IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.07.2025

PRONOUNCED ON : 25.07.2025

CORAM:

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

Crl.A.Nos.21, 22, 133, 317, 423 of 2023 and
538 & 623 of 2025

Cr.A.No.21 of 2023:-

M.S.Guru @ M.Gurusamy ... Appellant

Vs.

The State rep. by
The Deputy Superintendent of Police,
Economic Offences Wing-II,
Namakkal District.
(Crime No.1/2012) ... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records and to set aside the judgment and sentence dated 22.09.2021 imposed in C.C.No.28 of 2012 passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore.

For Appellant in Crl.A.Nos.21,22,423 of 2023 538 & 623 of 2025 : Mr.R.Vivekananthan

For Appellant in Crl.A.No.133 of 2023 : Mr.G.Murugendran

For Appellants in Crl.A.No.317 of 2023 : Mr.V.M.R.Rajentren

For Respondent in all Crl.As. : Mr.S.Raja Kumar
Additional Public Prosecutor

COMMON JUDGMENT

These appeals have been filed as against the judgments dated 22.09.2021, 30.11.2021, 17.03.2023, 29.01.2025 & 06.06.2025 passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore, in C.C.Nos.28 of 2012, 1 of 2013, 03 of 2013, 16 of 2012 & 29 of 2012 respectively, thereby convicting the appellants for the offences punishable under Sections 120-B r/w 420 & 420 of IPC and Section 5 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 (hereinafter referred to as "the TNPID Act")

CASE OF THE PROSECUTIONS :-

Crl.A.Nos.317 of 2023 & 423 of 2025 :-

These appeals have been filed as against the judgment dated 17.03.2023 passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore, in C.C.No. 3 of 2013, thereby convicting the appellants for the offences punishable under Sections 120-B r/w 420 & 420 of IPC and Section 5 of the TNPID Act.

1.1. There are totally five accused in this case and the appellants in Crl.A.No.317 of 2023 are arrayed as A3 to A5. The appellant in Crl.A.No.423 of 2013 is arrayed as A2. The case of the prosecution is that the first accused M/s. Susi Land Promoters Private Limited, a financial establishment in which, A2 was the Managing Director, A3 was the Director and A4 & A5 were the Managers of the first accused company. A2 to A5 were looking after the day to day management affair as administrators and they canvassed by wide publicity through advertisement in dailies and vernacular magazines to receive deposits.

1.2. Accordingly, they received deposits of Rs.50,000/- as one unit and promised to pay Rs.2,500/- per month as interest for 24 months and also promised to pay a sum of Rs.3,000/- for every six months and at the end of 24 months, the deposit will be refunded or equivalent land will be registered. Under the said plan, A2 to A5 collected deposits in the name of the first accused company to the tune of Rs.88,10,000/- from 45 depositors. Thereafter they failed to return any profit and also failed to return the deposited amount as promised by them. On the complaint lodged by several victims, the respondent registered the FIR in Crime No.20 of 2013 for the offences punishable under Sections 120-B, 406 &

420 of IPC and Section 5 of the TNPID Act. After completion of investigation, they filed final report and the same was taken cognizance by the trial Court in C.C.No.3 of 2013.

1.3. In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.45 and marked documents in Ex.P.1 to Ex.P.185. On the side of the accused, they examined D.W.1 to D.W.4 and marked documents in Ex.D.1 to Ex.29. The Court exhibits were marked as Ex.C.1 & Ex.C.2 and Ex.X1 to Ex.X.3. On perusal of the oral and documentary evidences, the trial Court found all the accused guilty for the offences punishable under Section, 420, 120-B r/w. 420 of IPC and sentenced A2 to A5 as follows:-

S.No.	Conviction	Sentence
1	Section 120-B r/w.420 of IPC (45 counts)	to undergo rigorous imprisonment for a period of seven (7) years and to pay fine of Rs.13,000/- each for each counts, in default to undergo rigorous imprisonment for further period of one and half (1½) years.
2	Section 420 of IPC (45 counts)	to undergo rigorous imprisonment for a period of seven (7) years and to pay fine of Rs.13,000/- 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 (45 counts)	to undergo rigorous imprisonment for a period of ten (10) years and to pay fine of Rs.13,000/- each, for each counts, in default

S.No.	Conviction	Sentence
		to undergo rigorous imprisonment for further period of two (2) years.

Further the first accused company was sentenced to pay fine of Rs.13,000/- for each counts in total Rs.11,70,000/- for two offences under Section 420 of IPC and Section 5 of TNPID Act and A2 to A5 shall pay the said fine amount equally Rs.2,95,500/- each. Aggrieved by the same, the present appeals.

