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Crl.A.No.224 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.224 of 2021

1.Sri Vasavi Enterprises
Rep. by its Managing Partner
J.Ilanchezhian

2.J.Ilanchezhian

... Appellants

Vs.

The State rep. by its
Deputy Superintendent of Police,
E.W.O.II, Erode,
Crime No.8 of 2002,
Erode District.

... Respondent

Prayer:

Appeal filed under Section 374(2) of Criminal Procedure Code seeking to call for the records relating to the judgment dated 24.03.2021 made in C.C.No.77 of 2008 on the file of the learned Special Judge, Special Court under TNPID Act, Coimbatore (CC No.18 of 2007 – TNPID Court, Chennai) and set aside the same.

For Appellants : Mr.N.Manoharan
For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor



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J U D G M E N T

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The criminal appeal has been filed seeking to set aside the judgment dated 24.03.2021 made in C.C.No.77 of 2008 by the learned Special Judge, Special Court under TNPID Act, Coimbatore (CC No.18 of 2007 – TNPID Court, Chennai).

2.The facts of the case is that the appellants are arrayed as A1 and A2 in C.C.No.77 of 2008. A1 is the financial establishment. A2 and A3 are responsible for the management and affairs of A1 financial establishment and they are alleged to have canvassed the depositors to deposit the amount with A1 and promised to pay higher rate of interest @ 15% and 18% respectively on their deposits and collected deposits and when the depositors demanded their deposit with interest after the maturity period, A2 and A3 defaulted to repay the deposit amount with interest and upon complaint filed, the Inspector of Police, E.O.W.-II, Erode after investigation, filed final report against the accused for the offences punishable under Sections 409, 420 of I.P.C. and Section 5 of TNPID Act, 1997 before the Special Court under TNPID Act, Chennai which was taken on file and numbered as C.C.No.18 of 2007 and thereafter the case was transferred to the file of the Special Court under TNPID Act,

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Coimbatore and was re-numbered as C.C.No.77 of 2008.

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3. A3 died pending trial. After trial, the case ended in conviction. A1 was imposed with the fine of Rs.1 Lakh under Section 5 of TNPID Act and A2 was directed to pay the fine amount imposed on A1, in default to undergo one year simple imprisonment. A2 was sentenced to undergo three years simple imprisonment and to pay a fine of Rs.1 Lakh in default to undergo one year simple imprisonment. The total fine amount was ordered to be distributed to the victims. The sentences were ordered to run concurrently. The imprisonment already undergone by A2, if any, was ordered to be set off as per Section 428 of Cr.P.C. Challenging the same, the present appeal has been filed.

4.The learned counsel appearing for the appellants submitted that though the appellant suffered punishment of imprisonment, as per Section 5A of the TNPID Act, an offence punishable under Section 5 may, before the institution of the prosecution, be compounded by the Competent authority or after the institution of the prosecution, be compounded by the Competent authority with the permission of the Special Court, on payment of the entire amount due to the depositors



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with or without interest. Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken or continued against the offender, in respect of the offence so compounded and the offender, if in custody, shall be discharged forthwith.

5.The learned counsel appearing for the appellants, on instructions, further submitted that the total amount involved in the complaint is Rs.17,36,500/- and the appellant is ready to deposit the entire amount collected from the depositors with reasonable interest that is to be fixed by this Court, though no interest is required under Section 5A of the TNPID Act. The learned counsel further submitted that A2 has already deposited the total fine amount before the Court below.

6.The learned Additional Public Prosecutor submitted that as per the charge sheet, the total principal amount is Rs.17,36,500/- and this Court may fix a reasonable rate of interest for the amount to be deposited by the appellants in the event of this Court considering the plea of the appellants for compounding the offence.



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7. Heard the learned counsel appearing for the appellants as well as the learned Additional Public Prosecutor.

8. Main thrust is given on behalf of the appellant on Section 5 of the TNPID Act, which speaks about compounding of offence and for better appreciation, Section 5 of The Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 is quoted hereunder:

"5.Default in repayment of deposits and interests honouring the commitment.-

Notwithstanding anything contained in Chapter II, where any Financial Establishment defaults the return of the deposit or defaults the payment of interest on the deposit, or fails to return in any kind, or fails to render service for which the deposit has been made every person responsible for the management of the affairs of the Financial Establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one lakh of rupees and such Financial Establishment is also liable for fine which may extend to one lakh of rupees.

5A.Compounding of offence.- (1) An



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offence punishable under Section 5 may, before the institution of the prosecution, be compounded by the Competent authority or after the institution of the prosecution, be compounded by the Competent authority with the permission of the Special Court, on payment of the entire amount due to the depositors with or without interest.

(2) Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken or continued against the offender, in respect of the offence so compounded and the offender, if in custody, shall be discharged forthwith."

9.Though the appellants are convicted under the TNPID Act by the Special Court under TNPID Act, Coimbatore and they have preferred appeal challenging the same, now the appellants have come forward to deposit the entire amount deposited by the depositors with reasonable interest and seek appropriate orders compounding the offence.

10.As per the above provision, this Court has powers to compound the offence as per Section 5A of the Act. It is to be borne



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in mind that the object of TNPID Act is to see that the innocent depositors are not taken for ride by unscrupulous elements and that the hard earned money of such depositors are realised by the said individuals. Equally, when the persons, who had collected deposits show remorse and is readily and willingly comes forward to pay the amount which they have collected from the depositors, interests of both the depositors and the person who collected the deposits should be seen and, thereafter, the Court could invoke its power under Section 5A of the Act, as punishing the appellants, who had collected deposits alone would not be sufficient as the depositors should be able to realise the fruits of their hard earned labour.

11.In the present case, the appellants have readily come forward, on their own volition, to deposit the amounts collected along with a reasonable interest as this Court may fix, which clearly shows that the appellants have realised their mistake and have shown remorse by readily coming forward to make the deposit of the amounts collected along with reasonable interest.

12.In such circumstances, to render substantial justice to the parties to the *lis*, this Court is of the considered view that the offence



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could be compounded on the appellants depositing the entire sum collected as deposits, to the tune of Rs.17,36,500/- along with interest at 6% p.a. on the principal amount. This Court is also inclined to reduce the fine amount imposed on the appellants from Rs.2 Lakhs to Rs.1 Lakh.

13. Accordingly, the second appellant / A2 is directed to deposit the total principal amount of Rs.17,36,500/- along with interest at the rate of 6% p.a. to the credit of C.C.No.77 of 2008 before the learned Special Judge, Special Court under TNPID Act, Coimbatore, within a period of four weeks from the date of receipt of a copy of this order. The Special Court under TNPID Act, Coimbatore, shall, after verifying the deposit made and the identity of the depositors, disburse the amount to the depositors proportionately, within a period of six weeks thereafter.

14. Since it is represented by the learned counsel appearing for the appellants that A2 has already deposited the total fine amount, the Special Court under TNPID Act, Coimbatore, is directed to retain a sum of Rs.1 Lakh towards fine amount and refund the balance fine amount to the second appellant/ A2.



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15.The conviction and sentence imposed on the appellants/accused vide judgment dated 24.03.2021 made in C.C.No.77 of 2008 by the learned Special Judge, Special Court under TNPID Act, Coimbatore, shall stand compounded on the above terms. The bail bonds, if any, executed by A2, shall stand terminated/ discharged.

16.The criminal appeal is partly allowed.

18.06.2024

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

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M.DHANDAPANI,J.

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