IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.07.2023

DELIVERED ON : 18.08.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.9 of 2022

1. G. Malliga
2. G. Mukesh ... Appellants

Vs.

State Represented by
The Inspector of Police,
Economic Offences Wing II Unit
Erode. ... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973 against the judgment dated 09.12.2020, passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore, in C.C.No.11 of 2014.

For Appellants	:	Mr.V. Murali Legal Aid Counsel for Appellants
For Respondent	:	Mr.S. Sugendran Additional Public Prosecutor.

JUDGMENT

The present appeal by the A4 and A5, the mother and son duo, G.Malliga and G. Mugesh, is against the Judgment dated 09.12.2020, passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore, in C.C.No.11 of 2014.

2. The Inspector of Police, EOW-II, Erode laid a charge sheet against six accused A1 to A6. A1 and A2 were M/s. Raja Rajeshwari Poultry farms and M/s. Sri Raja Rajeshwari Poultry farms at Vijayamangalam, Erode District, respectively. A3, S.K. Ganesan (since deceased) and his wife G.Mallika (A4) were the partners in the said firms since March 2012 and the A1 firm was duly registered with the Registrar of Firms, Salem vide Registration No.199/2012. A5 and A6 are G.Mukesh and G.Manoj Kumar, two sons of the couple. The case against A6 was split up as C.C. No.3 of 2020 since he was a minor then.

2.1. There are as many as 75 investors who were allegedly lured by the advertisement given by the A3 and A4, partners of both the poultry farms. The scheme floated by them was that whoever is interested in investing a minimum of Rs.1 lakh in the Poultry farm would be provided a shed, 375 country chicks, feed, other expertise including medical assistance for 3 months, monthly returns of Rs.7,000/-, taking back the chicks after three months and return of the entire Rs.1 lakh after 3 years.

2.2. All the 75 investors, it appears, were lured by the advertisement in the local dailies and invested sums ranging from Rs.1 lakh to Rs.3 lakhs expecting huge returns. The scheme which was successful in the beginning was aborted midway and the original investment amounts were not returned. The aggrieved investors approached the police. Thiru.Manivannan, the Special Sub Inspector of Police, Perundurai Police Station, received the complaints and registered an FIR (Ex.P.213) in Crime No.1081/2012 on 20.12.2012 under Section 420 of the Code of Criminal Procedure and sent the FIR copy to Vivekanandan (P.W.81), Circle Inspector of Police, Perundurai Police Station who made further enquiries and recorded the statements of some affected investors and sent the file to EOW, Erode. Later all the 75 investors were examined and their statements were recorded. The final report was submitted by Soundararajan (P.W.83), Inspector of Police on 27.09.2014 against the accused under Sections 120(b), 420 IPC and Section 5 of TNPID Act. He had also arrested Mallika (A4) on 20.01.2014 near Perundurai bus stop. Finally Karunakaran (P.W.84) (Investigationg Officer) filed additional charge sheet under Sections 120(b), 420 IPC and Section 5 of TNPID Act.

2.3. In the trial, the prosecution brought in 84 witnesses and adduced as many as 218 exhibits to prove the guilt of the accused. No material objects were there as no asset was seized from the accused. All the investors P.W.1 to P.W.75 had deposed with regard to their investments made in A1 and A2 firms. According to them they were not returned back their money despite repeated demands made by them. All the depositors were not cross examined by the accused. The evidence of the depositors corroborated with each other.

2.4 The accused denied having committed any offence when they were questioned under Section 313 Cr.P.C. There were no witnesses or documentary evidence on their side.

2.5. The trial court found all the accused as guilty and sentenced them as follows:

rank of the accused	***Conviction***	***Sentence***
A1 & A2	Section 420 IPC & Section 5 of TNPID Act.	A fine of Rs.10,000/- for each offences and each counts (10,000 x 2 x 2 x 75 = Rs.30,00,000/-). A4 shall pay the fine amount equally imposed on the 1st and 2nd accused firms, in default, to undergo Simple Imprisonment for a period of one year.
A4 & A5	Section 120 B IPC	Simple Imprisonment for two years and to pay a fine of Rs.10,000/- for each counts (Rs.10,000 x 2 x 75 counts = Rs.15,00,000/-) in default, to undergo simple imprisonment for one year
A4 & A5	Section 420 IPC	Simple Imprisonment for three years and to pay a fine of Rs.10,000/- for each counts (Rs.10,000 x 2 x 75 counts = Rs.15,00,000/-) in default, to undergo simple imprisonment for one year.
A4 & A5	Section 5 of TNPID Act, 1997.	Simple Imprisonment for 10 years and to pay a fine of Rs.10,000/- for each counts (Rs.10,000 x 2 x 75 counts = Rs.15,00,000/-) in default, to undergo simple imprisonment for one year.

The aforesaid sentences were ordered to run concurrently. The period already undergone by A4 and A5, if any, directed to be set off under Section 428 Cr.P.C. Out of the total fine of Rs.75,00,000/- (Rs.52,50,000/- to be paid by A4 and Rs.22,50,000/- to paid by A5), a sum of Rs.70,00,000/- was ordered to be paid to the victims P.W.1 to P.W73 and P.W.75, as per their respective dues mentioned in the final report proportionately towards compensation.

