



Crl.O.P.No.5048 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

**Crl.O.P.No.5048 of 2023
and
Crl.M.P.Nos.3178 and 3179 of 2023**

1. Kannan @ Sivachandren
S/o.Murugan

2. Kumar @ Ramkumar
S/o.Mnai

3. Ajay @ Harikrishnan
S/o.Vasudevan

... Petitioners

Vs.

1. The State,
Represented by its
The Inspector of Police,
Economic Offence Wing,
Salem District.
(Ref. Crime No.8 of 2015)

2. G.Kesavaperumal
S/o.Govindasamy

... Respondents



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PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973 praying to quash the additional final report dated 02.06.2016 in C.C.No.8 of 2015 on the file of the Court of the Special Judge, Special Court under TNPID Act, Coimbatore for offences under Sections 120(B), 468, 471, 419 and 420 of IPC and under Section 5 of TNPID Act r/w 120(B) of IPC.

For Petitioners : Mr.S.Sheik Ismail

For Respondents : Mr.A.Gopinath
Govt. Advocate (Crl.Side) for R1

O R D E R

The present petition has been filed seeking to quash the additional final report / supplementary report dated 02.06.2016 filed in C.C.No.8 of 2015 before the Court below on the ground that the Court below has proceeded further with the case even without taking cognizance of the supplementary report.

2. When the matter came up for hearing on 07.03.2023, this Court passed the following order:



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"Heard the learned counsel for the petitioner.

2. It is the submission of the learned counsel for the petitioner that originally final report was filed against three accused Viz., A1/Promox Emu Farms (p) Ltd., A2/V.Muthukumar and A3/Kannan. Then prosecution filed a petition under Section 173 (8) of Cr.P.C. for further investigation. After further investigation, additional final report was filed against four more accused. The learned Special Judge for TNPID Act, 1997 cases, Coimbatore, without taking cognizance of the offence against the additional accused Viz., A4/Kailasam, A5/Suresh Gandhi, A6/Kumar @ Ramkumar and A7/Ajay @ Harikrishnan, proceeded to furnish copies to the accused, framed charges and examined the witnesses. Now, this quash petition is filed challenging the proceedings conducted, without taking cognizance of the offence against the petitioner.

3. Learned Government Advocate (Crl.side) submitted that report may be called for from the concerned Judge as to whether cognizance of the offence against the additional accused had been taken or not.

4. Therefore, call for report from the learned Special Judge for TNPID Act, 1997 cases, Coimbatore as to



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whether the cognizance of the offence against the additional accused Viz., A4/Kailasam, A5/Suresh Gandhi, A6/Kumar @ Ramkumar and A7/Ajay @ Harikrishnan was taken, if so, when the cognizance was taken, by return of post along with a copy of the order taking cognizance. 5.

5. Post the matter after two weeks."

3. Pursuant to the above order, a report has been received from the learned Special Judge, Special Court under TNPID Act, Coimbatore dated 21.03.2023 and for proper appreciation, the report is extracted hereunder:

"I humbly submit that the Final Report, which was filed on 07.03.2015 against A1 to A3, was taken on file on 13.03.2015 and the Additional Final Report was filed on 02.06.2016, through which, A4 to A7 were added as accused, but the aforesaid final report, additional final report and notes paper are silent in respect of cognizance taken on additional final report and A4 to A7.

I further submit that even though there was no endorsement to that effect, "Cognizance is taken of an offence and not of an offenders/A4 to A7" as held by



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*our Hon'ble Apex Court in **Sonu Gupta Vs. Deepak Gupta & Others** on 11 February, 2015 and **State of W.B Vs. Mohammed Khalid** on 24 November, 1994 that Section 190 of the Code talks of cognizance of offences by Magistrates. This expression has not been defined in the Code. In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of the offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. No particular form is necessary.*

*The summoning of the additional accused is part of the proceeding initiated by the Magistrate taking cognizance of an offence. As pointed out by the Hon'ble Supreme Court in **Raghubans Dubey Vs. State***



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of Bihar (1967 AIR SC 1167) and Pravin Chandra Mody Vs. State of Andhra Pradesh ([1965] 1 S.C.R. 269).

I submit that accordingly, summons were issued; A4 to A7 appeared; on 14.12.2016, charges were framed against the accused A1 to A7; they denied the charges; the prosecution evidence was commenced on 01.03.2017 and closed on 22.04.2022 with Pw58; and it was posted for defence evidence from 11.05.2022; as no defence evidence, it was closed and posted for arguments on 22.06.2022; and due to filing of several miscellaneous applications, it has been been posted for arguments till 23.01.2023.

