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Crl.R.C.No.163 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.01.2025

PRONOUNCED ON : 05.02.2025

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.163 of 2023
and Crl.M.P.No.1278 of 2023

Geethalakshmi

... Petitioner/A3

Vs.

State Rep. by
The Inspector of Police,
Economic Offence Wing,
Chennai.

... Respondent

Prayer: Criminal Revision Petition filed under Sections 397 and 401 of Code of Criminal Procedure, praying to set aside the order dated 15.09.2022 made in Crl.M.P.No.634 of 2021 in C.C.No.10 of 2020 on the file of the learned Special Judge, under the Tamil Nadu Protection of Interest of Depositors and Financial Establishment Act, 1997, Chennai.

For Petitioner : Mr.V.C.Janardhanan
for Mr.R.Chavan

For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl. Side)

ORDER

The Criminal Revision challenges the dismissal of the petition in



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Crl.M.P.No.634 of 2021, filed by the petitioner/A3, under Section 239 of

Cr.P.C., seeking discharge from the case in C.C.No.10 of 2020 by the learned Special Judge, under the Tamil Nadu Protection of Interest of Depositors and Financial Establishment Act, 1997, Chennai, vide order dated 15.09.2022.

2. It is the case of the prosecution that the petitioner/A3 along with her husband was running an entity called 'Om Sakthi Chit Fund' and received deposits from 77 depositors to the tune of Rs.2,50,15,900/- and defaulted in repayment of chit amount and thereby, committed the offence under Section 5 of the TNPID Act. The petitioner/A3, sought for discharge before the trial Court on various grounds, which was dismissed by the order dated 15.09.2022, against which the present revision has been filed.

3.(i) Mr.V.C.Janardhanan, the learned counsel for the petitioner submitted that the prosecution had stated that the 1st accused was not registered either before the Registrar of Companies or Registrar of Chit Fund; that it has referred to the 1st accused as a partnership firm, without any basis; and that therefore, the allegation that the petitioner was in-



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charge and responsible for the conduct of the business of the 1st accused,
is not legally sustainable.

(ii) The learned counsel further submitted that since the prosecution had failed to establish that the 1st accused is a partnership firm, the question of vicarious liability of the petitioner would not arise; that if there is no vicarious liability on the petitioner, the *overt act* of the petitioner has to be assessed independently; and that the allegation against the petitioner is that she had collected deposits on behalf of the 1st accused which were deposited in the account maintained by the 2nd accused.

(iii) The learned counsel for the petitioner relied upon the judgment of this Court in *Tmt.Prasannadevi v. State of Tamil Nadu*, reported in **2009 (3) MWN (Cr.) 32**, in support of the submission that where a person is not a partner in a financial institution and happens to be a wife of the main accused, she cannot be prosecuted only because, she had assisted her husband in canvassing deposits.

(iv) The learned counsel therefore, submitted that there is no prima facie case against the petitioner to direct her to face the trial.



WEB COPY (v) The learned counsel for the petitioner further submitted that there is nothing on record to show that the petitioner had signed any documents relating to any of the 1st accused entity, in order to establish that she also participated in the collection of deposits.

(vi) The learned counsel further submitted that in the event of this Court disagreeing with the view taken in *Prasannadevi's case* [cited supra], this Court may refer the issue to a larger Bench.

4 (i) Mr.S.Udaya Kumar, the learned Government Advocate (Cri. Side) *per contra* submitted that the final report shows that the petitioner is a partner of the 1st accused entity; and that both the petitioner and her husband received deposits to the tune of Rs.2,50,15,900/- and therefore, a *prima facie* case is made out and in any case, there is grave suspicion against the petitioner and pointed out to Section 161 Cr.P.C., statements of one Sathish Kumar and one Mahendra Kumar, to show that the petitioner is also involved in the offence.

