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Crl.A.No.548 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.12.2024

Pronounced on : 18 .12.2024

CORAM

THE HONOURABLE MR.JUSTICE SHAMIM AHMED

Crl.A.No.548 of 2022 &
Crl.M.P.No.17761 of 2024

Murugesan

... Appellant

/vs/

1. State, represented by
the Deputy Superintendent of Police,
Economic Offence Wing-II,
Salem, Crime No.15/2012.
2. Mr.K.Palaniyappan
3. Mr.P.Kanagarajan
4. Mr. Sundaram

(R2 to R4 are impleaded as per order
dated 06.03.2024 in Crl.M.P.No.4084
of 2024 in Crl.A.No.548 of 2022)

... Respondents

Prayer : Criminal Appeal filed under section 374 (1) of Cr.P.C., against the judgment passed in C.C.No.13 of 2014, dated 18.05.2022 convicting the appellant by the Special Judge, Special Court under TNPID Act cases at Coimbatore and to set aside the same.

For Appellant

... Mr.M. Rajasekar

For Respondent

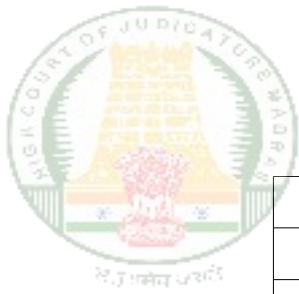
.... Mr. A.Gopinath, Govt.Advocate
(crl.side) for R1
M/s.Anu Ganesan for R2 to R4

**JUDGMENT**

Heard Mr.M. Rajasekhar, learned counsel appearing for the Appellant and Mr.A.Gopinath, learned counsel appearing for the 1st respondent and M/s.Anu Ganesan appearing for the respondents 2 to 4.

2. The instant Criminal Appeal has been filed challenging the conviction and sentence passed in Crl.A.No.548 of 2022, dated 18.05.2022 by the learned Special Judge, Special Court under TNPID Act Cases at Coimbatore. The trial court has convicted and sentenced the Appellant as tabulated hereunder;

<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
A3	Under section 420 and 406 IPC and under section 5 of TNPID Act	A3 on behalf of A1 pavaiamman Finance shall pay the fine of Rs.84,00,000/-, in default, to undergo nine months SI for each offence
A3	U/s.120B r/w.420 IPC	To pay a fine of Rs.1,00,000/- for each counts (fine of Rs.1,00,000 x 28 counts), in total Rs.28,00,000/-
A3	U/s.420 IPD	To undergo seven years imprisonment and to pay a fine of Rs.1,00,000/-, (fine of Rs.1,00,000 x 28 counts), in total Rs.28,00,000/-
A3	U/s.406 IPC	To undergo three years of imprisonment and to pay a fine of Rs.1,00,000/- (Fine of Rs.1,00,000 x 28 counts), in total Rs.28,00,000/-, in default of payment of fine, to undergo



<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
		further nine months SI
A3	U/s.5 of TNPID Act	To pay a fine of Rs.1,00,000/- (Fine of Rs.1,00,000 x 28 counts), in total Rs.28,00,000/-, in default, to undergo further two years SI

3. Aggrieved against the conviction and sentence imposed on the Appellant, the present Criminal Appeal has been preferred.

4. The facts of the case in brief are as follows;

4.1. A total number of 28 innocent depositors have deposited their hard earned money and life's savings for over a decade from 1996 totalling to a sum of Rs.5,09,80,476/- in Sri Paavai Amman Finance and other Financial Establishments which were run and managed by the appellant/accused herein along with one Late Mr.Manickam i.e., A2 in C.C.No.13/2014 under the caption “One in All and All in One” by floating several schemes through their firms promising to pay returns at higher rates of interest.

4.2. It is further submitted that the appellant committed default in settling the depositors' amount due to their conspiracy in widespread diversion and misuse of the depositors' funds. Consequently, a criminal complaint came to be lodged against them by the 2nd respondent herein and other depositors in Crime No.15 of 2012 and the same was registered as



Criminal case in C.C.No.13 of 2014 on the file of the Special Court under the TNPID Act, Coimbatore. The trial court has convicted and sentenced the appellant / A3 as stated above.

4.3. It is further the case that during the pendency of the said case, Mr.Manickam A2 therein died and consequently, charges against him stood abated on 04.10.2016. Challenging the conviction and sentence imposed on him, the appellant/A3 has preferred the present Criminal Appeal.

4.4 The appellant in the present case had settled 15 out of the 28 depositors, with a balance payable to the 13 unsettled depositors for the tune of Rs.4,65,40,736/-.

