IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on	20.09.2023
Judgment Pronounced on	13.06.2024

Coram

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.514 of 2016

1.B.Kandasamy

2.Manichavalli .. Appellants/Accused A (2-3)

Vs

State represented by
The Inspector of Police,
Economic Offences Wing-II Unit,
Cuddalore.
(Crime No.1 of 2008) .. Respondent/Complainant

Prayer: Criminal Appeals filed under Section 374 of Cr.P.C r/w Section 11 of T.N.P.I.D Act to set aside the conviction and sentence passed in C.C.No. 3 of 2010 passed by the learned Special Judge, Special Court under T.N.P.I.D Act, Chennai by judgment dated 02.07.2016 and acquit the appellants herein.

For Appellants .. Mr.K.Balu
For Respondent .. Mrs.G.V.Kasthuri
Additional Public Prosecutor

JUDGMENT

The Appellants had preferred this Criminal Appeal as against the judgment dated 02.07.2016 made in C.C.No. 3 of 2010 by the learned Special Judge under T.N.P.I.D Act, Chennai.

2.The brief facts, which are necessary for the disposal of this Criminal Appeal, are as follows:-

2.1.The first Accused in this case is a Company – Vallisudhan Finance & Investments. The second Accused – Kandasamy is the partner of the first Accused Company. The third Accused – Manickavalli is the wife of second Accused and also partner of the first Accused Company and the fourth Accused – Vannamayil (since dead) is the mother of second Accused and she is also a partner of first Accused Company. Accused 2 to 4 were the partners of the first Accused Company – Vallisudhan Finance and Investments which was a Financial Establishment. They ran the Financial Establishment at No.138, Indira Nagar, Neyveli. The first Accused

Financial Establishment was registered before the Registrar of Firms with Sl.No.31/VSF/95, dated 01.03.1995 at Cuddalore. The Accused 2 to 4 canvassed and collected the deposits from the depositors assuring that the amount will be repaid with 24% interest after maturity period. Based on the canvass by the Accused 2 to 4, many of the depositors had deposited amounts in the first Accused Company. One Mr.B.Venugopal, S/o.K.Bangaruswamy Naidu, resident of No.B.24, Sreeneevasan Salai, Block No.13, Neyveli - 31 lodged a complaint on 04.01.2008 against the first Accused/Financial Establishment and its partners Accused 2 to 4. As per the complaint, the complainant had deposited totally a sum of Rs.1,47,000/- with the first Accused/Financial Establishment in his name and in the name of his daughter on various dates. The Accused assured to pay interest at 24%. Later the Accused paid interest only for two months. The Complainant demanded his entire amount, for which the Accused did not repay the deposit amount. The Accused defaulted to repay the deposited amount. Similarly, the Economic Offences Wing received complaints from various depositors against the defaulted Financial Establishment. Based on the complaint of B.Venugopal, S/o.K.Bangaruswamy Naidu, a case was registered in Crime No.1 of 2008 on the file of the Economic Offences Wing-II, Cuddalore. The Inspector of Police, Economic Offences Wing-II, Cuddalore, proceeded with the investigation and in the due course of investigation, it was found that the Accused Nos.1 to 4 had collected deposits from various depositors totalling to the tune of Rs.20,22,156/- from 12 depositors. The first Accused/Financial Establishment was closed. Therefore, the complaint was registered. After completion of investigation, the Inspector of Police, Economic Offences Wing-II, Cuddalore, laid final report before the Court of the learned Special Judge, Special Court under the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997, Chennai. The final report was laid against the Accused Nos.1 to 4. Accused Nos.2 to 4 were responsible for the management of the affairs of the Financial Establishment. All the Accused conspired together to collect the amount from the depositors with fraudulent intention and dishonestly misappropriated and cheated the depositors. Accused 2 to 4 converted the deposited amount into their own use, thereby wilfully caused loss to the depositors by default in repayment of deposit amount along with interest. Hence, the Accused Nos.1 to 4 have committed offence punishable under Section 5 of the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997.