*I submit that it is the specific case of the accused that they received deposits, but repaid with interest during trial and obtained necessary receipts, which was admitted by the depositors during cross examination. The said facts would prove that the cognizance of an offence was taken and the accused were put on notice of the offences/allegation leveled in the final report and they participated in trial. **Now, the only question before this Court is that whether the 47***



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depositors received full settlement or again cheated by the accused? I further submit that the accused cheated 50 victims to the tune of Rs.1,06,86,000/-. In such a situation, I submit that the question of fresh cognizance and fresh trial does not arise.”

4. Heard the learned counsel for the petitioners and the learned Government Advocate appearing on behalf of the respondent Police.

5. The learned counsel for the petitioners mainly raised two contentions before this Court. The first contention is that there is absolutely no indication that the supplementary report filed under Section 173 (8) of Cr.P.C was taken cognizance. The learned counsel submitted that even though there is no form prescribed for taking cognizance of a report, there must be atleast some indication to show that the supplementary report was taken cognizance by the Court below and that the same is completely absent in the present case. The learned counsel submitted that this plea is raised by A6 and A7 who were added as accused by virtue of this supplementary report.



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6. The second contention raised by the learned counsel for the petitioners is that the witnesses who were examined had deposed before the Court that their amounts have been settled and that such settlement had taken place before the Mediation Centre. However, the Court below without taking the same into consideration, once again called all the witnesses and they were examined and they started giving a different version contra to the earlier evidence tended by them before the Court. Therefore, the petitioners are seriously prejudiced in this case.

7. The learned Government Advocate appearing on behalf of the respondent Police submitted that the petitioners cannot be permitted to question the issue regarding taking cognizance when the trial itself was completed and the case is at the stage of final arguments. The learned Government Advocate submitted that it is too late for the petitioners to knock the doors of this Court at this stage and seek for quashing the proceedings on the ground that the Court below did not take cognizance of



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the supplementary report.

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8. Insofar as the second contention raised by the learned counsel for the petitioners, it was submitted by the learned Government Advocate that there were several depositors before the Court below and whether they were settled in full or were partially settled and there is any more claim that is yet to be settled by the accused persons, is a factual dispute which cannot be gone into in this quash petition. Therefore, the learned Government Advocate sought for dismissal of this petition.

9. This Court carefully considered the submissions made by the learned counsel on other side and the materials available on record.

10. On carefully going through the report submitted by the Court below, it is seen that, too much of water has flown under the bridge. The Court below had taken cognizance of the supplementary report and had issued summons to A4 to A7, who were added as accused and charges were



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framed against them and they were questioned on the charges which were denied by them. Thereafter, the prosecution has examined all the witnesses and questioning was also completed under Section 313(1)(b) of Cr.P.C on 04.05.2022. The case was at the stage of arguments on 22.06.2022. Hence, the question as to whether the Court below took cognizance of the supplementary report becomes an academic question in view of the above facts that can be gathered from the report filed by the learned Special Judge.

11. The second contention that was raised with regard to the witnesses giving a contradictory version regarding settlement of dues to them, according to the petitioners, the entire amount has been settled to the depositors before the Mediation Centre. However, since all the witnesses were once again recalled, they took advantage of the situation and deposed as if they were only partially settled. Hence, the petitioners claimed that they have been seriously prejudiced.

12. In the considered view of this Court, even according to the



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petitioners, the entire settlement had taken place before the Mediation Centre. The witnesses have also deposed before the Court regarding the settlement of the amount during the first round of examining them as witnesses. If those witnesses have given a different version subsequently, when they were recalled, it is a subject matter of appreciation of evidence which has to be done only by the trial Court. The petitioners had taken a very specific stand that the entire amount has been settled and they are relying upon the deposition of the witnesses and certain materials placed before the Court. This will also be taken into consideration by the Court below while appreciating the evidence. It will suffice if this clarity is given by this Court. This ground raised by the petitioners being factual in nature is not a ground to be dealt with in a quash petition under Section 482 of Cr.P.C.

13. In the light of the above discussion, this Court does not find any ground to interfere with the proceedings before the Court below and it is left open to the Court below to consider the case on its own merits and in



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accordance with law including the defence that has been taken by the accused persons and pass final judgment as expeditiously as possible.

14. This Criminal Original Petition is disposed of accordingly.

Consequently, connected miscellaneous petitions are closed.

05.03.2024

NCC: Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

1. The Inspector of Police,
Economic Offence Wing,
Salem District.
(Ref. Crime No.8 of 2015)

2. The learned Special Judge,



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Special Court under TNPID Act,
Coimbatore

3. The Public Prosecutor,
High Court,
Madras.



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N.ANAND VENKATESH, J.

vji

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