4.5. It was further submitted that when the case was posted for arguments on 31.07.2024, the appellant voluntarily came forward and undertook to settle the principal amount payable to the 13 unsettled depositors for the tune of Rs.4,65,40,763/- and sought permission of this Court to compound the offences charged against him. Thereafter, by considering the circumstances of the case and after undergoing several rounds of discussions, the depositors entered into an understanding with the Appellant herein and agreed to compound the offences against him upon receiving the principal sum of deposit amounts due to them as detailed out in para 36 of the impugned judgment in pages 27 and 28, without going into the merits, in



order to bring a quietus to the matter.

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4.6. It is further submitted that pursuant to the orders passed by this court and in consonance with the understanding the appellant had deposited the entire sum of Rs.4,65,40,763/- to the credit of the District Revenue Officer (DRO), Salem vide payments made on various dates and the same was reported to this Court. It was also submitted that in the interregnum, upon considering the agony for the unsettled depositors, this Court, vide order dated 04.10.2024 directed to proportionately disburse the amount to the depositors which were lying deposited in the account of the DRO, Salem. In compliance thereof, the DRO, Salem issued summons dated 28.10.2024 to the said depositors.

4.7. It is further submitted that in view of the same and by taking note of the summons issued, this Court, vide order dated 13.11.2024 directed the DRO, Salem to disburse their respective amounts to the unsettled depositors including the legal representatives of the three deceased depositors among the 13, by on or before 22.11.2024 upon receiving the documents as required, other than which are under the court custody.

4.8. It is further submitted that in pursuance thereof, the depositors and the legal representatives of the deceased depositors appeared in person and furnished the relevant documents along with their affidavits to the DRO,



Salem. Subsequently, upon scrutiny, respective amounts due to all 13 unsettled depositors have been credited to the bank accounts of the said depositors/their legal representatives on 22.11.2024 and the same was reported to this Court on 25.11.2024.

5. The learned counsel for the appellant in this regard, has moved an affidavit on behalf of the Appellant Murugesan on 02.12.2024 clearly stating that in paragraph 4 that the details of payment made to the tune of Rs.4,65,40,763/- and it was also submitted that the said amount was also disbursed to all the claimants. As per the understanding entered between the appellant and the respondent Nos.2 to 4 and other claimants for compounding of the offence.

6. It was also stated in paragraph 7 of the aforesaid affidavit dated 02.12.2024 that a sum of Rs.25 lakhs was deposited in pursuance to the order of this Court dated 29.06.2022 in Crl.M.P.No.7206 of 2022. He submits that as the entire amount has been paid to the depositors and no amount is due, thus the amount of Rs.25 lakhs deposited before the trial court may be released in favour of the present appellant namely Murugesan within the time frame of this Court.



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7.M/s.Anu Ganesan, the learned counsel for the respondent Nos.2 to 4 has also filed an affidavit dated 09.12.2024 and in paragraph No.8, it has been clearly stated that the amount has already been credit to the account of all the 13 depositors and the legal representatives on 22.11.2024 to the tune of Rs.4,65,40,763/- by the District Revenue Officer, Salem and she has also filed a detailed affidavit by the depositors separately which is also taken on record and she submits that she and her clients have no objection if the Court compound the offence and acquit the appellant in the present case.

8. Learned Govt. Advocate (crl.side) on behalf of the State has also filed a status report of the competent authority i.e., DRO, Salem and in paragraph No.A details of the payment and the names of 13 claimants along with legal representatives have been stated and it has been also stated that the amount has been paid to them. The said statement is also taken on record. It is from the perusal of the aforesaid documents and the affidavit filed by the parties and the averments made, now the amount as against the appellant has already been paid to all the depositors and no amount is due as the parties have already entered into a compromise and the full principal amount has been paid. Thus, the counsels submits that there is no any justification to keep



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the matter pending any further for argument and as prayed by the learned counsel for the appellant and the counsel for the respondents 2 to 4 as well as the learned Govt. Advocate (crl.side), to compound the offence and set aside the sentence imposed upon the appellant under section 420,406 IPC and section 5 of TNPIC Act in C.C.No.13 of 2014 passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore.

9. Learned counsel for the appellant further submits that on the basis of Change in Circumstances, as the parties have entered into a Memorandum of Compromise and the entire amount due against the appellant was already paid to all the depositors which fact has also been confirmed by the learned counsel for the respondents, thus it was prayed that this court has inherent power to compound the offence under section 5 of TNPID Act, so that the ends of justice could be secured as the object of the Act is primarily compensatory and not punitive.

10. In support of the argument, the learned counsel for the appellant has also placed the judgment of the Coordinate Bench of this Court passed in C.A.No.1231 of 2022 in the case of R.K. Emu Farms Vs. State of Tamilnadu reported in MANU/TN/2520/2024 decided on 4.06.2024.