Crl.A.Nos. 22 &133 of 2023 :-

2. These Criminal Appeals have been filed as against the judgment dated 30.01.2021 passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore, in C.C.No.1 of 2013, thereby convicting the appellants for the offences punishable under Sections 120-B r/w 420 & 420 of IPC and Section 5 of the TNPID Act.

2.1. There are totally four accused in which, the appellant in Crl.A.No.22 of 2023 is arrayed as A2 and the appellant in Crl.A.No.133 of 2023 is arrayed as A3. The case of the prosecution was that the first accused was the company and the second accused was the Managing Director of the first accused. The third accused was the Manager of the first accused company, who looks after the day to day administration and financial arrairs of the first accused company. A4 is the wife of the second accused who took active part in the management and day to day affairs of the first accused company. All the accused persons, with common intention had canvassed the general public by giving false promise that they would give higher rate of interest for the deposits made under the various scheme. As per the first scheme, if the depositor deposited a sum of Rs.1,50,000/-, it was construed as one unit and the accused promised to supply 10 Emu birds, provide feeds for the Emu birds, erect sheds, provide free medical checkups and further promised a monthly return of Rs.6,000/- for 24 months and a yearly bonus of Rs.20,000/- for two years along with free insurance by the company. After the maturity period of 24 months, the deposit amount of Rs.1,50,000/- will be repaid. Under second scheme viz., VIP Scheme, if the depositor deposited a sum of Rs.1,50,000/- it will be construed as one unit and they would allot 10 Emu birds to the depositor and a maintain the emu birds in their farms on behalf of the depositors and a monthly return of Rs.7,000/- for 24 months will be paid along with a sum of Rs.30,000/- as yearly bonus for two years and after the maturity period of 24 months, the entire deposit amount will be repaid.

2.2. Accordingly, from 01.07.2011 to 14.09.2012, all the accused persons conspired together and through frequent advertisements for both the schemes, canvassed and explained to the depositors, thereby collecting a sum of Rs.1,02,07,500/- from 37 depositors. Thereafter, they failed to comply their promise and failed to return the deposits. On the complaint from several depositors, the respondent registered the FIR in Crime No.14 of 2012 for the offence punishable under Section 120-B, 420 of IPC and Section 5 of the TNPID Act. After completion of investigation, they filed final report and the same was taken cognizance in C.C.No.1 of 2013.

2.3. In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.37 and marked documents in Ex.P.1 to Ex.P.226 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.13. On perusal of the oral and documentary evidences, the trial Court acquitted the fourth accused alone and convicted the A1 to A3 viz., the appellants herein, for the offence punishable under Sections 120-B r/w. 420 & 420 of IPC and Section 5 of the TNPID Act and sentenced them as follows :-

S.No.	Conviction	Sentence
1	Section 120-B r/w.420 of IPC (36 counts)	to undergo rigorous imprisonment for a period of seven (7) years and to pay fine of Rs.25,000/- each for each counts, in default to undergo rigorous imprisonment for further period of one and half (1½) years.
2	Section 420 of IPC (36 counts)	to undergo rigorous imprisonment for a period of seven (7) years and to pay fine of Rs.25,000/- 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 (36 counts)	to undergo rigorous imprisonment for a period of ten (10) years and to pay fine of Rs.25,000/- each, for each counts, in default to undergo rigorous imprisonment for further period of two (2) years.

Further the first accused company was sentenced to pay fine of Rs.25,000/- for each counts in total Rs.18,00,000/- for two offences under Section 420 of IPC and Section 5 of TNPID Act and A2 was sentenced to pay the said fine amount on behalf of A1, in default to undergo further two years rigorous imprisonment. Aggrieved by the same, the present appeals.

Crl.A.No.21 of 2023 :-

3. This Criminal Appeal has been filed as against the judgment dated 22.09.2021 passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore, in C.C.No.28 of 2012, thereby

convicting the appellant for the offences punishable under Sections 120 r/w 420 & 420 of IPC and Section 5 of the TNPID Act.

3.1. There are totally nine accused in which the appellant is arrayed as the second accused. The case of the prosecution was that the first accused was the company and the second accused was the Managing Director of the first accused. The third accused was the General Manager and the fourth accused was the Manager. The accused 5 to 9 were working in the first accused company and were looking after the day to day affairs of the company. All the accused persons conspired together with common intention to cheat the depositors, they had canvassed them individually by giving false promise about various schemes and promised to repay the deposits with bonus. As per scheme-I, a sum of Rs.1,50,000/- was construed as one unit and for that the accused promised to supply six Emu birds, provide feeding for the Emu birds, erect sheds, provide free medical check up and further promised a monthly return of Rs.6,000/- for two years and a yearly bound of Rs.20,000/- for two years along with free insurance by the firm. As per the scheme-II viz., VIP Scheme, the Emu birds would be maintained in their farms on behalf of the depositors and sum of Rs.1,50,000/- was construed as one unit and for the same, they would allot six Emu birds in favour of the depositors and maintain them. They would pay a monthly return of Rs.7,000/- for two years along with a yearly bonus of Rs.30,000/- for two years and after the maturity period of 24 months, the deposit amount will be repaid.

