



Crl.A.No.223 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.08.2025

PRONOUNCED ON : 13.08.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.223 of 2023
and Crl.M.P.No.3160 of 2023

1. M/s.Raja Emu Farms India (Pvt) Ltd.,
P.N.Complex, Chennimalai Road,
Kangeyan Taluk,
Tiruppur District,
rep. by A4.

2. Tamizh Emu Farms Indian (Pvt) Lt.,
D.No.286-A, P.N.Complex,
Chennimalai Road,
Kangeyam Taluk,
Tiruppur District.
Rep. by A3.

3. C.Tamil Prabhu
4. S.Rajasekar

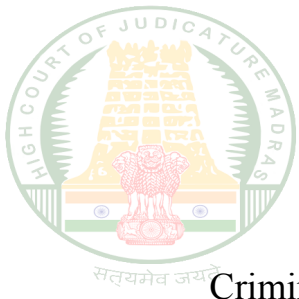
... Appellants

Versus

The State rep. by
The Deputy Superintendent of Police,
Economic Offences Wing-II,
Coimbatore.
Crime No.7 of 2012

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of



Crl.A.No.223 of 2023

Criminal Procedure praying to take this file an appeal call for records relating to judgment in C.C.No.12 of 2013 dated 30.06.2022 on the file of the Special Judge, Special Court under the Tamil Nadu Protection of Interests of Depositors Act Cases, Coimbatore, and set aside the same and acquit the appellant from all charges framed against him.

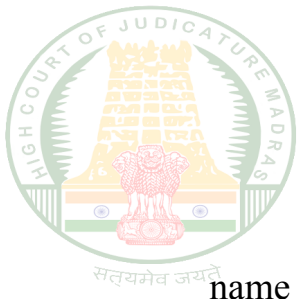
For Appellants : Mr.G.Murugendiran

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been preferred as against the judgment dated 30.06.2022 passed by the learned Special Judge, Special Court under the Tamil Nadu Protection of Interests of Depositors Act Cases, Coimbatore, in C.C.No.12 of 2013, thereby convicting the appellants for the offences punishable under Sections 120B r/w. 420, 406 & 420 of IPC and Section 5 of the Tamil Nadu Protection of Interests of Depositors Act (hereinafter referred to as “the TNPID Act”).

2. The case of the prosecution was that the first accused was the company viz., Raja Emu Farms India Private Limited in which, A4 & A6 are the directors of the first accused company. After changing the

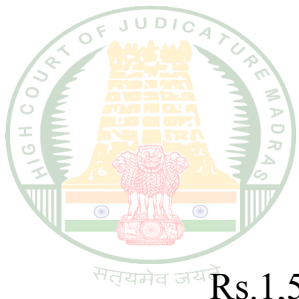


Crl.A.No.223 of 2023

WEB COPY

name as Tamilzh Emu Farms India Private Limited viz., the second accused herein, A3 & A7 were inducted as Directors of the second accused company. All the accused had jointly run the office and actively participated in the day to day affairs of the company with common intention to collect huge amount as deposit from the general public and to cheat them. All the accused conspired together and canvassed their schemes to the general public and received huge sum of deposits during the period between 28.07.2011 to 04.08.2012, by executing agreements and by giving false promise of high returns with ulterior motive to cheat the depositors and swindle the entire deposit collected from the general public under scheme I & II.

3. As per the scheme-I, for one unit amount of Rs.1,50,000/-, the company would supply six number of Emu birds and will provide sheds, foods, free medical check up and free medicines to maintain the Emu birds and will pay sum of Rs.7,000/- for 24 months and Rs.20,000/- as yearly bonus for two years and will refund the deposit amount of Rs.1,50,000/- after the period of maturity and the grown up Emu birds will be taken back. Under scheme-II, for one unit amount of



Crl.A.No.223 of 2023

WEB COPY

Rs.1,50,000/-, the company will maintain the Emu birds in the Emu farms and will pay Rs.7,500/- for 24 months and Rs.25,000/- as early bonus and will refund the deposit of Rs.1,50,000/- after the maturity period of 24 months. They had collected the amount to the tune of Rs.1,20,39,000/- from 72 depositors and thereafter, they committed default in payment of interest as well as principal deposit. They also failed to render any service as promised by them. On the complaint, the respondent registered the FIR in Crime No.7 of 2012 for the offence punishable under Sections 120-B, 406, 420 of IPC and Section 5 of the TNPID Act. After completion of investigation, the respondent filed final report and the same was taken cognizance by the trial Court in C.C.No.12 of 2013 as against seven accused persons.