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11. Heard the learned counsel for the appellant as well as the learned counsel for the respondents 2 to 4 and learned Govt. Advocate (crl.side) appearing for the 1st respondent and perused the materials placed on record.

12. Considering the facts as narrated above, the following question arise for consideration.

'Whether the order passed by the trial court convicting the appellant can be nullified and compounded by the High Court on the basis of terms and conditions entered between the parties'.

13. Before answering the aforesaid question as framed, I shall examine the relevant provision of the Cr.P.C., as well as the Negotiable Instrument Act and TNPID Act regarding compounding of the offence. I may extract Section 320 of Cr.P.C., section 147 of Negotiable Instruments Act and Section 5 of TNPID Act.

Section 320 Cr.P.C. - Compounding of Offences -

1) The offences punishable under the sections of the Indian Penal Code (45 of 1860), specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table -



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2) *The offences punishable under the Sections of the Indian Penal Code (45 of 1860), specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending be compounded by the persons mentioned in the third column of that Table -*

3) *When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.*

4) (a) *When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence.*

(b) *When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court, compound such offence.*

5) *When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or as the case may be, before which the appeal is to be heard.*

6) *A High Court or Court of Session acting in the exercise of its powers of revision under Section 401 may allow any person to compound any offence which such person is competent to compound under this section.*

7) *No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.*



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8) *The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.*

9) *No offence shall be compounded except as provided by this section.*

Section 147 of the Negotiable Instrument Act :'

"Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable."

Section 5 of the TNPID Act says as follows;

'5. Default in repayment of deposits and interest 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 a fine which may extend to one lakh of rupees.

14. That apart from the perusal of the aforesaid documents, and



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affidavit filed by the parties and the application made before this Court, the entire amount has already been paid by the appellant to all the depositors and their representatives and no amount is due to the parties and the parties have entered into a compromise outside the court. This court also do not find any justification in keeping the matter pending any further. This Court also considered the request made by the learned counsel for the appellant, learned counsel for the respondents 2 to 4 and the learned Govt. Advocate (crl.side) appearing for the 1st respondent stating to compound the offence and set aside the sentence imposed upon the appellant under section 420, 406 IPC and section 5 of TNPID Act in C.C.No.13 of 2014 passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore appears to be genuine and justified.

15. It is well settled that inherent power of the Court can be exercised only when no other remedy is available to the litigants and nor a specific remedy as provided by the statute. It is also well settled that if an effective, alternative remedy is available, the High Court will not exercise its inherent power, especially when the appellant may not have availed of that remedy. The power can be exercised by the High Court to secure the ends of justice, prevent abuse of the process of any court and to make such orders as may be



necessary to give effect to any order under this Code or Act, depending upon the facts of the given case. This Court can always take note of any miscarriage of justice and prevent the same by exercising its power. These powers are neither limited, nor curtailed by any other provision of the Code or Act. However, such inherent powers are to be exercised sparingly and with caution

16. In the instant case, it is true that the appeal was dismissed and the appellant was convicted and sentenced as stated above, but it cannot be lost sight of the fact that this Court has power to intervene in exercise of its power only with a view to do the substantial justice or to avoid a miscarriage and the spirit of compromise arrived at between the parties. This is perfectly justified and legal too.

17. I have considered the argument and judgments cited by the learned counsel for the appellant as well as by the learned Counsel for the State and other decisions of the Hon'ble Apex Court and I do not think it necessary to enlist those decisions which are taken into consideration for the purpose of the present proceedings.



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18. In the instant case, the appellant is invoking the inherent power of this court after dismissal of the appeal. In these circumstances, I have to examine as to whether for entertaining the aforesaid case, any special circumstances are made out or not, so it can be legitimately argued and inferred and held that in all cases where the appellant is able to satisfy this Court that there are special circumstances which can be clearly spelt out subsequent proceeding invoking inherent power of this court can be modified and cannot be thrown away on that technical argument as to its sustainability once the contesting parties entered into subsequent compromise.

19. In the case of *Krishan Vs. Krishnaveni*, reported in (1997) 4 SCC 241, Hon'ble the Apex Court has held that though the inherent power of the High Court is very wide, yet the same must be exercised sparingly and cautiously particularly in a case where the applicant is shown to have already invoked the revisional jurisdiction under section 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may in its discretion prevent the abuse of process or miscarriage of justice by exercising its power.

20. In the case of **S.W. Palankattkar & others Vs. State of Bihar**,



2002 (44) ACC 168, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

21. For adjudicating the instant case, the facts as stated hereinabove are very relevant. Here, the appellant has attempted to invoke the jurisdiction of this court.

