IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.04.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No.167 of 2021
and
Crl.M.P.Nos.6100 and 13989 of 2023

1.M/s.Asian Emu Farms
Rep. By A2 to A8
S-Block, 11B, Tamilarasi Complex
Kovaipudur, Coimbatore.

2.K. Subramaniam
3.V.U. Sudheesh
4.G. Sivakumar
5.V.O. Francies
6.C. Sivan .. Appellants

Versus

State by The Inspector of Police,
Economic Offences Wing-II,
Coimbatore,
(Crime No.2 of 2014) .. Respondent

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure to call for the records of the case in C.C. No. 17 of 2014 on the file of the learned Special Judge, Special Court under TNPID Act, Coimbatore, set aside the judgment of conviction and sentence dated 11.01.2021 imposed on the Appellants.

For Appellants .. Mr. B. Mohan

For Respondent .. Mrs. G.V. Kasthuri
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal had been filed against the judgment dated 11.01.2021 passed in C.C. No. 17 of 2014 on the file of the learned Special Judge, Special Court under TNPID Act Cases, Coimbatore,

2. The brief facts, which are necessary for the disposal of this Criminal Appeal, are as follows:-

2.1. According to the Inspector of Police, EOW-II, Coimbatore, the Accused No.1 viz., Asian Emu Farms was registered before the Registrar of Firms, Coimbatore under Reg. No.979/2011 on 04.08.2011. They were running their office at S-Block, 11-B, Thamilarasi Complex, Kovaipudur, Coimbatore. Accused-2 to Accused-6 are the partners of Accused-l Financial Establishment as per the Partnership Deed dated 10.07.2011, Accused-7 Paul retired from the said Accused-l firm on 20.08.2011 and one C. Sivan, Accused-8 was newly inducted as partner of the Accused-1 Firm. On 16.11.2011, the Accused-2 to Accused-7 have jointly opened a Current Account No.1294135000001572 with Karur Vysya Bank, Kovaipudur Branch, Coimbatore. The Accused Accused-2 to Accused-8 planned and worked together in a calculative manner and collected deposits from the public with a dishonest intention to cheat the depositors and swindle their deposit amounts. The Accused had induced the general public with the false promises of unrealizable returns and also assured to return the principal amount at the end of the term and collected deposits from them in fraudulent financial operation popularly known as "PONZI SCHEME". Further Accused-2 to Accused-8 canvassed and collected deposit amount under various plans viz.,

(i) Under Plan-1, on deposit amount of Rs.2,00,000/-, the Company would pay an amount of Rs.8,000/- as monthly returns to every month for a period of 24 months and pay an amount of Rs.55,000/- as bonus for two years; they would build a shed in the depositors land and supply 8 Emu Chicks with full insurance coverage; they would supply necessary feed and medical assistance; the depositor has to grow the chicks for a period of 24 months and they would take back the grown up chicks and return the deposit amount to the depositor at the end of 24 months;

(ii) Under Plan-II, on deposit amount of Rs.1,50,000/-, the Company would pay an amount of Rs.6,500/- as monthly returns to every month for a period of 36 months and pay an amount of Rs.45,000/- as bonus for three years; they would build a shed in the depositors land and supply 6 Emu Chicks with full insurance coverage; they would supply necessary feed and medical assistance; the depositor has to grow the chicks for a period of 36 months and they would take back the grown up chicks and return the deposit amount to the depositor at the end of 36 months;

(iii) Under Plan-III, on deposit amount of Rs.1,50,000/-, the Company would pay an amount of Rs.7,000/- as monthly returns to every month for a period of 36 months and pay an amount of Rs.45,000/- as bonus for three years; they would build a shed in the depositors land and supply 6 Emu Chicks with full insurance coverage; they would supply necessary feed and medical assistance; the depositor has to grow the chicks for a period of 36 months and they would take back the grown up chicks and return the deposit amount to the depositor at the end of 36 months;

(iv) Under Plan-IV, on deposit amount of Rs.1,00,000/-, the Company would pay amount of Rs.5,000/- as monthly returns to every month for a period of 60 month; they would build a shed in the depositor's land and supply 4 Emu Chicks with full insurance coverage; they would supply necessary feed and medical assistance; the depositor hat to grow the chicks for a period of 60 months and they would take back the grown up chicks and return the deposit amount to the depositor at the end of 60 months; and

(iv) Under Plan-V, on deposit amount of Rs.50,000/-, the company would pay an amount of Rs.2,000/- as monthly returns to every month for a period of 60 months; they would build a shed in the depositors land and supply 2 Emu Chicks with full insurance coverage; they would supply necessary feed and medical assistance; the depositor has to grow the chicks for a period of 60 months and they would take back the grown up chicks and return the deposit amount to the depositor at the end of 60 months.