4. In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.78 and marked documents in Ex.P.1 to Ex.P.243. On the side of the accused, they examined D.W.1 to D.W.3 and marked documents in Ex.D.1 to Ex.D.18. On perusal of the oral and documentary evidences, the trial Court acquitted the accused 5 to 7 from all the charges and found guilty of the accused 2 to 4 for the offences punishable under



Crl.A.No.223 of 2023

Sections 406, 420, 120-B r/w. 420 of IPC and Section 5 of the TNPID
WEB COPY

Act and sentenced A3 & A4 as follows:-

S.No.	Conviction	Sentence
1	Section 120-B r/w.420 of IPC (72 counts)	to undergo rigorous imprisonment for a period of seven (7) years and to pay fine of Rs.15,000/- each for each counts, in default to undergo rigorous imprisonment for further period of one and half (1½) years.
2	Section 420 of IPC (72 counts)	to undergo rigorous imprisonment for a period of seven (7) years and to pay fine of Rs.15,000/- each for each counts, in default to undergo rigorous imprisonment for further period of one and half (1½) years.
3	Section 406 of IPC (72 counts)	to undergo rigorous imprisonment for a period of three (3) years and to pay fine of Rs.15,000/- each for each counts, in default to undergo rigorous imprisonment for further period of one and half (1½) years.
3	Section 5 of TNPID Act (72 counts)	to undergo rigorous imprisonment for a period of ten (10) years and to pay fine of Rs.15,000/- each, for each counts, in default to undergo rigorous imprisonment for further period of two (2) years.

The above sentences are ordered to run concurrently. Further the second
accused company was also sentenced to pay fine of Rs.15,000/- for each
counts in total Rs.32,40,000/- for the offences under Sections 420, 406 of
IPC and Section 5 of TNPID Act and A3 & A4 shall divide the said fine
amount in equal proportion and pay Rs.16,20,000/- each. Aggrieved by

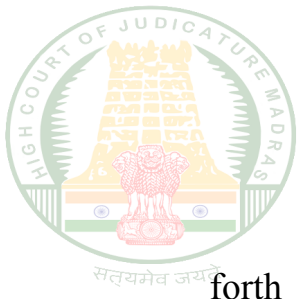


Crl.A.No.223 of 2023

the same, A1 to A4 filed the present appeal.

WEB COPY

5. Though the learned counsel appearing for the appellants raised various grounds, he vehemently contended that the counsel, who appeared on behalf of the appellants before the trial Court, did not cross-examine any of the prosecution witnesses. Further the learned counsel appearing for the appellants did not argue orally and did not submit any written argument. The entire trial was conducted by the trial Court in the absence of the cross-examination of P.W.1 to P.W.78 by the appellants and also without any arguments on their part, the trial Court convicted the appellants. It is clear violation of Article 21 and 39A of the Constitution of India. The provisions under Sections 242(3) and 304 of Cr.P.C., provide rights for an accused before the trial Court when no counsel appears on behalf of the accused. In such cases, the trial Court ought to appoint a counsel from legal aid and also shall appoint *amicus curiae* on behalf of the accused to put forth his defence. Therefore, the order of conviction and sentence imposed by the trial Court cannot be sustained and is liable to be set aside. He sought for the entire matter to be remanded back for fresh trial by giving opportunity to the appellant to put



Crl.A.No.223 of 2023

WEB COPY

forth their evidence. In support of his contention, he relied upon the judgment of this Court and the Hon'ble Supreme Court of India as follows :-