2.2.The learned Special Judge, Special Court for trial of cases under the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997, Chennai, taken cognizance of the final report laid by the Inspector of Police, Economic Offences Wing-II, Cuddalore and numbered the case as C.C.No.3 of 2010 and issued summons to the Accused Nos.1 to 4.

2.3.On appearance of the Accused, copies of the final report were furnished under Section 207 of Cr.P.C.

2.4.After hearing the Prosecution and the defence and after having considered the materials on record, the learned Special Judge, Special Court under the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997, Chennai, and having satisfied that there were sufficient grounds to frame charges against the Accused, had framed Charge under Section 5 of the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997 (12 counts) against the Accused 1 to 4 and explained in Tamil. Since the Accused denied the charges and claimed to be tried, trial was ordered.

2.5.During the pendency of the case, fourth Accused 4 was reported dead. Hence, the charges against Vannamayil abated on 06.06.2014. During trial, the Prosecution had examined 14 witnesses as P.W-1 to P.W-14 and marked 52 documents as Ex.P-1 to Ex.P-52. On completion of the Prosecution evidence, the incriminating evidence available against the Accused 1 to 3 were put to the Accused 1 to 3 under 313 Cr.P.C. They denied the incriminating evidence against them. After hearing the argument of the learned Public Prosecutor and the learned defence Counsel for the Accused, the learned Special Judge, Special Court under the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997, Chennai, on proper appreciation of evidence, had by judgment dated 02.07.2016 had acquitted the Accused 1 to 3 under Section 5 of the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997 for two counts and had convicted and sentenced under Section 5 of the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997 for ten counts. First Accused Financial Establishment was imposed fine of Rs.10,000/- for each count (total fine of Rs.1,00,000/-). A2 and A3 partners of the firm were imposed with sentence of imprisonment of two years for each count and fine of Rs.10,000/- for each count (total fine of Rs.2,00,000/-), in default, to undergo six months Simple Imprisonment for each count. Substantial sentence of imprisonment awarded to Accused 2 and 3 for ten counts shall run concurrently. The benevolent provision of Section 428 of Cr.P.C. cannot be invoked to Accused 2 and 3 since they have never been in incarceration for a single day. The fine amount imposed on first Accused shall be payable by Accused 2 and 3 jointly and severally. Out of the fine amount of Rs.3,00,000/-, a sum of Rs.2,70,000/- shall be payable to the depositors. The order for awarding compensation shall be given effect to after the appeal time is over or after the appeal, if any, preferred is over.

3.Aggrieved by the judgment of conviction, sentence of imprisonment and fine imposed on the Accused 1 to 3, the Accused 1 to 3 had preferred this Criminal Appeal.

4. The learned Counsel appearing for the Appellants submitted that the Appellants have been convicted by the learned Special Judge under T.N.P.I.D Act, Chennai, in C.C.No.3 of 2010 for offences under Section 5 of T.N.P.I.D Act by imposing the sentence of imprisonment and fine.

5. Initially, the case was registered under Section 420 of I.P.C and Section 5 of the T.N.P.I.D Act. At the time of framing of charges, Section 5 alone was framed by the learned Special Judge under the T.N.P.I.D Act, Chennai. Since the Accused denied the charges, the learned Special Judge under the T.N.P.I.D Act, Chennai, had ordered trial. Accused-1 in C.C.No.3 of 2010 Accused-1 is M/S Valli Sudhan Finance and Investments which is a registered Company, Accused-2 Kandasamy is a Director of the Company, Accused-3/Manickavalli is the wife of Kandasamy and Accused-4/Vannamayil is the mother of Accused-2.