2.2. The Accused had given frequent advertisements about the various schemes viz., the above mentioned Plan-I to Plan-V through daily news papers, pamphlets, etc., canvassed and explained their schemes. They have collected Rs.68,46,025/- from 35 depositors (46 counts) with false promise that they would return their money with unrealistic interest, after the maturity period; which they had no intention to return. They have indulged in fraudulent financial operation, converted major portion of the depositors amount for their personal benefits, defaulted in payment of interest as well as principal deposit amount. Even though the accused have paid the assured monthly returns to some of the depositors and gained their confidence, at one-point of time they vanished with the depositors money. Thus the Accused are individually and collectively liable to be punished for the offences punishable under Sections 120(B), 406, 409, 420 of IPC and Section 5 of TNPID Act, 1997.

2.3. Manimekala, Sub Inspector of Police, who received the complaint given by P.W-1 against the Asian Emu Farms/A-1 registered a First Information Report in Crime No.2 of 2014, Ex.P-130 on the file of Economic Offences Wing-II, Coimbatore for the offences under Sections 120(b), 406, 420 of IPC and Section 5 of TNPID Act, 1997. On receipt of Ex.P130, P.W-40

Prem Anand, Inspector of Police, Economic Offences Wing, Coimbatore taken up the case. Later on, PW40 visited the place of occurrence and found the A-l firm was locked. He examined P.W-l and recorded his statement. On 23.01.2014, he arrested the aforesaid Accused viz., Subramani, Sutheesh and Sivakumar at the junction of SBOA School, Muthankulam Road, Coimbatore in the presence of witnesses Manthiriappan and Raju. On such arrest, he recorded the confession statement of said Subramanian and based on his statement, he seized Ex.P-131 Pamphlet and Ex.P-132 Partnership deed of the said farm. Further, in the presence of same witnesses, he examined Accused Sutheesh and Sivakumar and recorded their statements. Based on their statements, he seized copy of agreement entered between Asian Emu Farms and Alpho Emu Farms and also agreement between Asian Emu Farms and Krishnaveni, Venkataprabhu, Velappa Chertiar. He also seized copy of 5 Nos. of agreements entered between Al farm with depositors through seizure mahazar, P.W-36 Manthiriappan deposed regarding the seizure of documents viz., agreements and arrest of the Accused, who signed in the seizure mahazars Ex.P-125 and Ex.P-126. This signature of P.W-36 was marked as Ex.P-124. Further, P.W-40 examined the said witnesses and recorded their statements. Again on 11.02.2014, PW40 examined 34 Nos. of depositors and recorded their statements and obtained receipts and agreements from them.

2.4. In the course of investigation, P.W-40 came to know that the said Asian Emu Farms was registered under District Registrar, Coimbatore vide Registration No.979/2011 dated 04.08.2011, which consists 1. S. Sivakumar, 2. Sutheesh, 3. Subramanian, 4. G. Sivakumar, 5. Francis, 6. P. Paul and 7. C. Sivan as partners. Further, he deposed that Ex.P-133 Registration Certificate along with enclosures reveals that on 10.07.2011, the 7th Accused retired from the service of the said firm and on 20.08.2011 and 8th Accused viz., Sivan was inducted as partner in the said firm. P.W-40 examined one Pongodi, District Registrar (Company) and recorded her statement. Further, he examined PW37 Ramesh Prasad and P.W-39 Karthikeyan, the Bank officers of Karur Vysya Bank and Axis Bank respectively, where the Accused have Bank accounts and recorded their statements and obtained Bank statements. Subsequently, due to transfer, the said Prem Anand handed over the file to his successor P.W-41, Latha for further investigation. On 14.08.2014, P.W-41 examined the witness Mathirajan and Alphonsa, recorded their statements and obtained the receipts and agreements. After completing all formalities, she filed the final report for the offence under Sections 120(b), 406, 420 of I.P.C. and Section 5 of the TNPID Act, 1997 against the Accused.

2.5. On receipt of the final report along with the relevant records from the Prosecution, the learned Special Judge, Special Court under TNPID Act cases, Coimbatore took up the case on file as C.C. No. 17 of 2014 against the Accused and summons were issued to them. On appearance of the Accused, copies were furnished to them under Section 207 of Cr.P.C. After hearing the Special Public Prosecutor and the learned Counsel for the defence, the learned Special Judge framed the charges against the Accused under Sections 120(B), 406, 420 of IPC and Section 5 of TNPID Act, 1997. The Accused denied the charges and claimed to be tried. Therefore, trial was ordered. During trial, the Prosecution examined 41 witnesses as P.W-1 to P.W-41 and marked 133 documents as Ex.P-1 to Ex.P-133.