3.2. Accordingly, the accused had collected the sum of Rs.2,39,15,600/- from 96 depositors and thereafter they did not even pay any amount and also failed to return the deposit amount as assured by them. On receipt of several complaints from the depositors, the respondent registered the FIR in Crime No.1 of 2012 for the offences punishable under Section 120-B, 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 in C.C.No.285 of 2012.

3.3. On the side of the prosecution, they had examined P.W.1 to P.W.89 and marked documents in Ex.P.1 to Ex.P.423. On the side of the accused no one was examined and they marked Ex.D.1 to Ex.D.6. On perusal of oral and documentary evidences, the trial Court acquitted the accused Nos.3 to 9 and convicted A1 & A2 for the offence punishable under Sections 120-B r/w.420 & 420 of IPC and Section 5 of the TNPID Act and sentenced as follows :-

S.No.	Conviction	Sentence
1	Section 120-B r/w.420 of IPC (96 counts)	to undergo rigorous imprisonment for a period of seven (7) years and to pay fine of Rs.50,000/- for each counts, in default to undergo rigorous imprisonment for further period of one and half (1½) years.
2	Section 420 of IPC (96 counts)	to undergo rigorous imprisonment for a period of seven (7) years and to pay fine of Rs.50,000/- for each counts, in default to undergo rigorous imprisonment for further period of one and half (1½) years.
3	Section 5 of TNPID Act (96 counts)	to undergo rigorous imprisonment for a period of ten (10) years and to pay fine of Rs.50,000/- for each counts, in default to undergo rigorous imprisonment for further period of two (2) years.

Further the first accused company was sentenced to pay fine of Rs.50,000/- for each counts in total Rs.96,00,000/- for two offences punishable under Section 420 of IPC and Section 5 of TNPID Act and A2 was sentenced to pay the said fine amount on behalf of A1, in default to undergo further two years rigorous imprisonment. Aggrieved by the same, the present appeals.

Crl.A.No.623 of 2025 :-

4. This Criminal Appeal is directed as against the judgment dated 06.05.2025 passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore, in C.C.No.29 of 2012, thereby convicting the appellants for the offences punishable under Sections 420 & 406 of IPC and Section 5 of the TNPID Act.

4.1. There are totally four accused in which the appellants are arrayed as A1 & A2. The case of the prosecution was that the first accused was the company and the second accused was the Managing Director of the first accused company. Third and fourth accused were the General Manager and Receptionist of the first accused company respectively. All the accused conspired together with an intention to cheat the depositors and have floated several schemes and canvassed the general public by introducing investment plan. Accordingly they floated the scheme-I, for the deposit of Rs.1,50,000/- wherein, the company will supply 6 Emu birds, construct sheds at their costs, provide feeds, medical check ups and free medicines and the depositors were assured to be given a sum of Rs.6,000/- per month for 24 months and a sum of Rs.20,000/- per annum as bonus and also assured to return the deposit amount after the maturity period. Under the Scheme -II viz., VIP Scheme, for the deposit of Rs.1,50,000/- they will allot six Emu birds to the depositor and the company will maintain the birds in their Emu farms and the depositors were assured to be given a sum of Rs.7,000/- per month for 24 months and a sum of Rs.30,000/- per annum as bonus and also assured to return the deposit amount after the maturity period.

4.2. Accordingly, they had collected money to the tune of Rs.7,61,90,300/- from 385 depositors and thereafter, they failed to return any profit and also failed to return the deposits. On receipt of the several complaints from the depositors the respondent registered the FIR in Crime No.2 of 2012 for the offences punishable under Sections 120-B, 406, 420 of IPC and Section 2 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.29 of 2012.

4.3. In order to bring the charges to home, the prosecution had examined P.W.1 to Ex.P.233 and marked documents in Ex.P.1 to Ex.P.1094. On the side of the accused, they examined D.W.1 and marked documents in Ex.D.1 to Ex.D.5. On perusal of the oral and documentary evidences, the trial Court acquitted the accused 3 & 4 and convicted the accused 1 & 2 for the offences punishable under Sections 420 & 406 of IPC and Section 5 of the TNPID Act and sentenced as follows :-

S.No.	Conviction	Sentence
1	Section 420 of IPC (385 counts)	to undergo rigorous imprisonment for a period of seven (7) years and to pay fine of Rs.35,000/- for each counts, in default to undergo rigorous imprisonment for further period of one and half (1½) years.
2	Section 406 of IPC (385 counts)	to undergo rigorous imprisonment for a period of three (3) years and to pay fine of Rs.30,000/- for each counts, in default to undergo rigorous imprisonment for further period of nine months.
3	Section 5 of TNPID Act (385 counts)	to undergo rigorous imprisonment for a period of ten (10) years and to pay fine of Rs.35,000/- for each counts, in default to undergo rigorous imprisonment for further period of two (2) years.