- (i) (2025) 2 SCC 381 – Ashok Vs. State of Uttar Pradesh*
- (ii) Crl.A.No.1664-1665 of 2025 – Ekene Godwin & Anr Vs. State of Tamil Nadu*
- (iii) Crl.A.No.1106 of 2019 – Shankar Vs. The State of Maharashtra*
- (iv) Crl.A.No.750-751 of 2020 – Parveen Vs. State of Harayana*
- (v) (1986) 2 SCC 401 – SUK Das Vs. Union Territory of Pradesh*
- (vi) Crl.R.C.No.70 of 2023 – Kalaivani Vs. State & anr.*

6. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the trial Court categorically recorded the counsel who appeared on behalf of all the A1 to A4 and he was present during the cross-examination of P.W.1 to P.W.78 and there was no cross by A1 to A4. In fact, the learned counsel who appeared on behalf of A5 to A7 filed petition to recall prosecution witnesses and they were duly cross-examined. But though the learned counsel who appeared for the appellants, was very much present before the trial Court, did not file any petition to recall any of the prosecution witness. Further at the



Crl.A.No.223 of 2023

WEB COPY

time of arguments before the trial Court, the counsel who appeared for the appellants was very much present before the trial Court. But he did not offer any oral or written arguments before the trial Court. Therefore, it cannot be said that the appellants were not given opportunity before the trial Court and there is no violation of Articles 21 and 39-A of the Constitution of India.

6.1. He further submitted that the appellants are not poor litigants. They collected had huge sum to the tune of Rs.1,20,39,000/- from the general public and had cheated them. That apart, as against the dismissal of the suspension of sentence, the appellants had reached up to the Hon'ble Supreme Court of India and had engaged Senior counsels, incurring huge expenses for the same. When it was being so, the appellants are not entitled to be defended by legal aid counsel. The legal aid counsel are meant for poor and financially weaker section. Further the depositors were examined as prosecution witnesses and they categorically deposed that after collection of their respective deposits under the scheme I & II, the accused persons executed the agreement as per the scheme and also issued receipts. All the agreements and receipts were marked as



Crl.A.No.223 of 2023

WEB COPY

exhibits before the trial Court. Further the accused 5 to 7 were employees of the first accused company and as such the trial Court acquitted them.

Whereas the appellants herein are the companies and directors, who had actively participated in the day to day affairs of the company and they had floated the schemes and collected huge amount from the depositors. Therefore, the trial Court rightly convicted the appellants and there are not entitled for fresh trial on the ground of opportunity.

7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.



Crl.A.No.223 of 2023

WEB COPY

8. It is true that no one can be deprived of the opportunity of cross-examination and making arguments before the trial Court. The provision under Section 242(3) of Cr.P.C., says that the trial Court shall proceed with the trial by examining the witnesses and permitting the accused to cross-examine them even by recalling them. The provision under Section 304 of Cr.P.C., provides legal aid to the accused at State expenses in certain circumstances. It is relevant to extract the provision under Section 304 of Cr.P.C., as follows :-

“ 304 Legal aid to accused at State expense in certain cases:-

(1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government make rule providing for;

(a) the mode of selecting pleaders for defence under Sub-Section (1);

(b) the facilities to be allowed to such pleaders by the Courts;



WEB COPY



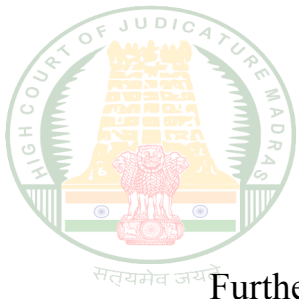
Crl.A.No.223 of 2023

(c) the fee payable to such pleaders by the Government, and generally, for carrying out the purposes of Sub-Section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of Sub-Sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before the Courts of Session.”

Thus it is clear that when the accused has not sufficient means to engage pleader, the Court can appoint pleader from legal aid counsel to represent on behalf of the accused. Therefore, both the provisions are clear that the accused must be given opportunity to cross-examine the prosecution witnesses and if the accused could not able to engage any counsel due to non- availability of sufficient means, the Court can engage the pleader from the legal aid counsel on the expenses of the State.

9. In the case on hand, the appellants are economically sound. In fact, they collected a sum of Rs.1,20,39,000/- from the general public. Therefore, they had sufficient means and hence, the provision under Section 304 of Cr.P.C., is not at all applicable to the appellants herein.

