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Crl.R.C.No.1736 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1736 of 2024

and

Crl.M.P.Nos.14275 & 14277 of 2024

1.M/s.Baby Emu Farms India Pvt. Ltd.,
1/7 – 16B, Oor Gounder Theru,
Nangavalli Main Road,
Kunjandiyur – Gonur Post,
Mettur Taluk, Salem District – 636 404.
Rep by its Managing Director
S.Thangadurai and T.Baby (Director)

2.S.Thangadurai

3.T.Baby

... Petitioners/Accused

Versus

State Rep. by
The Inspector of Police,
Economic Offence Wing,
EOW-II, Salem District.
Crime No.542 of 2012.

...Respondent/complainant

PRAYER: Criminal Revision Case filed under Sections 438 of Bharatiya
Nagarik Suraksha Sanhita praying to call for the records relating to



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Crl.M.P.No.1792 of 2024 in C.C.No.23 of 2012 on the file of Special Court under TNPID Act, Coimbatore, passed by order dated 30.09.2024 and set aside the same by allowing this Criminal Revision Petition.

For Petitioners : Mr.R.Ravichandran

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This Criminal Revision Petition is filed seeking to set aside the order passed in Crl.M.P.No.1792 of 2024 in C.C.No.23 of 2012 dated 30.09.2024 by the learned Special Judge, Special Court under TNPID Act, Coimbatore.

2.The petitioners/accused in C.C.No.23 of 2012, who are facing trial for offence under Sections 406, 420, 465, 471 r/w 120(B) of I.P.C. and Section 5 of TNPID act, had filed a petition under Section 311 of Cr.P.C. in Crl.M.P.No.1792 of 2024 to recall the witnesses PW1 to PW80. The trial Court, by order dated 30.09.2024, dismissed the petition, against which, the present revision is filed.



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3.The contention of the learned counsel for petitioners is that the petitioners filed Crl.M.P.No.1792 of 2024 seeking to recall PW1 to PW80. In this case, they are the depositors, who received some portion of the deposited amount, which was not questioned to them. Further, he also referred to the sworn statement given by some of the depositors, who state that they received entire deposit amount and their claim was fully settled and these documents were not marked. The statement would show that some of the witnesses examined before the trial Court, thereafter the settlement has been made. These settlement documents and attention to be drawn to the witnesses and the same has to be marked as exhibits. Otherwise the petitioners' right would get defeated and great prejudice would be caused. He further submitted that within 4 days of dismissing the petition, the trial Court in a similar case in C.C.No.7 of 2019, had allowed Section 311 Cr.P.C. petition, whereby allowing 14 witnesses to be examined on payment of batta of Rs.1,000/- each. The same condition may be imposed to the petitioners. The petitioners



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are ready to deposit a sum of Rs.80,000/- (Rs.1,000/- each) to recall the witnesses PW1 to PW80. He further submitted that out of Rs.29,02,29,000/- a huge sum of Rs.9 Crores towards 27.8% of the deposit amount paid to the depositors. Further more, the property worth about Rs.55 crores attached in this case and the offence is compoundable one.

4.The learned Additional Public Prosecutor on the other hand strongly opposed the petitioners' contention stating that the petitioners floated the scheme of investing in Emu birds, wherein they received huge deposits from public by offering huge returns, but failed to repay the amounts to the depositors, hence, the case in Crime No.542 of 2012 registered. The petitioners are A2 and A3. They collected deposits in the name of Baby Emu Farm India Private Limited/A1, the second petitioner is the Managing Director of A1 company and third petitioner is the wife of the second petitioner. After investigation charge sheet filed in C.C.No.23 of 2012. Thereafter, five additional reports filed and now there are totally 2182



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depositors and on behalf of the prosecution, PW1 to PW160 examined.

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Despite sufficient opportunity given to the petitioners, they were filing one petition or other and avoiding and delaying the trial. In this case, now the investigating officers examined as PW158 to PW160, Exs.P1 to P550 marked and the case was closed on the side of prosecution, and the case posted for questioning under Section 313 Cr.P.C.

5.He further submitted that earlier the petitioners moved an application in Crl.M.P.No.726 of 2023 for examination of all the depositors on the pretext of cross examining them claiming that they had given gold coins and also constructed sheds for the Emu birds. The said application was dismissed by the trial Court on 19.02.2024 and thereafter, to further drag on the proceedings this petition has been filed. In this case PW1 to PW59 were examined as early as in the year 2013. PW60 to PW80 examined in the year 2021. The petitioners at the fag end of the trial now filed the present petition to drag on the proceedings. He further submitted that payments to the



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depositors, as projected by the petitioners, were actually paid by the District Revenue Officer to the depositors towards 27.8% of the deposit amount as per the order of this Court and these are the admitted facts. In view of the same, recalling the witnesses for this purpose is not required. As regards the petitioners' contention that subsequent to the examination of the witnesses, the amount was settled, as shown in the typed set, sworn affidavit of certain witnesses, it is seen that apart from depositors, the petitioners are the other signatories. The petitioners can very well produce these documents, if they intend to do so by examining themselves as witness by filing a petition under Section 315 Cr.P.C. and mark documents. Hence, recalling PW1 to PW80 is not required and no prejudice would be caused to the petitioner.

6.Considering the submissions made on either side, it seen that the petitioners' contention that portion of the amount paid to the depositors is not disputed. As regards the petitioners' contention of subsequently paying the entire amount to the depositors and they have sworn affidavit of the



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depositors, the petitioners can very well produce the same by examining themselves as witness in this case or in the manner known to law. In view of the same, no prejudice would be caused to the petitioners. Hence, this Court is not inclined to entertain this petition.

7.Finding that the case is of the year 2012, the trial Court is directed to complete the trial within a period of three months from the date of receipt of a copy of this order. It is also contended by the learned counsel for petitioners that the petitioners' property worth around Rs.55 Crores are lying with the District Revenue Officer (DRO). The trial Court to give equal attention to the attached property to be brought to sale through the DRO and also find out whether the amount can be realised, which would be sufficient for repaying the depositors. In the event of the same, petition under Section 5A of TNPID Act can be entertained.



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8. With the above observations, this Criminal Revision Case is dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

18.10.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

Speaking order/Non-speaking order
rsi

To

1. The The Inspector of Police,
Economic Offence Wing,
EOW-II, Salem District.

2. The Special Judge,
Special Court under TNPID Act,
Coimbatore.

3. The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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