Further the first accused company was sentenced to pay fine of Rs.35,000/- for each counts in total Rs.4,04,25,000/- for three offences punishable under Sections 420 & 406 of IPC and Section 5 of TNPID Act and A2 was sentenced to pay the said fine amount on behalf of A1, in default to undergo further two years rigorous imprisonment. Aggrieved by the same, the present appeals.

Crl.A.No.538 of 2025 :-

5. This Criminal Appeal has been preferred as against the judgment dated 29.01.2025 passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore, in C.C.No.16 of 2012, thereby convicting the appellants for the offences punishable under Sections 420 & 406 of IPC and Section 5 of the TNPID Act.

5.1. There are totally five accused in which, the first accused was the company and the second accused was the Managing Director of the first accused company. The accused 4 & 5 were the Manager and Chief Executive officer of the first accused company. The case of the prosecution was that during the year 2010-12, all the accused conspired together with common intention and canvassed the general public by floating two schemes of Emu birds rearing and had collected huge sum from the general public. As per scheme-I, for the deposit of Rs.1,50,000/- the company will supply six Emu birds, construct sheds at their costs, provide feeds, medical check ups and free medicines and the depositors were assured to be given a sum of Rs.6,000/- per month for 24 months and a sum of Rs.20,000/- per annum as bonus and also assured to return the deposit after the maturity period. Under Scheme- II viz., VIP Scheme, for the deposit of Rs.1,50,000/- the company will allot six Emu birds to the depositor and the company will maintain the birds in their emu farms itself and the depositors were assured to be given Rs.7,000/- per month for 24 months and assured to give Rs.30,000/- per annum as bonus and assured to return the deposit after the maturity period of two years.

5.2. Accordingly, they had collected money to the tune of Rs.19,02,22,336/- from 1087 depositors and thereafter, they failed to pay any amount and also failed to return the deposit amount thereby they had dishonestly misappropriated the deposits and converted the deposits for their own use. On receipt of the several complaints from the depositors, the respondent registered the FIR in Crime No.2 of 2012 for the offences punishable under Sections 120-B, 406 & 420 of IPC and Section 5 of the TNPID Act. After completion of investigation, they filed final report and the same was taken cognizance by the trial Court in C.C.No.16 of 2012.

5.3. In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.278 and marked documents in Ex.P.1 to Ex.P.1897. On the side of the accused, they examined D.W.1 and the Court marked document in Ex.C.1. On perusal of oral and documentary evidences, the trial Court acquitted A3 to A5 and found guilty of the first and second accused for the offences punishable under Sections 420, 406 of IPC and Section 5 of the TNPID Act and sentenced them as follows :-

S.No.	Conviction	Sentence
1	Section 420 of IPC (1312 counts)	to undergo rigorous imprisonment for a period of seven (7) years and to pay fine of Rs.25,000/- for each counts, in default to undergo rigorous imprisonment for further period of one and half (1½) years.
2	Section 406 of IPC (1312 counts)	to undergo rigorous imprisonment for a period of three (3) years and to pay fine of Rs.20,000/- for each counts, in default to undergo rigorous imprisonment for further period of nine months.
3	Section 5 of TNPID Act (1312 counts)	to undergo rigorous imprisonment for a period of ten (10) years and to pay fine of Rs.25,000/- for each counts, in default to undergo rigorous imprisonment for further period of two (2) years.

Further the first accused company was sentenced to pay fine of Rs.25,000/- for each counts in total Rs.9,84,00,000/- for the offences punishable under Sections 420 & 406 of IPC and Section 5 of TNPID Act and A2 was sentenced to pay the said fine amount on behalf of A1, in default to undergo further two years rigorous imprisonment. Aggrieved by the same, the present appeal.

