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Crl.O.P.Nos.13257 and 13260 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2024

CORAM

THE HONOURABLE MR.JUSTICE Dr.G.JAYACHANDRAN

Crl.O.P.Nos.13257 & 13260 of 2024
and Crl.M.P.Nos.8065 & 8066 of 2024

1.Ellappan Lingava Naidu
2.Selvarajan Muthusamy

... Petitioners in
both the Crl.O.P's.

Vs.

1.State represented by DSP
EOW, Coimbatore.
2.Sri Vari Finance
3.Sri Balaji Chit Funds
4.Sri Vari Chit Funds Pvt. Limited
5.Gurusamy
6.Padmavathi
7.Aravidhbabu
8.Devaraj

... Respondents in
both the Crl.O.P's.

Common Prayer: Criminal Original Petitions have been filed under Section 482 of Criminal Procedure Code to quash the order dated 02.04.2024 passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore in Crl.M.P.Nos.49 and 50 of 2024 in C.C.No.4/2017.



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In both the Crl.O.P's.:

For Petitioners : Mr.Swami Subramanian
For Respondents : Mr.S.Udaya Kumar
Govt. Advocate (Crl. Side) for R1
Mr.K.R.Sankaran for RR 5, 6 and 7
Mr.S.Nagarajan for R8

COMMON ORDER

The case of financial fraud attracting offences under the Prize Chits and Money Circulation Scheme (Banning) Act 1978 and the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 has been taken on file under C.C.No.4/2017 on the file of the Special Court under TNPID Act, Coimbatore.

2. When the matter was posted for arguments, prosecution has taken out applications under Section 311 Cr.P.C., to recall the P.W's.2, 5, 69, 75, D.W's.1 and 2. In the petitions, it has been stated that certain documents quoted during the course of investigation could not be placed along with the final report and only during the cross examination of the witnesses and on elucidation of certain facts it would be revealed. Therefore, the



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prosecution has thought it fit that they must be recalled and 11 documents mentioned in the petitions have to be marked. The said applications strongly opposed by the accused persons and the trial Court after going through the track record of the case have dismissed the petitions as devoid of merits.

3. Being aggrieved, strangely the witnesses P.W.2 and 5 have filed these petitions stating that recalling them for further examination is necessary to introduce certain documents.

4. As far as the counsels appearing on behalf of the respondents / accused would contend that it is an attempt on behalf of the prosecution to fill up the lacunae, that too end of the trial. When the matter was posted for arguments, the prosecution has filed the applications and no evidence could be seen from the averments made in the petitions filed under Section 311 of Cr.P.C.,.

5. Mr.K.R.Sankaran, learned counsel appearing on behalf of the



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respondents 5, 6 and 7 submitted that on 06.02.2023, the prosecution completed their examination of witnesses and closed their side. Thereafter incriminating evidences against the accused were put to the accused under Section 313 of Cr.P.C., on 14.02.2023. After examination of defence witnesses, matter stands posted on 21.03.2023 and after completion of arguments it was reserved for orders. However, due to change of Presiding Officer, the matter was heard by new Presiding Officer and when the arguments were completed, the petition under Section 311 of Cr.P.C., has filed the applications on 26.12.2023 to recall P.W's.2, 5, 69, 75, D.W's.1 and 2.

6. Taking note of the fact these applications are filed to fill up the lacunae and to drag on the proceedings, in spite of a specific direction by this Court to complete the trial within a specific period, the trial Court has rightly dismissed the application.

7. This Court on considering the submissions and the records found that the order passed by the Trial Court is in consonance with law and



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facts. The Section 311 of Cr.P.C., cannot be exercised at the discretion of the prosecution. The Judge who considers the application under Section 311 of Cr.P.C., should satisfy whether recall of witnesses necessary to arrive at a just decision. At the same time, Court should sparingly exercise the power to proven abuse of process and attempt to fill up the lacunae in this case, this Court finds that the belated attempt to recall witnesses and introduce documents when the matter was in the midst of arguments clearly indicates that it is an attempt to fill up the lacunae and introduce documents, which ultimately in possession of the prosecution even before filing the final report.

8. Hence the petition to quash the order dated 02.04.2024 passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore in CrI.M.P.Nos.49 and 50 of 2024 in C.C.No.4/2017 is dismissed as devoid of merits. Consequently, the connected miscellaneous petitions are closed.

11.07.2024



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Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

Neutral citation: Yes/No

To

1. Deputy Superintendent of Police
EOW, Coimbatore.

2. The Public Prosecutor,
High Court, Madras.



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Dr.G.JAYACHANDRAN, J.

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