22. I am not in agreement that when the adjudication of a criminal offence has reached to the state of appellate level, there cannot be any compromise without permission of the court in all case including the offence punishable under 'TNPID Act' can be compounded only if High Court or Court of Sessions grants permission for such purpose. The Court presently, concerned with an offence punishable under 'TNPID Act'.

23. It is evident that the permissibility of the compounding of an offence is linked to the perceived seriousness of the offence and the nature of



the remedy provided. On this point I can refer to the following extracts from an academic commentary [Cited from : K.N.C. Pillai, R.V. Kelkar's Criminal Procedure, 5th Edition :

"17.2 - compounding of offences – A crime is essentially a wrong against the society and the State. Therefore, any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognize some of them as compoundable offences and some others as compoundable only with the permission of the court..."

24. The expression 'special law' means a provision of law, which is not applicable generally but which applies to a particular or specific subject or class of subjects. Section 41 of Indian Penal Code stands on the same footing and defines the phrase special law. In this connection I would like to quote the well accepted proposition of law emerging from various observations made by the Hon'ble Apex Court in different decisions as a gist of the principle and it can be summarised as under:

"When a special law or a statute is applicable to a particular subject, then the same would prevail over a general law with regard to the very subject, is the accepted principle in the field of interpretation of statute."



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25. In view of the aforesaid discussion, the parties, in reference to offence referred above are at liberty to compound the matter at any stage.

The complainant i.e. the person or persons affected can pray to the court that the accused, on compounding of the offence may be released by invoking inherent jurisdiction of this Court.

26. Generally, the powers available would not have been exercised when a statutory remedy under the law is available, however, considering the peculiar set of facts and circumstances it would not be in the interest of justice to relegate the parties to the court. Additionally when both the parties have invoked the jurisdiction of this Court and there is no bar on exercise of powers and the inherent powers of this court can always be invoked for imparting justice and bringing a quietus to the issue between the parties.

27. In view of the affidavit exchanged between the parties and in view of the observation made in the judgment referred and taking into account the fact that the parties have settled the disputes amicably by way of compromise and the entire amount has been paid by the appellant to the respondents/depositors and no amount is due, this Court is of the view that compounding of the offence is required to be permitted.



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28. Accordingly, the present appeal is allowed on the basis of the compromise arrived at between the parties to this litigation out of Court. The impugned conviction and sentence passed in C.C.No.13 of 2014 under section 420, 406 IPC and Section 5 of TNPID Act passed by the Special Judge, Special Court under TNPID Act, Coimbatore is hereby modified. The conviction and sentence stands **annulled** as this court intends, otherwise to secure the ends of justice. The appellant shall be treated as **acquitted** on account of compounding of the offence with the complainant/person affected.

29. While allowing the present appeal, the learned counsel for the appellant submits that a sum of Rs.25,00,000/- was deposited in pursuance to the order passed by this Court dated 29.06.2022 in Crl.M.P.No.7206 of 2022. The said amount be returned to the appellant namely Mr.Murugesan by the trial court as the entire amount has already been paid to the respondents/depositors. In view of the above, the trial court is directed to refund the amount of Rs.25 lakhs deposited by the appellant in pursuance of the order of this Court dated 29.06.2022 passed in Crl.M.P.No.706 of 2022 within a period of three weeks from the date of receipt of a certified copy of this order along with appropriate application.



30. Office is directed to communicate this order to the learned trial court concerned immediately.

31. In the result,

- The Criminal Appeal is allowed. Crl.M.P.No.17761 of 2024 stands ordered.
- The impugned conviction and sentence passed in C.C.No.13 of 2014 dated 18.05.2022 by the learned Special Judge, Special Court under TNPID Act Cases, Coimbatore is hereby **modified**.
- The conviction and sentence imposed on the appellant by the court below stands **annulled**.
- The appellant shall be treated as **acquitted** on account of compounding of the offence with the complainants/respondents.
- The trial Court is directed to refund the amount of Rs.25 lakhs deposited by the appellant in pursuance of the order of this court dated 29.06.2022 passed in Crl.M.P.No.7206 of 2022 already deposited by the appellant in C.C.No13 of 2014 within a period of three weeks from the date of receipt of a certified copy of this order to the appellant – Murugesan, son of Palanivel Gounder.



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Index:yes

Internet: yes

To

1. The Special Judge,
Special Court under TNPID Act cases, Coimbatore.
2. The Public Prosecutor,
High Court, Madras.

SHAMIM AHMED, J.

msr

PREDELIVERY JUDGMENT MADE IN

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