COUNSELS FOR APPELLANTS' SUBMISSIONS:-

6. The learned counsel appearing for the appellants in Crl.A.Nos.21, 22 & 423 of 2023 and 538 & 623 of 2025 submitted that the appellant was the Managing Director of the first accused company, who is arrayed as A2 in all the crimes. Though five different cases were registered in four districts by the respective respondents, all the cases are one and the same. In all the cases, the appellant was alleged that he along with other accused persons conspired together with common intention floated several schemes and collected huge amount from the general public. They assured the depositors that they would pay bonus and other profits monthly and after maturity entire deposits will be returned with bonus. Further in all the cases, the schemes which were allegedly floated by the appellant were one and the same. Under the schemes, the general public from four different districts deposited the amount. Therefore, the registration of five cases itself is unwarranted and the respondents should have registered only one FIR. Now the appellant is facing five conviction for the very same set of allegations imposed by the same Court. In fact, the period of crime in all fourth district were one and the same and schemes allegedly floated by the accused were also one and the same. In

two districts the first accused company is differ and it is none other than sister concerned of other financial company.

6.1. He further submitted that there are totally ten cases registered as against the appellant for the same course of transactions that took place between the year 2010-2012. Apart from the present five cases, another five cases are pending for trial. Out of the five cases, three cases were registered as against M/s. Susi Emu Farms (India) Private Limited and one case was registered as against M/s.Susi Land Promoters Private Limited and one case was registered as against M/s.G1 Emu's Zone India Private Limited. However, the prosecution registered ten separate cases for the very same course of transactions. It is illegal and violation of principles of double jeopardy which is envisaged under Article 20(2) of the Constitution of India. Accordingly, no person shall be prosecuted and punished for the same offence more than once. In this regard, he relied upon the judgment of the Hon'ble Supreme Court of India reported in ***(2022) 14 SCC 323*** in the case of ***T.P.Gopalakrishnan Vs. State of Kerala*** which held that Section 300 of Cr.P.C., prohibits a person from being tried for the same offence twice and any other offence on the same facts.

6.2. He further submitted that the prosecution failed to consolidate all the witnesses together and subjected the appellant for several trials across different districts for the very same set of transactions. It led to multiple convictions for essentially the same offence, which is not only procedurally improper but also a violation of legal principles, rendering such repeated convictions unlawful and contrary to the established norms of criminal jurisprudence.

6.3. He further submitted that in all the ten cases, the alleged default amount is Rs.134,87,97,300/-. So far, the competent authority had attached the appellants properties that are worth more than Rs.22,20,00,000/- and seized liquid cash to the tune of Rs.10,00,00,000/- Apart from that, several properties were attached and the same are pending for auction sale. Further, insofar as the five convicted cases, the total default amount is Rs.30,92,64,736/-. The total fine amount imposed comes to the tune of Rs.35,00,00,000/-. Therefore, including the deposited amount and the property which were sold out along with the liquid cash recovered is now more than the defaulted amount, which is at the hands of the competent authority and as Court deposits. Therefore, the depositors can very well be settled from the amount that is very much available with the competent authority and the Court and since it is a compoundable offence, it can be compounded by payment of the entire amount to the depositors.

6.4. He also submitted that all the cases had arisen out of the same set of allegations but by different judgments. The appellant was convicted and therefore, the sentence cannot run consecutively and it shall be run concurrently as contemplated under Section 427 of Cr.P.C. It deals that when a person is already undergoing a sentence of imprisonment for life and again sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with the previous sentence. It provides that such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence. In support of his contention, he relied upon the following judgments :-

(i) (2022) 14 SCC 323 – T.P.Gopalakrishnan Vs. State of Kerala
(ii) 2009 (3) MWN (Cr.) 32 – Prasannadevi Vs. State of Tamil Nadu

7. The learned counsel appearing for the appellant in Crl.A.No.133 of 2023 submitted that the appellant is arrayed as A3 in C.C.No.1 of 2013 and he was an employee and paid servant of the first accused company. The first accused company was run by its Managing Director viz., the second accused. The appellant was working as an employee on monthly salary as per the direction of the second accused and hence, vicarious liability cannot be invoked as against the employee of the company. There were two bank accounts in the name of the first accused company viz., G1 Emus Export India Private Limited and G1 Emus Zone India Private Limited. Both the accounts were frozen by the government authority by way of Government orders. The Competent authority also filed an application to absolute the said attachment. Accordingly, the sum of Rs.29,98,876/- is very much available with the government authority from 12.03.2013 and it might multiple by two or three times.

7.1. In this case, there were 37 depositors and total default amount is Rs.1,02,07,500/-. Already the second accused had settled 12 depositors and the remaining 25 depositors are to be settled to the tune of

Rs.63,74,000/- and sufficient money is very much available with the competent authority and as such the conviction against the appellant cannot be sustained and it is liable to be set aside.