2.6. The learned Special Judge, Special Court under TNPID Act cases, Coimbatore upon considering the oral and documentary evidence, found the Accused 1 to 6 and 8 guilty and sentenced them as follows:

Accused-1, namely, M/s.Asian Emu Farms to pay fine of Rs.2,000/- for each offences and each counts under Section 420 and 406 of IPC and Section 5 of TNPID Act (Fine of Rs.2,000/- x 3 offences x 35 counts, in total Rs.2,10,000/-). Accused-2 to Accused-6 and Accused-8 shall pay the fine amount equally imposed on the 1st Accused Firm, in default of payment of fine, they should undergo further period of 1 year simple imprisonment for each offences;

Accused-2 to Accused-6 and Accused-8 each to undergo two years rigorous imprisonment and to pay fine of Rs.2,000/- for each counts (Fine of Rs.2,000 x 6 Accused x 35 counts), in total Rs.4,20,000/-, under Sec.120B of I.P.C., in default of payment of fine, to undergo further one year simple imprisonment;

Accused-2 to Accused-6 and Accused-8 each to undergo three years simple imprisonment and to pay fine of Rs.2,000/- for each counts (Fine of Rs.2,000 x 6 Accused x 35 counts), in total Rs.4,20,000/-, under Sec.406 of I.P.C., in default of payment of fine, to undergo further one year simple imprisonment;

Accused-2 to Accused-6 and Accused-8 to undergo three years simple imprisonment and to pay fine of Rs.2,000/- for each counts (Fine of Rs.2,000 x 6 Accused x 35 counts), in total Rs.4,20,000/-, under Sec.420 of I.P.C., in default of payment of fine, to undergo further one year simple imprisonment;

Accused-2 to Accused-6 and Accused-8 to undergo three years simple imprisonment and to pay fine of Rs.2,000/- (Fine of Rs.2,000 x 6 Accused x 35 counts), in total Rs.4,20,000/-, under Sec.5 of T.N.P.I.D. Act, 1997, in default of payment of fine, to undergo further one year simple imprisonment. Total fine amount Rs.18,90,000/-; each Accused to pay Rs.3,15,000/-

Out of the total fine of Rs.18,90,000/-, a sum of Rs.18,00,000/- shall be distributed to the victims P.W-1 to P.W-35 as per their respective dues mentioned in the final report proportionately, after appeal time is completed;

The sentence was ordered to run concurrently. The period of imprisonment already undergone by Accused-2 to Accused-6 and Accused-8, if any, shall be set off as per Section 428 of Cr.P.C. No material object was available for orders;

Accused-7 Paul @ Sajan is not found guilty and he was acquitted under Section 248(1) of Cr.P.C. for the offence under Section 120B, 420 and 406 of IPC and Section 5 of TNPID Act. The bail bond, if any execute by Accused-7 is cancelled.

2.7. Assailing the aforesaid Judgment of conviction and sentence dated 11.01.2021 passed in C.C. No. 17 of 2014, the Accused-1, 2, 4, 5, 6 and 8 have come forward with this Criminal Appeal.

3. The learned Counsel for the Appellants submitted that the learned Special Judge, Special Court for TNPID Act, Coimbatore have convicted the Accused inspite of the settlement of the amount by them to the depositors. Also the learned Counsel for the Appellant invited the attention of this Court to the discussion of the same by the learned Special Judge, Special Court for TNPID Act, Coimbatore to reject their contention by stating that without the involvement of the Competent Authority, the partial selective settlement is not acceptable.

4. Not satisfied with the grounds raised by the learned Counsel for the Appellant in this Appeal, this Court directed the Competent Authority/

District Revenue Officer, Coimbatore to issue summons to all the depositors and record the settlement of all the depositors. So that, based on the said report of the District Revenue Officer, Coimbatore, this Appeal can be disposed off. The case was adjourned from 15.09.2023 to 27.09.2023. Also the Registry was directed to post this case as a specially listed case on 27.09.2023 by 2.15 pm. Accordingly on 27.09.2023, the case came up for hearing as a specially listed case. The Tahsildar attached to the office of the Competent Authority was present in the Court along with the Status report. The Inspector of Police, Economic Offences Wing-II, Coimbatore was also present in the Court along with the CD file. As per the report of the Competent Authority/District Revenue Officer, Coimbatore had recorded the statement of 23 depositors and the details of the same had been furnished by the Competent Authority/District Revenue Officer, Coimbatore as Status Report.

5. The learned Additional Public Prosecutor submits that the depositors namely Nithya, Punithavathy, Shanmugam, Maraiyan, only remains to be settled. It is also submitted that sufficient amount is available with District Revenue Officer, Coimbatore. The status report of the District Revenue Officer, Coimbatore filed before this Court shall be accepted and whatever amount is available has to be proportionally distributed to the

depositors in accordance with the provisions of TNPID Act.

