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Crl.M.P.No.15804 of 2023
in Crl.A.No.823 of 2023

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M.NIRMAL KUMAR, J.

This criminal miscellaneous petition is filed to suspend the sentence imposed on the petitioner by the learned Special Judge, Special Court under TNPID Act, Coimbatore in C.C.No.3 of 2017 dated 03.09.2021 and enlarge the petitioner pending appeal.

2.The petitioner was convicted by the trial Court for the offence under Section 5 of TNPID Act and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,00,000/- for each counts [1,00,000 x 40 counts], in total Rs.40,00,000/-, in default, to undergo two years rigorous imprisonment.

3.The contention of the learned counsel for the petitioner is that the Trial Court placed reliance on the evidence of PW1 to PW39, the depositors and the deposit receipts. She would submit that the deposit receipts does not fulfill Section 2 of the TNPID Act. In the deposit receipt, there is no date,



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year, signature and witness. The document is also an unregistered one.

Further, none of the depositors state as to how the deposits were made, where it was made by RTGS or cash or Demand Draft or any bank transfer. In such circumstances, the evidence of depositors cannot be considered. In this case FIR was registered in the year 2014 but some of the depositors state that in the year 2012 they received cheques from the accused which was deposited, got dishonoured, no steps were taken under Negotiable Instruments Act but two years later, they joined the other depositors and case under TNPID Act registered which is not proper. Further, the number of depositors is also not clear, in one place it is shown as 41 depositors, in another place it is 40, in yet another place it is shown as 39 and the Trial Court had not come to a conclusion as to how many depositors actually deposited. She would further submit that it is a scheme wherein Emu birds, feed, cage and other things were given to the depositors but the respondent police failed to seize any Emu bird, feed or cage and produced in the Court. Hence, whether at all deposits were received in the name of Emu bird is doubtful. She further submitted that in this case trial was conducted by a Special Judge under warrant procedure and to be construed as a Magistrate,



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when the Magistrate has got power to convict only for three years and impose fine, the conviction for ten years and Rs.40 lakhs fine is improper.

Further, in this case during the judgment neither the accused nor his counsel appeared, in such circumstances rendering the judgment of conviction is not proper. She further submitted that PW40 is the owner of the property in which A1 Company was functioning but PW40 had not produced any rental agreement or proof to show that A1 Company was functioning in the said premises.

4.The learned Additional Public Prosecutor filed his counter and submitted that on the complaint of one Rajamani, a case in Crime No.04/2014 for the offence under Sections 406, 420 IPC and Section 5 of TNPID Act was registered against the petitioner firm Sri Kuberan Emu Farms/A1 and its proprietor AG.Kumar/A2. In the complaint, it is stated that based on the advertisement, the complainant visited A1 Company, enquired about the various schemes and its benefits. Believing the promise of the accused, the complainant deposited a sum of Rs.1,50,000/- in particular scheme. On receiving the amount, the accused made an



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agreement with the complainant but he did not maintain his promise. Hence, the complainant went to the office of the accused and demanded to return his deposit, for which, the accused issued a cheque. But when the cheque was presented for encashment, it was returned with an endorsement “Funds Insufficient”. Thereafter, case was investigated, final report filed and the Special Court under TNPID Act took cognizance of the case in C.C.No.3 of 2017. the accused cheated 41 depositors and misappropriated the amount to the tune of Rs.61,51,000/-. Before the Trial Court, PW1 to PW43 examined and Ex.P1 to Ex.P147 marked on the side of the prosecution and DW1 examined and no documents marked on the side of the defence. The Trial Court considering all the aspects and finding that the evidences are natural, clear, cogent, trustworthy, had convicted the accused as stated above. Hence, he prayed for dismissal of the petition.

5.Considering the submissions made and on perusal of the materials, it is seen that the petitioner cheated 39 depositors to the tune of Rs.40 lakhs. The depositors have clearly stated in the evidence about the deposit amount. The Trial Court on the evidence of the witnesses, namely, the



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depositors/PW1 to PW39 and the owner of the property/PW40 and ExP1 to Ex.P147 had rightly convicted the petitioner. Further, the points raised by the petitioner can be decided at the time of final hearing and it is not a fit case to entertain suspension of sentence. Hence, this Court is not inclined to grant suspension of sentence.

6. Accordingly, this Criminal Miscellaneous Petition stands dismissed.

12.03.2024

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