8. The learned counsel appearing for the Crl.A.No.317 of 2023 submitted that the appellants are arrayed as A3 to A5 and they had nothing to do with the offence committed by A1 & A2. The first accused was the company and the second accused was the Managing Director of the first accused. All the appellants herein were the employee of the first accused company and they were engaged by the second accused who was the Managing Director of the first accused company. Though they were actively involved in the activities of the first accused company, they had acted only as employees. Even according to the case of the prosecution, no amount was deposited into their personal accounts. Proper receipts had been issued for the amount collected by the appellants in the name of the first accused company and no amount was directly collected by them or was deposited into their personal accounts.

8.1. He further submitted that there were 45 depositors in which P.W.1-7, 10,14,16,19,24-29 and 37 have already been settled by the second accused. Therefore, the appellants had no role to play in respect of canvassing the general public and in floating of the schemes. Therefore, the appellants being the employees of the first accused, cannot be held liable to be punished on the ground of vicarious liability. Further no offence is made out under Section 420 of IPC as against the appellants. They never induced the general public to deposit any amount. Admittedly, the schemes were floated by the first accused company by the second accused and canvassing the general public to deposit money under the schemes.

RESPONDENT'S SUBMISSION:-

9. The learned Additional Public Prosecutor appearing for all the respondents submitted that the second accused in all the cases was the mastermind behind the crimes. He floated various schemes under the name of the first accused company in which, he was the Managing Director, to cheat the general public in four Districts such as Erode, Coimbatore, Salem and Namakkal. There were different companies with different types of schemes. In fact, they also floated the said schemes on different dates in different districts. Therefore, the respondents on receipt of the complaints from the depositors from each districts that too on

different cause of action registered separate FIRs and the cases are in no way connected to one another. Though the *modus operandi* of the crime may be one and the same in all the cases but the accused had floated different schemes in different companys' names that too on different dates. Therefore, it cannot be said that for the same set of allegations, several FIRs have been registered. Hence the principle of double jeopardy cannot be applicable to the cases on hand and there is no violation of Section 300 of Cr.P.C., or Article 20(2) of the Constitution of India.

9.1. He further submitted that though nearly Rs.36,00,00,000/- of money is available with the competent authority, there are totally ten cases pending as against the appellants in four districts. In each district, there are different depositors. Therefore, the amount which is lying with the competent authority cannot be disbursed only with respect to the convicted cases. The huge deposits were collected by the very same appellants in the pending trial cases as well. Therefore, the amount which is lying with the competent authority can be disbursed proportionately to all the depositors. Hence, compounding of the offence for the convicted cases alone cannot be possible.

9.2. He also submitted that insofar as the benefits under Section 427 of Cr.P.C., is concerned, it depends upon whether the facts forming the basis of prosecution arise out of a single transaction or transactions that are akin to each other. In the cases on hand, the second accused had collected huge deposits from canvassing the general public under different schemes under different entities. Therefore, the appellants are not entitled for any benefits as contemplated under Section 427 of Cr.P.C. In support of his contention he relied upon the following judgments:-

(i) (2013) 7 SCC 211 – V.K.Bansal Vs. State of Haryana and another

(ii) (2022) 12 SCC 426 – Mohd Zahid Vs. State through NCB

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

<u>FINDINGS :-</u>

11. On the submissions made by the learned counsel appearing for the appellants, the following issues have arisen for consideration :-

(i) Whether the registration of several cases for the very same set of allegations is in violation of the provisions under Section 300 of Cr.P.C., and Article 20(2) of the Constitution of India?

(ii) Whether the second accused in all the cases is entitled for the benefits under Section 427 of Cr.P.C?

(iii) Whether the offences can be compounded by settling the amount by the accused?

(iv) Whether the appellant in Crl.A.Nos.133 of 2023 and 317 of 2023 are the employees of the first accused and if so, whether they are liable to be punishable for the offence committed by the company?

(v) Whether the prosecution proved the charges against all the accused?

(i) Violation under Section 300 of Cr.P.C., and Article 20(2) of the Constitution of India:-

12. There were totally five cases, in which the appellants were convicted for the offences punishable under Sections 120-B r/w. 420, 406, 420 of IPC and Section 5 of the TNPID Act, by the same Court. The details of the cases, default amount and punishment are as follows :-

Sl. No.	C.C. Nos & Crime Nos.	Date of conviction	Convic-tion details	Punish-ment	Default amount (in Rs.)	Criminal Appeal Nos.
1.	16 of 2012 (5 accused) (Crime No.2 of 2012 – EOW-II, Coimbatore)	29.01.2015	A1 & A2 convicted A3 to A5 acquitted	S.420 of IPC – 7 years S.406 IPC – 3 years S.5 of TNPID Act – 10 years	19,02,22,336/- (1087 depositors)	538 of 2025 by A1 & A2
2.	28 of 2012 (9 accused) (Crime No.1 of 2012 – EOW-II, Namakkal)	22.09.2021	A1 & A2 convicted A3 to A9 acquitted	S.120 r/w 420 of IPC – 7 years S.420 IPC – 7 years S. 5 of TNPID Act – 10 years	2,39,15,600/- (96 depositors)	21 of 2023 by A2
3.	29 of 2012 (4 accused) (Crime No.2 of 2012 – EOW-II, Salem)	06.06.2025	A1 & A2 convicted A3 & A4 acquitted	S.420 of IPC – 7 years S.406 IPC – 3 years S.5 of TNPID	7,61,09,300/- (385 depositors)	538 of 2025 by A1 & A2