6. During trial, Accused-4 died. Therefore, the charge stood abated against Accused-4. Accused-1 to Accused-3 stood trial. To prove the charges, the prosecution had examined witnesses P.W-1 to P.W-11 and marked documents/exhibits Ex.P-1 to Ex.P-52. P.W-2 is the son of depositor, P.W-8 is the wife of depositor Kannan. P.W-2 is the son of depositor Gunasekaran. The learned Counsel for the Appellants submits that Accused-2 and many of the depositors were employees of M/S Neyveli Lignite Corporation. In the course of such acquittances, they deposited money in the Company. The Company was closed in the year 1998. The Complaint was lodged after 10 years. The learned Counsel for the Appellants invited the attention of this Court Ex.P-49 which is worded as follows:

> "திருமதி.K.மாணிக்கவள்ளி W/o. B.கந்தசாமி ஆகிய நான் திரு.R.தண்டபானி என்பவரிடம் வாங்கிய கை மாற்று தொகை ரூ.2,00,000/ஐ Dt: 01.12.1997 (இரண்டு லட்சம் ரூபாய்) மேற்குறிய தேதிக்குள் செலுத்திவிடுகிறேன்"

Therefore, it is only a private transaction, for which the provision of T.N.P.I.D Act cannot be pressed into service. Further, he would submit that

Accused-3 was only a Director in Accused-1 Company. Except for the fact that she is the wife of Accused-2, there is no incriminating evidence proved by the depositors P.W-1 to P.W-14. The receipts issued in the name of Manickavalli were not subjected to any Forensic examination regarding the signature of Accused-3. The learned Special Judge, Special Court under T.N.P.I.D Act, Chennai had, based on the evidence of P.W-1 to P.W-14, mechanically convicted the Accused and sentenced Accused-2 & Accused-3 for two years imprisonment and a fine of Rs.10,000/- for each, totally a sum of Rs.2,00,000/- in default to undergo Simple Imprisonment. Accused-1/Company was imposed with fine of Rs.10,000/- for each count (Total fine is Rs.1,00,000/-), total for the case, Rs.3,00,000/- was imposed. During the admission of this appeal Rs.3,00,000/- was deposited. Therefore, the learned Counsel for the Appellants seeks to set aside the judgment of conviction and sentence of imprisonment imposed on Accused-2 & Accused-3.

7. The learned Additional Public Prosecutor vehemently objected to the line of arguments of the learned Counsel for the Appellants, stating that the registration of the Finance Company shows Accused-3 as one of the

Directors. All the exhibits marked as fixed deposit receipts up to 46 viz., Ex.P-1 to Ex.P-46 are signed by Accused-3. Ex.P-52 is the Registration Form for registering the Company M/S.Valli Sudhan Finance and Investments (Registration No.31/VSF/95) showing the Accused-3 as a Director. Also the learned Additional Public Prosecutor submitted that all the FDR's were signed by Accused-3. The fact that FDR's were not subjected to a handwriting expert to obtain an expert opinion regarding the signature of Accused-3 cannot be accepted in appeal. It ought to have been subjected for forensic examination. During the trial, Accused-3 should have not disputed the signature. The said submission of the Appellants' Counsel cannot be accepted. The learned Additional Public Prosecutor also submitted that as per the complaint lodged by each of the witnesses through Ex.P-6, Ex.P-22, Ex.P-24, it was stated that in the year 1998, the Company was closed.

8. Also the learned Additional Public Prosecutor invited the attention of this Court to the FDR's in which maturity as given as year 2000 and 2002. Also in the complaint they have stated that they had been searching for the

Accused, as he had wantonly delayed and approached them for the return of the FDR deposit amount. Therefore, the defence of the Accused that the complaint is belated cannot be accepted. The learned Judge had rightly on appreciation of evidence of P.W-1 to P.W-14 and in the light of Ex.P-1 to Ex.P-52 had convicted the Accused, the appeal lacks merits and is to be dismissed.

Point for Consideration

Whether the judgment of conviction recorded by the learned Special Judge, constituted under the T.N.P.I.D, Act 1997 in C.C.No.3 of 2010 dated 02.07.2016 is to be set aside as perverse?

9. Heard the learned Counsel for the Appellant and the learned Additional Public Prosecutor. Perused the judgment of conviction recorded by the Special Judge, Special Court constituted under T.N.P.I.D Act, 1997.

