open to the prosecution is to challenge the order of the Special Judge under TNPID Act, Chennai by way of filing a revision petition before the Sessions Court; without resorting to that process the State had filed the Criminal Original Petition and the same is not maintainable; in the guise of filing the Criminal Original Petition, the prosecution cannot take the advantage of filing additional materials which should be the outcome of further investigation; without invoking appropriate provision of law for seeking further investigation, the prosecution had taken a short route and attempted to file additional documents and that cannot be encouraged; the learned Special Judge under TNPID Act, Chennai had rightly rejected the charge sheet for want of materials and hence the petition should be dismissed. In support of their contention they cited the decision of the Supreme Court in ***Balveer Singh and Another Vs. State of Rajasthan and another*** reported in ***(2016) 6 SCC 680***.

5. The Criminal Miscellaneous Petitions in Crl.M.P. Nos.1422 of 2023 & 3702 of 2022 have also been filed to implead them as parties to the proceedings.



6. The learned Government Advocate submitted that the once charge sheet is filed, the course open to the Magistrate is either to accept the report or to disagree the report and drop the proceedings or even give directions for further investigation; in the opinion of the Magistrate, if the report does not have any ingredients to make out any offence, the informant ought to have been put on notice; since much prejudice has been caused to the victims of this case, the petitioner cannot be forced to face the disadvantage for the hyper technical reasons raised by the learned counsel for the respondents 10, 14, 16, 18, 20, 21; the affected persons ought to have given an opportunity before taking a decision to drop the report; since a hefty sum of Rs.38,92,59,087/- is involved, the matter ought not to have been taken so lightly.

7. The learned Special Judge under TNPID Act, Chennai had chosen to refuse to take the charge sheet filed by the petitioner on file, for want of complete materials. In the order passed by the trial Judge it has been observed that despite the charge sheet has been returned for compliance, the prosecution did not take any steps to comply the defects and represent it in a manner suitable for taking cognizance. The lackadaisical approach of the Investigation Officer in producing the relevant materials to the Court had led to the rejection of the report.



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8. It has been observed by the Court that the superior police officers had not properly informed about the development of the case and just to satisfy the higher Officials, the Economic Wing appears to have mounted pressure on the Court to take cognizance of the charge sheet without furnishing the complete materials before the Court. However, the learned trial Judge had proceeded to record that due to devastating floods that had occurred in the year 2015, the original documents were lost and hence the final report cannot be taken on file.

9. While rejecting the charge sheet it seems that the Court is aware of the interest of thousands of victims who have made investments in the companies of the accused. Since the Court has been giving directions from time to time to the prosecuting agency to file appropriate documents, the prosecution should have taken the matter seriously and had collected the materials to the extent possible in order to complete the essential contents of the charge sheet. However, the order itself reveals that no proper notice has been given to the affected parties before charge sheet was rejected. It has been observed in the order that the depositors have complained before the Court by making their personal appearance and expressed their grievance of not taking cognizance of the matter. It appears that



the learned Special Judge under TNPID Act, Chennai had explained to them that the matter would be dealt in accordance with the Criminal Procedure Code.

10. Before dropping the charge sheet, an appropriate notice ought to have been given to the affected parties. If the parties are just told that the matter would be dealt according to the Criminal Procedure Code, they would not know under what provision of Criminal Procedure Code the matter would be dealt and what would the probable result. Only if a proper notice is given, the victims could have got a due opportunity to make due submissions before the Court before the charge sheet was rejected.

11. The learned counsel for the respondents 10, 14, 16, 18, 20, 21 have relied on the decision reported in **Balveer Singh's case** (cited supra) and submitted that the impugned order should have been challenged by way of filing a revision and not by way filing a Criminal Original Petition. They drew the attention of the Court to Paragraph No. 25 of the above said order in which reads as under:

“ 25. The next question is as to whether this Court should exercise its powers under Article 136 of the Constitution to interdict such an order. We find that the order of the Magistrate refusing to take cognizance



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against the appellants is revisable. This power of revision can be exercised by the superior Court, which in this case, will be the Court of Session itself, either on the revision petition that can be filed by the aggrieved party or even suo motu by the Revisional Court itself. The Court of Session was, thus, not powerless to pass an order in his revisionary jurisdiction. Things would have been different had he passed the impugned order taking cognizance of the offence against the appellants, without affording any opportunity to them, since with the order that was passed by the learned Magistrate a valuable right had accrued in favour of these appellants. However, in the instant case, we find that a proper opportunity was given to the appellants herein who had filed reply to the applications of the complainant and the Sessions Court had also heard their arguments. For this reason, we are not inclined to interfere with the impugned order and dismiss the appeal.”

12. In the aforesaid case the affected parties have been given with proper opportunity to be heard. But in the present case no opportunity was given to the affected parties and it is patent in the impugned order itself. Informing the affected parties that the matter would be dealt in accordance with Criminal Procedure Code is not a proper notice given to them and the layman who appear before the Court cannot know about the consequences of the procedural aspects unless he is given with an opportunity to consult his counsel.



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13. Since there is gross violation of principles of natural justice, I feel this court cannot stand on the hypo technical ground and reject the petition. Since due opportunity was not given to the victim in accordance with the procedures established under law, I feel the ends of justice would be met only if the impugned order is set aside and the matter is remanded back to the trial Court for re-appreciating the same.

14. Since the impugned order itself states about the natural calamity that had occurred in the year 2015, I feel it is appropriate to give an opportunity to the petitioner to seek permission of Court for further investigation and collect materials even if the materials are only secondary evidences.

15. There cannot be no other fitting circumstances than the natural calamity for considering the production of secondary evidence in the place of primary evidence.

16. With the above observations the Criminal Original Petition is allowed and the order dated 17.03.2020 made in unnumbered final report in SR.No.1262/2017 passed by the learned Special Judge for TNPID Court, Chennai



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is set aside and the matter is remitted back to the learned Special Judge for TNPID Court, Chennai for re-appreciating the same. The Superintendent of Police, Economic Offences Wing-II, Guindy, Chennai shall monitor the proceedings before the trial Court.

17. Since the petitioners in Crl.M.P. Nos.1422/2023 & 3702/2023 can submit whatever documents they have, to the prosecuting agency, there is no necessity for them to get impleaded as parties to the proceedings. Hence, the Criminal Miscellaneous Petitions in Crl.M.P. Nos.1422/2023 & 3702/2023 are closed.

13.02.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation : Yes / No
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To:

1. The Special Judge, TNPID Court,
Chennai.
2. The Superintendent of Police,
Economic Offences Wing-II,
Guindy, Chennai – 32.
3. The Deputy Superintendent of Police,
Economic Offences Wing-II,
Guindy, Chennai – 32.
4. The Public Prosecutor,
Madras High Court.



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R.N.MANJULA, J.,

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