Sl. No.	C.C. Nos & Crime Nos.	Date of conviction	Convic-tion details	Punish-ment	Default amount (in Rs.)	Criminal Appeal Nos.
				Act – 10 years		
4.	1 of 2013 (4 accused) (Crime No.14 of 2012 – EOW-II, Erode)	30.11.2021	A1 to A3 convicted A4 acquitted	S.120 r/w 420 of IPC – 7 years S.420 IPC – 7 years S. 5 of TNPID Act – 10 years	1,02,07,500/- (36 depositors)	22 of 2023 by A2 133 of 2023 by A3
5.	3 of 2013 (5 accused) (Crime No.20 of 2012 – EOW-II, Erode)	17.03.2023	A1 to A5 convicted	S.120 r/w 420 of IPC – 7 years S.420 IPC – 7 years S. 5 of TNPID Act – 10 years	88,10,000/- (45 depositors)	423 of 2023 by A2 317 of 2023 by A3 to A5

13. In all the cases, there are three entities arrayed as first accused. In Crime No.1 of 2012 on the file of the Economic Offences

Wing-II, Namakkal and in Crime No.2 of 2012 on the file of the Economic Offences Wing-II, Coimbatore and in Crime No.2 of 2012 on the file of the Economic Offences Wing-II, Salem, the first accused is M/s.Susi Emu Firms India Private Limited. In Crime No.14 of 2012, on the file of the Economic Offences Wing-II, Erode, the first accused is M/s.G1 Emu's Zone India Private Limited. In Crime No.20 of 2012 on the file of the Economic Offences Wing-II, Erode, the first accused is M/s. Susi Land Promoters Private Limited. Accordingly there are three entities in all five cases in different places such as Erode, Coimbatore, Salem & Namakkal Districts.

14. Further, in all the cases, they had floated different schemes. Their *modus operandi* is one and the same in all the crimes and under the various schemes, they had canvassed the general public with wide publicity via dailies and vernacular magazines to induce the general public to deposit, thereby collecting huge money from various depositors. However, they committed default to repay the deposit amount and also failed to provide the benefits as assured by them. In all the cases, almost all the depositors were examined and the fixed deposit receipts were marked as exhibits. The victims also produced agreements

which were entered between the victims and the first accused company thereby agreeing to pay the incentives and other benefits under the scheme. Therefore, the prosecution proved all the charges and the trial Court rightly found A1 and A2 guilty in all the cases and convicted them. Therefore, it is not in violation of procedure as contemplated under Section 300 of Cr.P.C., and there is absolutely no violation of Article 20 of the Constitution of India.

15. The learned counsel appearing for the appellants/A1&A2 in all the cases relied upon the judgment of the Hon'ble Supreme Court of India reported in ***(2022) 14 SCC 323*** in the case of ***T.P.Gopalakrishnan Vs. State of Kerala,*** which held as follows :-

> *"28. Under clause (2) of Article 20, no person shall be prosecuted and punished for the same offence more than once. Article 20(2) of the Constitution of India incorporates within its scope, the plea of autrefois convict, meaning, previously convicted as known to British jurisprudence, or the plea of double jeopardy known to the American Constitution. However, the said concepts are circumscribed in Article 20(2) which provides that there should be not only a prosecution but also punishment in the first instance in order to operate as a bar to a second prosecution and*

punishment for the same offence. On a plain reading the of sub clause (2) of Article 20, it is clear that the said provision bars a second prosecution only where the accused has been both prosecuted and punished for the same offence previously vide S.A. Venkataraman vs. Union of India AIR 1954 SC 375 ("S.A. Venkataraman"). But this clause does not bar subsequent trial if the ingredients of the offences in the previous and subsequent trials are distinct. In Maqbool Hussain vs. State of Bombay AIR 1953 SC 325, this Court has held that clause(2) is not applicable unless the person has been both prosecuted and punished.