6. As per the Status report furnished by the Competent Authority / District Revenue Officer, Coimbatore, Nithya -P.W.13, Punithavathy - P.W.18, Shanmugam - P.W.27 and Maraiyan P.W.28 has to be settled by the District Revenue Officer, Coimbatore. To meet their claim, Rs.5,86,500/- is available with the District Revenue Officer, Coimbatore. In the light of the above report filed by the Competent Authority/District Revenue Officer, Coimbatore, as per the order of this Court dated 15.09.2023, the District Revenue Officer, Coimbatore is directed to settle the amount to the above 4 depositors and file a report through Additional Public Prosecutor.

7. At this stage, the learned counsel for the appellants submit that the Appellants undertake to settle the remaining depositors as well. The learned Counsel for the Appellants undertook that, if four weeks time is granted, the Appellants will settle the dues to the 8 persons mentioned in the status report of the District Revenue Officer, Coimbatore i.e.,(1) Praburaj, (2) Angammal, (3) Thilagavathi, (4) G.Chinnasamy, (5) Kavitha, (6) Rajamani, (7) R.Vadivel and (8) N.Subramanian.

8. The Competent Authority/ District Revenue Officer, Coimbatore, specified in his report that a person appeared before him is the legal heirs of the deceased/depositor. If any of the depositors is not alive, District Revenue Officer, Coimbatore has ample powers to verify and settle dues to the legal heirs of the concerned deceased depositors by invoking powers under TNPID Act.

9. In continuation of the same, the Additional Public Prosecutor had furnished the status report dated 06.02.2024 of the Competent Authority viz., District Revenue Officer, Coimbatore – Dr. M. Sharmila. As per the status report filed by the District Revenue Officer, Coimbatore, the Competent Authority under the TNPID Act vide Ref. No.5181/2015/I-1, dated 06.02.2024, settled the entire amount to the depositors.

10. As per the judgment of the learned Special Judge, Special Court under TNPID Act Cases, Coimbatore, the Accused himself had settled some amount to a few of the depositors by resorting to a pick and choose method. Therefore, the claim made by the Accused that he had settled the dues to the depositors of the firm was rejected, as it was not done in a fair manner. Therefore, the trial Court convicted the Accused by the judgement dated

11.01.2021 in C.C.No.17 of 2018 for the offences under Sections 120(B), 406, 409, 420 of IPC and Section 5 of TNPID Act, 1997.

11. Pending Appeal, this Court directed the Accused/Appellants to settle the entire dues to all the depositors by depositing the amount with the District Revenue Officer, Coimbatore, who is the Competent Authority under TNPID Act. The District Revenue Officer, Coimbatore as Competent Authority was directed to file a status report regarding entire settlement. As per the report filed on 27.09.2023, only 8 persons remains to be paid the entire dues. The amount was available with the Competent Authority. Therefore time was granted to the Competent Authority to settle the entire dues and report regarding settlement.

12. Accordingly, the District Revenue Officer, Coimbatore, the Competent Authority under the TNPID Act Dr.M.Sharmila in her report vide Ref. No.5181/2015/I-1, dated 06.02.2024, had furnished the details of payment made to the remaining 8 depositors with their names and affidavit to that effect with the proof of their identity. The District Revenue Officer had further stated that the offence alleged against the Accused can be compound under Section 5-A of the TNPID Act, 1997. The status report of the District Revenue Officer,

Coimbatore/Competent Authority filed vide Ref. No.5181/2015/I-1, dated 06.02.2024, is accepted, recorded and taken on file.

In the light of the above discussion, **this Criminal Appeal is allowed.** The judgment of conviction in C.C.No.17 of 2014 on the file of the learned Special Judge, Special Court under TNPID Act Cases, Coimbatore, is set aside by compounding the offences against the appellants under Section 5-A of TNPID Act, 1997. The Appellants/Accused-1, 2, 4, 5, 6 and 8 are acquitted from all the charges. The bail bond executed by the Appellant/Accused-1, 2, 4, 5, 6 and 8 shall stand cancelled.

17.04.2025

Shl
Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order

SATHI KUMAR SUKUMARA KURUP, J.

SRM

To:

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

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

3.The District Revenue Officer,
Competent Authority under TNPID Act,
Coimbatore.

4. The Section Officer,
   Criminal Section,
   High Court of Madras.

5. The Superintendent,
   Central Prison,
   Coimbatore.

6. The Public Prosecutor,
   High Court, Madras.

Judgment made in
Crl.A.No.167 of 2021

17.04.2025