10. It is the contention of the Appellant that the wife of the Appellant is Accused-3. She had not committed any offence. She is not signatory to any of the documents of the Accused-1, Company. Accused-2 is the son of

Accused-4.

11. It is the contention of the learned Counsel for the Appellant that the complaint of the defacto Complainant is a belated complaint after 10 years of the alleged occurrence. Therefore the investigation and laying of final report is against the guidelines regarding the investigation of the cases. Also it is the contention of the learned Counsel for the Appellant that the Appellant had already borrowed money from acquaintances as a private transaction and has nothing to do with the T.N.P.I.D Act. The depositors who had already received the money back were forced to give statements against the Accused. Based on those false statements, the Investigation Officer had laid the final report. The learned Special Judge, Special Court constituted under T.N.P.I.D Act failed to consider the evidence of the witnesses in cross examination and had mechanically convicted the Accused. Therefore the judgment of conviction recorded by the Special Judge, Special Court constituted under T.N.P.I.D Act is perverse and is to be set aside.

12. The learned Counsel for the Appellant submitted that the Charge Sheet abated as against the mother of the Accused-2 (Vanamayil). Accused-3 is the wife of Accused-2. None of the witnesses have spoken about the role of Accused-2. Therefore the conviction recorded against Accused-2 has to be set aside. Not only that, after arrest and detention of the Accused during the pendency of the case, the Accused was granted bail and he had settled the dues of the depositors. Still during cross examination, they denied the same. The learned Judge failed to consider those facts and had mechanically convicted the Accused. Therefore the learned Counsel for the Appellant seeks to set aside the judgment of conviction recorded by the learned Special Judge, Special Court constituted under T.N.P.I.D Act.

13. On perusal of the depositions, it is found that the P.W-1 had conceded that he had received back the amount. The rest of the witnesses had denied the fact that the Accused in this case had settled the dues. The further submission of the learned Counsel for the Appellant is that the transaction was purely an individual transaction for urgent necessity of Accused-2 and his family members. While so, after receiving complaint, the

case was altered as T.N.P.I.D Act offence.

14. Considering the fact that the Appellants had settled many of the depositors, the learned Judge failed to consider those facts and convicted the accused. Therefore the same is perverse. If the submission of the learned Counsel for the Appellant is to be accepted, the Accused himself ought to have filed the documents to prove that he had settled the dues to those subscribers of the Financial Establishment towards their monthly payment. That was not marked either in cross examination by the learned Counsel for the Appellant or by the State. Merely relying on the oral evidence will not help the Appellant.

15. The learned Counsel for the Appellant relied on the following rulings in support of his contention in the cases of:

(i) ***Tmt.Prasannadevi -vs- State of Tamil Nadu reported in 2009 (3) MWN (Cr.)***

(ii) Laila Christobel -vs- State rep by the Inspector of Police reported in 2019 SCC Online Mad 38515.

16. The learned Counsel for the Appellants invited the attention of this Court to the reported ruling in the case of ***Laila Christobel -vs- State rep by the Inspector of Police*** in Para 11 and 12 of the judgment, wherein it was stated-

> *"11. As contended by the learned Counsel for the appellant/accused, this Court does not find any material whatsoever to show that the appellant herein was involved in the day-to-day administration of the first accused concern. The conclusion reached by the trial Court that only on the premise that the involvement of the appellant was not denied by her husband himself cannot be a valid conclusion in the eye of law. Unless or until the factum of active involvement of the appellant in managing the affairs of the financial institution is established, she cannot be an accused for the offences under Section 5 of the TNPID Act. In fact, reliance placed by the learned Counsel for the appellant in the decision of this Court and the ratio as decided by this Court which is extracted above would clearly clinch the case in favour of the accused.*
>
> *12. The decision of this Court cited supra would squarely apply to the factual matrix of this case. None of the witnesses who were examined by the prosecution has deposed about the involvement of the appellant herein in day-to-day functioning of the first accused firm. No document was marked to show her involvement in the running of the concern. In the absence of such proof or evidence, the trial Court has erred in convicting the appellant herein for the offence under Section 5 of the TNPID Act. The trial Court's conclusion on this aspect is completely misplaced and misconceived and such a conclusion reached by the trial Court cannot be countenanced in law or on facts."*

Therefore, the ruling regarding the wife of the partner in a partnership firm, ***2019 SCC Online Mad 38515***, is applicable only to the Accused-3 and none of the witnesses have spoken about the role played by the wife of Accused-2.