(ii) The learned Government Advocate (Crl.Side) relied on the



judgment in *New Horizon Sugar Mills vs. Government of Pondicherry*,

reported in **2012 (10) SCC 575**, wherein the Hon'ble Supreme Court at paragraph Nos.15 and 16, held as follows:

“15. Mr. Ganguli urged that the Tamil Nadu Act dealt with the protection of deposits made by the public in the financial establishments. Section 2(3) of the said Act defines “financial establishments” not to include a Company registered under the Companies Act, 1956, or a Banking Company as defined under Section 5(c) of the Banking Regulations Act, 1949, (“the 1949 Act”), or a non-banking financial company as defined in clause (f) of Section 45(1) of the Reserve Bank of India Act, 1949. Mr. Ganguli urged that in 2003, Section 2(3) of the Tamil Nadu Act was amended omitting the words “a company registered under the Companies Act, 1956” and inserting the words “a non-banking financial company” as defined in clause (f) of Section 45-I of the Reserve Bank of India Act, 1949, after the words “does not include”. By the same amendment, the words “a company registered under the Companies Act, 1956 ” were introduced into Sub-Section (3) of Section 2. The amended provision now reads as follows :-

“(3) ‘financial establishment’ means an individual, an association of individuals, a firm or a company registered under the [Companies Act, 1956](#) (Central Act 1 of 1956) carrying on the business of receiving deposits under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined in [Section 5 \(c\)](#) of the Banking Regulation Act, 1949 (Central Act 10 of 1949).”

16. Mr. Ganguli urged that in contrast, the Pondicherry Act defined the expression “financial establishment” in Section 2(d) to mean :-



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“.... Any person or group of individuals or a firm carrying on business of accepting deposits under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by the Government, any State Government or the Central Government, or a banking company as defined under Section 5 of the Banking Regulation Act, 1949.”

5. Considered the rival submissions made by the learned counsel on either side and perused the materials available on record.

6. It is not in dispute that the 1st accused is not a company. In the final report, it is stated that A2, the husband of the petitioner and the petitioner were responsible for the management of the affairs of the 1st accused. The respondent during the course of the investigation ought to have ascertained as to whether the 1st accused is a legal entity. Be that as it may. Even assuming that a chit fund was run in the name of 'Om Sakthi Chit Fund' and the prosecution has not produced materials to show that it is a partnership firm, the petitioner and her husband cannot be absolved of the offence at this stage for that reason alone.

7. It is the case of the petitioner that she was only a housewife and that the materials collected by the respondent at best reveal that she had



assisted A2, her husband in collecting deposits and relied upon the judgment of this Court in ***Prasannadevi's case*** [cited supra], wherein this

Court had held as follows:

“12. The fact remains that the petitioner was not a partner of the partnership firm charged in this case under [section 5](#) of the TNPID Act. The only allegation levelled by the witnesses examined on the side of the prosecuting agency is that the petitioner canvassed for deposits for the financial institution. To invoke the penal provision under [section 5](#) of the TNPID Act, one should shoulder the responsibility of managing the affairs of the financial firm or company. I find that the provision under [section 5](#) of the TNPID Act has been drafted very carefully. A person who merely manages the affairs of a firm or a company viz., Clerks, Accountants, Office Assistants, who are just paid servants would not be responsible for the management in the sense that they are not answerable to the claim made against the financial firm. In other words, a person, who simply manages the affairs of a firm, cannot be said to have taken the responsibility of answering the allegation of mis-management of the affairs of the firm. The Clerks, Accountants and Office Assistants come under the said category. They have been given a role to manage the affairs of the partnership firm, but, they are not responsible for the mis-management of the firm when the same is under challenge by a third party. All the persons who manage the affairs of the financial institution need not necessarily be responsible for the management of the affairs of the institution. What is required under [section 5](#) of the TNPID Act is that the person charged should have been responsible for the management of the affairs of the institution. The persons who simply manages the affairs of the financial institution as paid servant fall out the ambit and scope of the aforesaid provision of law.