3. Presently this appeal is from A4 & A5 to set aside the conviction and sentence awarded by the trial court.

4. Heard Mr.V. Murali, learned Legal Aid Counsel for Appellants and Mr.S.Sugendran, learned Additional Public Prosecutor, for the respondent.

5. The learned counsel for the appellants would contend as follows:

i. The element of cheating cannot be said to have been substantiated by the prosecution.

ii. The sheds were erected, country chicks were given, feed also was taken care of, medical assistance was given and the chicks were taken back after three months.

iii. The poultry farms (A1 and A2) were registered only in March 2012 and most of the agreements with the investors were done in June-July 2012 and the monthly returns were paid to the investors initially. All these clearly indicate that there was no criminal conspiracy or intent to cheat the investors.

iv. It was a pure business failure due to many extraneous factors including the 'pressing of the panic button' by many of the investors.

v. A4 and A5 were not directly involved in the business. A4, though was a partner was only a name lender and it was her husband A3 who managed the affairs besides being the prime partner. As regards A5, he was neither a partner nor was in charge of the financial affairs of the farms.

vi. The business loss in the poultry farms was like any other business loss and attributing cheating or conspiracy on the accused is erroneous and unjustified.

6. Per contra, the learned Additional Public Prosecutor would contend that the very purpose of the Act, the first of its kind in the country, is to come to the rescue of helpless depositors/investors who invest their lifetime savings in schemes floated by unscrupulous elements promising the 'stars in the sky'. In the instant case, according to him, impossible promise of high return (about 90%) was made and the gullible depositors fell into the trap. The amount involved is more than one crore and if such persons are not booked, instances of cheating by making tall promises, will become the order of the day. He would also contend that P.W.1 to P.W.83 were not cross examined by the accused and hence their evidence remain unrebutted. He, therefore, pleaded for dismissal of the appeal stating that the prosecution had made out a clear case for conviction.

7. Before discussing the facts of this case, let us analyse the purpose, contents, provisions and effect of the the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1997 (for brevity "the TNPID Act"). This came into existence when many 'benefit funds' were floated by unscrupulous persons/companies providing interest as high as 14-

19% which was very attractive and alluring. Many of the depositors got attracted to such schemes and invested their life savings. Many pensioners were victims who mindlessly had fallen prey to such companies. It was then this Act, the TNPID Act, was enacted by the Tamil Nadu Government. In fact a specially dedicated police unit under the Economic Offences Wing was created to effectively investigate/deal with the cases relating to 'non banking financial companies and unincorporated financial institutions' which collected money as deposits and thereafter defaulted in repayment of the same on maturity. This was in compliance with the direction in its order by this court in Company Application Nos. 479 & 480 of 1990 dated 29.09.1999. The TNPID Act was amended on 10.11.2003 to define deposits as including deposits of money in installments and also for any service. There were also other amendments in Section 2 (3), 3 & 5A. The Act provide for (a) action against financial institutions who failed to return the deposit/interest, (b) Arrest of persons responsible, (c) The Special Court for TNPID Act constituted to help in speedy trial, attachment and sale of properties and for distribution of the money to the depositors, (d) The Competent Authority for attachment of properties is the DROs of the

District and they can compound the offences before the institution of the prosecution or after the institution of the prosecution. They are the custodians of the attached properties, to get absolute attachment order and responsible for distribution of the amount realised equally to the depositors after sale of the properties.

8. Now the instant case. It is true that the two Poultry Farms were owned by S.K. Ganesan (A3) and G. Mallika (A4). It is also true that they had two schemes, one ordinary and another VIP scheme. They had collected amounts ranging from Rs.1 lakh to Rs.3 lakhs from each of the investor. They also entered into an agreement with each one of them and the agreement was titled "Employment Opportunity Agreement deed" by which they acknowledged the receipt of amount, agreed to set up a poultry shed, provide 2 months old chicks, provide feed and medical facilities for the chicks, pay monthly returns (to meet the expenses of rent and wages) and stated the validity of agreement as 3 years and that after three year period, the amount would be returned along with annual bonus. The monthly expenses reimbursement, number of chicks and annual bonus