17. The suggestion of the learned Counsel for the defence before the trial Court that the Accused had settled the dues was denied by the witnesses. In cases of this nature, the documentary proof had to be filed to accept the contention of the Accused-1 and Accused-3. Since it is while collar crime it stands on a different footing from the other I.P.C offences. The claim by the Appellant that the complaint was belated was rejected by the witnesses in this case on the grounds that after deposit, the Financial Establishment was closed which forced the depositors to give complaint to Economic Offences Wing.

18. The suggestion put to the Investigation Officer that he is suppressing material fact also cannot be accepted. If what had been suggested by the learned Counsel for the Appellant is true, the Appellant should have marked documents entered into between Accused and the depositors. In the absence of any such document, to prove the contention of

the Appellant, the suggestion of the Appellant is to be rejected. There is no settlement on the date of filing of this case. The transaction between Vanamayil and other depositors for Rs.2,00,000/- was a private transaction was denied by P.W-3. When there is denial, it is the duty of the Appellant to prove the same by marking document either in cross examination of the prosecution witness or by oral evidence of the Accused. Here these things does not arise. No document had been marked. The witness had spoken cogently that after deposit of the amount, the Financial Establishment was closed forcing the witnesses to prefer the complaint. Therefore the claim of 10 years belated complaint cannot be accepted. It is natural that the depositors approach the Police Station if the Financial Establishment was not functioning. Here the Directors of the Financial Establishment had locked the premises and left. Only then the depositors were forced to file complaint. Therefore the contention of the learned Counsel for the Appellant that the amount had been settled. Still the learned Judge had imposed conviction cannot at all be accepted. The same is rejected in the light of the vehement objection of the learned Additional Public Prosecutor for the state.

19. In the light of the above, the criminal appeal filed commonly for Accused-1 to Accused-3 is allowed partly only as against Accused-3, wife of Accused-2, as the Prosecution witnesses have not spoken about the role played by Accused-3. The submission of the learned Counsel for the Appellant is accepted in the light of the reported decision only as against Accused-3. Therefore, the Criminal Appeal is partly allowed. The judgment of conviction recorded by the learned Special Judge, Special Court under T.N.P.I.D Act, Chennai, is set aside with regard to Accused-3 only.

20. The judgment of conviction recorded by the learned Special Judge as against Accused-1 and Accused-2 is dismissed as having no merits. **Point for consideration is answered partly in favour of the Appellants** and partly in favour of Prosecution. The judgment of conviction recorded by the learned Special Judge, Special Court under T.N.P.I.D Act in C.C.No.3 of 2010, dated 02.07.2016 is found proper except judgment against the wife of Accused-2. **Therefore, the judgment of conviction is set aside as against Accused-3 only.**

In the result, the Criminal Appeal is partly allowed.

The fine amount of Rs.10,000/- for each count (Total fine of Rs.1,00,000/-) imposed on the first Accused Financial Establishment is confirmed. Since the judgment of conviction is set aside as against Accused-3, the fine amount of Rs.10,000/- for each count imposed on Accused 2 and 3 is modified as the second Accused shall pay the fine of Rs.20,000/- for each count (Total fine of Rs.2,00,000/-) and the sentence of imprisonment imposed on the Accused-2 is reduced to one year for each count.

13.06.2024

shl/srm
Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order

To

1.The Inspector of Police,
Economic Offences Wing-II Unit,
Cuddalore.

2.The Special Judge,
Special Court under T.N.P.I.D Act Cases,
Chennai.

3.The Public Prosecutor,
Madras High Courth,
Chennai.

SATHI KUMAR SUKUMARA KURUP.J,

shl/srm

Judgment made in

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