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13. The canvassing agents, as such, cannot be held responsible for the management of the affairs of the firm. A canvassing agent may contribute his mite by mobilising funds for the financial firm on contract basis for payment of brokerage or service charges. But, by no stretch of imagination, we can say that such a person shoulders the responsibility of the management of the affairs of the firm. A canvassing agent gives a rosy picture about the firm to mobilise the deposit. It is only the depositors who shall verify the veracity of such embellished version regarding the performance of a firm and the financial soundness thereof with the person who is responsible for the management of the firm and offer his deposit.

14. Sometimes, all family members, who have nothing to do with the financial bungling of the institution are roped in on the mere allegation that they started canvassing for deposit for the financial institution. Such a practice should be stopped forthwith as otherwise innocent victims just because they happened to be the relatives of the mis-managed financial institution would be roped in and they have to undergo the ordeal of criminal trial.

15. In view of the above facts and circumstances, the court having deprecated the practice of implicating the innocent relatives of the persons who are responsible for the management of the affairs of the firm, it is held that the Clerks, Accountants and Office Assistants who are working in the financial institution as well as the canvassing agents shall not be prosecuted for the offence under [section 5](#) of the TNPID Act as they do not shoulder the responsibility for the management or mis-management of the affairs of the firm or company. The Trial Court has improperly dismissed the plea of the petitioner for discharge on the ground that there are allegations in the statements recorded by the investigating agency from the witnesses that the petitioner did canvass for the deposit for the financial institution.



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16. Therefore, the order passed by the the Special Judge, Chennai under [TNPID Act, 1997](#) stands set aside and the petitioner is discharged from the criminal proceedings in C.C.No.47 of 2006 and as a consequence, the criminal revision case stands allowed. The connected Miscellaneous Petition stands closed.”

8. In that case, the wife of A2 was sought to be implicated, although she had nothing to do with the financial establishment since she had assisted the financial establishment in canvassing for mobilising deposits. Further, the accused therein was not a partner of the partnership firm. Therefore, this Court had discharged the accused on the ground that canvassing agents cannot be held responsible for the management of the aforesaid firm and that family members who had nothing to do with the financial establishment should not be roped in on the mere allegation that they also canvassed for deposits for the financial institution.

9. However, in the facts and circumstances of this case, it is seen that both the petitioner and her husband were conducting the day-to-day transactions of the 1st accused and even assuming that the 1st accused is not a legal entity, the allegation is that both of them had collected the



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deposits jointly and not repaid the same. The statements of the witnesses by name, Mahendra Kumar and Satish Kumar, would show that both the petitioner and her husband were involved in the collection of the deposits and failed to repay the deposits and when the depositors tried to contact the petitioner and her husband, both of them switched off their phones and closed the financial establishment and absconded. Further, the witness Satish Kumar would also state that a sum of Rs.17,750/- was also transferred to the account of the petitioner. Hence, the above judgment relied upon by the learned counsel for the petitioner would not be applicable to the facts of the instant case.

10. Therefore, this Court is of the view that there is grave suspicion against the petitioner and this Court at this stage cannot hold that the witnesses cannot be believed. It is well settled that at the stage of charge framing, grave suspicion is sufficient to frame the charges. The probative value, the veracity and the effect of the evidence cannot be gone into at that stage. The probable defence of the accused on facts can only be decided in the trial.

11. However, it is made clear that the petitioner can raise all the



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above points before the trial Court and it is needless to say that the trial Court shall consider the same without being influenced by any of the observations made in this order.

12. Considering the fact that the petitioner is a lady, the personal appearance of the petitioner before the trial Court is dispensed with, unless it is required by the learned Judge for the progress of the Trial. The petitioner shall file an affidavit of undertaking before the trial Court that she will not dispute her identity and that the counsel named by her in the affidavit will cross examine the prosecution witness.

13. With the above observation, the Criminal Revision Case is dismissed. Consequently, the connected Criminal Miscellaneous Petition is closed.

05.02.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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SUNDER MOHAN, J.

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To

1. The Special Judge,
under the Tamil Nadu Protection of Interest
of Depositors and Financial Establishment Act, 1997,
Chennai.
2. The Inspector of Police,
Economic Offence Wing,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

Pre-delivery order in
Crl.R.C.No.163 of 2023

05.02.2025