varied according to the amount invested. It was also stated in the agreement that the grown up birds would be taken back by the farm. In most of the cases, the sheds were built and the chicks were given. The monthly expenses also was paid for 2 to 3 months. But when the monthly return was not forthcoming the investors approached the accused (as per their depositions) and found them absconding. It is not clear as to why they did not approach the police before December 2012. In fact the agreements, in majority, were made in April-May 2012 and the monthly payments were made till June-July 2012 (in some cases August 2012). It is also not clear as to whether the accused belonged to the same locality and the investors knew them already. The prosecution has also alleged that all the receipts and agreements were made in the name of A2 M/s. Sri Raja Rajeswari Poultry Farm, the unregistered farm, though, A1 (M/.s. Raja Rajeswari Poultry farm) was registered. However, A2 also had a partnership deed (Ex.P.204) showing A3 and A4 as partners. It is also the contention of the prosecution that it was an act of criminal conspiracy to con the investors under the guise of poultry farming, promising huge returns and luring them to deposit. According to the prosecution, had the accused really were serious about the business, they would not have aborted the scheme so early. On the contrary, the accused took a plea that it was nothing but a 'knee jerk' reaction of investors when during the same period many poultry and EMU farms failed. Interestingly, all the prosecution witnesses/investors have deposed in a stereo type manner with no explanation as to how they were attracted to do such a poultry business with the accused. Even assuming that the business was lucrative the investors seem to have taken a plunge without having any knowledge of the business. The accused also contended that the investments made by the depositors were used to construct the poultry sheds, give 2 months old chicks, the cost of feed and the monthly expenses towards rent, labour, etc. If this contention is acceptable then why did they incorporate in the agreements regarding the return of the investment after 3 years is puzzling. Similarly, the issuance of receipts and agreements made in the name of the unregistered firm also had no answer. However, it clearly appears to be a method to make some quick money. The other financial transactions involved in erecting poultry sheds, giving chicks, etc., have not been elaborated by the accused. There has been a deliberate attempt to hoodwink the law as well as the depositors.

9. Now the aspect of involvement of A4 and A5. A3 expired. A4 Mallika was the sole partner left out. A5, Mukesh, son of A4 was not a partner in the Poultry farms. He did not sign the receipt or agreement. But the trial court held as follows:

> *"merely because A5 is not a partner, it cannot be said that he had no role. The records and oral evidence are completely against them (him). When they had no role in the management of A1 and A2 what necessitated them to settle the amount and also join with A3 in contesting the case and also during cross examination of P.W.84 (Investigating Officer). The said settlement would also prove that the accused 4 & 5 also committed the offences in the name of A1 and A2."*

There is no clarity as to what settlement was made. No properties were seized. It appears that the accused did not have any property.

10. Ex.P.212 is the letter dated 24.03.2014 from HDFC Bank, Erode Branch in which the accused A2 to A5 had accounts. A6 did not have any account. These accounts were frozen on the date of the letter at the request

of the Inspector of Police, EOW, Erode. But statement of accounts have not been adduced. In the absence of the statement of accounts it is very difficult to assume that the proceeds (of alleged cheating) were credited to these accounts. However, since A3 and A4 were partners, their involvement in the fraudulent act cannot be ruled out. But the role of A5 is not established by the prosecution. The depositions of the 75 complainants, would not suffice to conclude that A5 was also managing the affairs of the Poultry farms. The trial court's observation that since A5 was willing to pay back the investors he has to be held guilty of the offence defies logic. It should be understood that it was his own parents who were implicated and his father had died during the pendency of trial. Having lost his father, it was but natural for A5 to have offered to compensate the investors to save his mother from the clutches of law and this alone cannot be used against him. In my opinion the prosecution has not proved the guilt of A5 beyond reasonable doubts. Only the guilt of A4 is proved.

11. It was argued that A4 is a homemaker and was a mere name lender for the business run by her deceased husband (A3). However,

officially she was a partner as evidenced by both the partnership deeds and she cannot be absolved of her liability. Moreover, the depositors were not cross examined by A4 on these lines when she was afforded opportunity to cross examine them. Notwithstanding the facts of the case wherein many gullible investors were taken for a ride making it appear easy for the accused to make big money, the investors also have to be blamed for their immense greed to become rich overnight knowing very well that there is no shortcut to prosperity.They became victims of their own greed.

12. In the result,

i. the Criminal Appeal is partly allowed.

ii. G. Mukesh, the 2nd appellant (A5 in C.C No.11 of 2014) is acquitted from all the offences, of which he is charged. He shall be released with immediate effect unless his custody is required in connection with any other case. Bail bonds, if any, shall stand cancelled.

iii. The conviction of the A4 is confirmed. However, the sentence passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore, in C.C.No.11 of 2014, as against G.Malliga, the 1st appellant (A4 in C.C No.11 of 2014) is modified as follows:

Conviction	***Sentence***
Section 120 B IPC	Simple Imprisonment for two years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for three months.
Section 420 IPC	Simple Imprisonment for three years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for six months.
Section 5 of TNPID Act, 1997.	Simple Imprisonment for 5 years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for one year.

The aforesaid sentences shall run concurrently. The fine amount of Rs.30,00,000/- imposed on A1 and A2 shall be paid to the victims P.W.1 to P.W.73 and P.W.75 on pro-rata basis.

iv. This Court places on record its appreciation to Mr.V.Murali, learned Legal Aid counsel, for his valuable assistance in deciding this case. The Legal Service Authority is directed to pay a sum of Rs.15,000/- to the said counsel towards his fee.

18.08.2023

bga
Index : yes/no
Speaking /Non speaking Order

To

1. The Special Judge, Special Court under TNPID Act, Coimbatore.

2. The Inspector of Police,
   Economic Offences Wing II Unit,
   Erode.

R.HEMALATHA, J.

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Pre-Delivery Judgment in
Crl.A.No.9 of 2022

18.08.2023