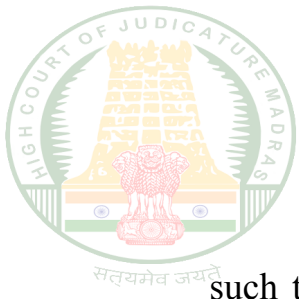


Crl.A.No.223 of 2023

WEB COPY

Further on perusal of the records, it is revealed that the appellants had engaged their counsel one A.Vijayananthan, before the trial Court. He was all along present during the entire trial before the trial Court. On perusal of the chief examination of the prosecution witnesses, it is revealed that the accused did not cross-examine any of the prosecution witnesses. It means that the counsel, who appeared on behalf of the accused did not have any cross-examination over the prosecution witnesses.

10. In fact, the learned counsel who appeared on behalf of the fifth accused subsequently filed petition to recall the prosecution witnesses and had cross-examined them. However, the learned counsel who appeared on behalf of the appellants before the trial Court did not file any application to recall the prosecution witnesses for cross-examination. It means that the appellants had no cross-examination over the prosecution witnesses. At the time of the arguments also, the counsel who appeared on behalf of the appellants was very much present before the trial Court. But he did not submit any oral or written arguments. Therefore, the appellants had no arguments before the trial Court and as



Crl.A.No.223 of 2023

WEB COPY

such their counsel did not have any arguments neither oral nor written.

Hence, it doesn't mean that in the absence of the accused and their counsel the prosecution had examined the witnesses before the trial Court and the accused were not given opportunity to cross-examine the prosecution witnesses, in order to attract the violation under Article 21 & 39-A of the Constitution of India. It is relevant to extract the Article 39-A of the Constitution of India as follows :-

“39A. Equal justice and free legal aid :- The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

Thus, it is clear that the persons by the reason of economic or other disabilities are entitled for free legal aid to have equal opportunities for securing justice.

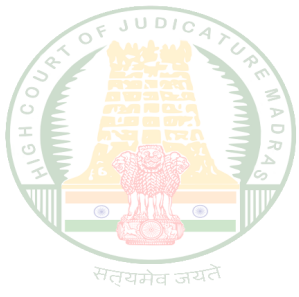
11. As stated supra, in the case on hand, the appellants are economically sound and they would neither come under the category of



Crl.A.No.223 of 2023

WEB COPY

economically weaker section nor do they have any other disabilities. That apart, they engaged an Advocate and he did not cross-examine any of the prosecution witnesses and he also did not argue before the trial Court at the time of arguments. Further, insofar as the other grounds are concerned, all the accused had conspired together and canvassed their schemes to the general public and had received huge sum as deposits. During the period between 28.07.2011 to 04.08.2012, they had collected the amount to the tune of Rs.1,20,39,000/- from 72 depositors by executing agreements and by giving false promise of high returns with ulterior motive to cheat them. Thereafter, they swindled the entire deposit money collected from the general public under scheme I & II. They also failed to render any service as promised by them. All the depositors had deposed before the trial Court and marked their respective agreements executed by the accused and the receipts issued in their favour. Therefore, the prosecution categorically proved the charges for the offences punishable under Sections 120B r/w. 420, 406 & 420 of IPC and Section 5 of the TNPID Act. The trial Court rightly convicted the appellants and this Court finds no infirmity or illegality in the order passed by trial Court and the appeal fails.



Crl.A.No.223 of 2023

WEB COPY

12. Accordingly, the Criminal Appeal stands dismissed.

Consequently, connected miscellaneous petition is closed.

13.08.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

rts

To

1.The Special Judge,
Special Court under TNPID Act Cases,
Coimbatore,

2.The Deputy Superintendent of Police,
Economic Offences Wing-II,
Coimbatore.

3. The Public Prosecutor,
Madras High Court,
Chennai.



WEB COPY



Crl.A.No.223 of 2023

G.K.ILANTHIRAIYAN. J,

rts

Judgment in
Crl.A.No.223 of 2023
and Crl.M.P.No.3160 of 2023

13.08.2025