BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Twenty Eighth day of February Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice G.ILANGOVAN

CRL MP(MD) No.2489 of 2023
in
CRL A(MD)No. 260 of 2022

1 V.RAVIBALAN

2 V.RAMESH KUMAR ... PETITIONER/1st APPELLANT/ ACCUSED No.4

Vs

STATE REP.BY
THE DEPUTY SUPERINTENDENT OF POLICE,
ECONOMIC OFFENCE WING - II,
DINDIGUL.
(IN CRIME NO. 03 OF 2012) ... RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the execution of sentence in C.C.No.33/2013 dated 03.03.2022 on the file of the Honble Special Court under Tamilnadu Protection of Interest of Depositors(in Financial Establishment) Act 1997,Madurai enlarge the petitioner/appellants/accused on bail pending disposal of the above appeal.

Prayer in Crl.A(MD)No. 260 OF 2022:
To call for the records from the file of the trial court (Special Court under Tamilnadu Protection of Interest of Depositors (in Financial Establishment) Act 1997, Madurai) hear the submissions of the Appellants/Accused 4 and 5 and the prosecution, set aside the judgment of the trial court passed in C.C.No. 33/2013 dated 03rd March 2022 by allowing this appeal and acquit the Appellants/Accused 4 and 5.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S. GOPALAN.T.K, Advocate for the petitioner and of MR.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in C.C.No.33 of 2021, dated 03/03/2022 by the Special Court under Tamilnadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997, Madurai, and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution is that the first accused is a registered Financial Establishment, that the accused 2 to 5 had conspired together at Dindigul between 22.03.2012 and 14.11.2012 and they have entered into an agreement to commit the offences, with a common intention to collect huge amount from the public in the name of the first accused and to swindle the amount, in pursuance of the same, they created Deposit Schemes-I, II and III with attractive high rates of interest knowing fully well that they are not going to repay, that the accused 2 to 5 started to canvass the general public that as per Scheme-I, they will supply 6 EMU birds along with shed, food, free insurance cum free medical check up and also promised to pay Rs.9,000/- per month for 24 months along with Rs.15,000/- yearly bonus for two years, after which, they will refund the deposit amount of Rs.1,50,000/-, that in the II Scheme, they will allot 6 EMU birds and maintain themselves and also promised to pay Rs.10,000/- per month for 24 months along with Rs.15,000/- yearly bonus for two years, after which, they will refund the deposit amount of Rs.1,50,000/- and that as per Scheme III, they will supply 24 goats along with shed, food, free insurance cum free medical check up and also promised to pay Rs.9,000/- per month for two years along with Rs.10,000/- yearly bonus for three years, after which, they will refund the deposit amount of Rs.1,00,000/-. It is the further case of prosecution that by widely publishing the said schemes, a sum of Rs.4,00,29,000/- was received from 164 depositors and thereafter, Rs.24,00,000/- from 5 depositors and Rs.40,80,000/- from 8 depositors in the name of the company and utilised for the benefit of the accused and converted the said money as assets and spent lavishly and that after the period of maturity, the accused closed the company and absconded while the depositors were left on the street.

3.On the basis of the complaint lodged by one of the victim, FIR came to be registered in crime No.3 of 2012 on 29.12.2012. After completing the investigation, the respondent police has laid the charge sheet for the alleged offences under Sections 409, 420, 120 (b), 468 and 471 IPC and Section 5 of the Tamil Nadu Protection of Interest of the Depositors (in Financial Establishment) Act 1997 and the case was taken on file in C.C.No.33 of 2013 before the Special Court under Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997, Madurai

4.During the trial, the prosecution had examined 195 witnesses as P.W.1 to P.W.195 and exhibited 452 documents as Ex.P1 to Ex.P.452. The defence had examined 2 witnesses as D.W.1 and D.W.2

and adduced no documentary evidence.

5.The learned Special Judge, upon considering the evidence and on hearing the arguments of both sides, has passed the impugned Judgment, dated 03.03.2022 and found the petitioner guilty, convicted and sentenced him to undergo 10 years S.I., and imposed a fine of Rs.1,00,000/- for the offence under section 5 of TNPID Act; for the offence under section 120(B) IPC Rigorous Imprisonment for 10 years and to pay a fine of Rs.1,00,000/- with default clause and for the offence under section 406 IPC, Rigorous Imprisonment for 3 years and to pay a fine of Rs.10,000/- with default clause and for the offence section 420 IPC Rigorous Imprisonment for 7 years and to pay a fine of Rs.10,000/- with default clause and for the offence under section 468 IPC, Rigorous Imprisonment for 7 years and to pay a fine of Rs.10,000/- with default clause and for the offence under section 471 IPC, Rigorous Imprisonment for 7 years and to pay a fine of Rs.10,000/- with default clause and directed the sentences to run concurrently.

6.Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

7. The learned counsel for the petitioner would submit that even though there is a specific allegation to the effect that this petitioner is also a partner along with the first accused in the company called Subasree EMU Farms India (P) Limited, no material was collected to show that he is also one of the partners. Document that was produced by the prosecution is only relating to the first accused and victims. The victims alleged to have entered into an agreement with the first accused showing the deposit and agreement to repay the same with benefits. Even as per the allegation made in the Final Report and during the course of the trial, it was not established that this petitioner also actively participated in the affairs and the management of the above said company. It is also further submitted that it is the proprietary concern owned by the first accused. There was no partnership deed or it was not at all a company registered under the provision of the Companies Act.

8. According to the learned counsel appearing for the petitioner, since this petitioner is neither in a partner nor involved in the affairs of the company, he would rely upon the judgment of this Court in ***S.Thamayanthi Vs. State of Tamil Nadu reported in CDJ 2013 MHC 2119.*** Unless there is clear proof to the effect that he is involved in the affairs of the company, he is entitled for suspension of sentence.

9. Per contra Additional Public Prosecutor would submit that the petitioner actively involved in the above said functioning of the company acting as collecting agent. Whether this petitioner was

a partner in the company and also took active participatio[illegible]he affairs is the matter for consideration in the appeal. Several crores of rupees have been defrauded and various cases have been registered against the company before various Courts. The application that was filed by the co-accused seeking suspension of sentence was dismissed by this Court.

10. Again this petitioner wants to sustain his argument by relying upon the above said circumstances, but there is evidence on record shows that this petitioner collected money from the public, so whether collection of money on behalf of the company show the active participation by invoking section 120B of IPC in the affairs of the company is the matter of consideration in the appeal. Considering the magnitude of the offence, money involved and number of innocent perons cheated, considered the view that this is not a fitest case to suspend the sentence. All these things that can be canvased at the time of appeal.

11. In the result, this criminal miscellaneous petition is dismissed.

sd/-
28/02/2023

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/03/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Indu
TO

1 THE SPECIAL JUDE,
UNDER TAMILNADU PROTECTION OF INTEREST OF
DEPOSITORS (IN FINANCIAL ESTABLISHMENT) ACT
1997, MADURAI)

2 THE SUPERINTEINDENT
CENTRAL PRISON, MADURAI.

3 THE DEPUTY SUPERINTENDENT OF POLICE,
ECONOMIC OFFENCE WING - II, DINDIGUL.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.T.K.GOPALAN, Advocate (SR-3067[I] dated 01/03/2023)

ORDER
IN
CRL MP(MD) No.2489 of 2023
in
CRL A(MD)No. 260 of 2022
Date :28/02/2023

PKP/CC/SAR-4/23.03.2023/ **4P/6C**