29. There are three conditions for the application of the clause. Firstly, there must have been previous proceeding before a court of law or a judicial tribunal of competent jurisdiction in which the person must have been prosecuted. The said prosecution must be valid and not null and void or abortive. Secondly, the conviction or acquittal in the previous proceeding must be in force at the time of the second proceeding in relation to the same offence and same set of facts, for which he was prosecuted and punished in the first proceeding. Thirdly, the subsequent proceeding must be a fresh proceeding, where he is, for the second time, sought to be prosecuted and punished for the same offence and same set of facts. In other words, the clause has no application when the subsequent proceeding is a mere continuation of the previous proceeding, for example, where

> *an appeal arises out of such acquittal or conviction. In order to sustain a plea of double jeopardy, it must be shown that all the aforesaid conditions of this clause are satisfied, vide S.A. Venkataraman."*

Thus it is clear that the above conditions are to be fulfilled to attract the violation of procedure under Section 300 of Cr.P.C., and Article 20 of the Constitution of India.

16. The same offence means where the offences are not distinct and the ingredients of the offences are identical. Two distinct offences can be made up of different ingredients and the embargo under Article 20 of the constitution of India has no application, though the offences have some overlapping features. Therefore, the crucial requirement of Article 20 is that the offences are the same and identical in all respects. As stated supra, there were three entities and they had collected huge deposits from general public under different schemes. The schemes are different not only in respect of benefits and but also with respect to the deposits and its maturity. Therefore, the above judgment is not applicable to the case on hand and hence, there is no violation of the procedure under Section 300 of Cr.P.C., and Article 20(2) of the Constitution of India.

(ii) Benefit under Section 427 of Cr.P.C.:-

17. Insofar as the benefits under Section 427 of Cr.P.C., is concerned, the learned Additional Public Prosecutor relied upon the judgment reported in ***(2013) 7 SCC 211*** in the case of ***V.K.Bansal Vs. Stateof Haryana and another*** in which, the Hon'ble Supreme Court of India held as follows :-

> *"13. There are also cases where the High Courts have depending upon whether facts forming the basis of prosecution arise out of a single transaction or transactions that are akin to each other directed that the sentences awarded should run concurrently. As for instance the High Court of Allahabad has in Mulaim Singh v. State 1974 Crl. L.J. 1397 directed the sentence to run concurrently since the nature of the offence and the transactions thereto were akin to each other. Suffice it to say that the discretion vested in the Court for a direction in terms of Section 427 can and ought to be exercised having regard to the nature of the offence committed and the facts situation, in which the question arises.*
>
> *14. We may at this stage refer to the decision of this Court in Mohd. Akhtar Hussain v. Assistant Collector of Customs (1988) 4 SCC 183 in which this Court recognised the basic rule of convictions arising out of a single transaction justifying concurrent running of the sentences.*

The following passage is in this regard apposite:

"The basic rule of thumb over the years has been the so called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.

....

18. Applying the principle of single transaction referred to above to the above fact situations we are of the view that each one of the loan transactions/financial arrangements was a separate and distinct transaction between the complainant on the one hand and the borrowing company/appellant on the other. If different cheques which are subsequently dishonoured on presentation, are issued by the borrowing company acting through the appellant, the same could be said to be arising out of a single loan transaction so as to justify a direction for concurrent running of the sentences awarded in relation to dishonour of cheques relevant to each such transaction. That being so, the substantive sentence awarded to the appellant in each case relevant to the transactions with each company referred to above ought to run concurrently. We, however, see no reason to extend that concession to *transactions in which the borrowing company is different no matter the appellant before us is the promoter/Director of the said other companies also. Similarly we see no reason to direct running of the sentence concurrently in the case filed by the State Bank of Patiala against M/s Sabhyata Plastics and M/s Rahul Plastics which transaction is also independent of any loan or financial assistance between the State Financial Corporation and the borrowing companies. We make it clear that the direction regarding concurrent running of sentence shall be limited to the substantive sentence only. The sentence which the appellant has been directed to undergo in default of payment of fine/compensation shall not be affected by this direction. We do so because the provisions of Section 427 of the Cr.P.C. do not, in our opinion, permit a direction for the concurrent running of the substantive sentences with sentences awarded in default of payment of fine/compensation."*

18. The learned Additional Public Prosecutor also relied upon the judgment of the Hon'ble Supreme Court of India reported in ***(2022) 12 SCC 426*** in the case of ***Mohd Zahid Vs. State through NCB*** which held as follows :-

"19. Even otherwise as observed hereinabove under Section 427 (1) of Cr.PC, the Court has the power and

discretion to issue a direction that the subsequent sentence to run concurrently with the previous sentence in that case also, the discretion has to be exercised judiciously depending upon the nature of offence or the offences committed.

20. In the present case the appellant – accused has been convicted for the offences under the NDPS Act. He has been convicted in one case for recovery of 4 kg heroin and sentenced to undergo 12 years RI and in another case there is a recovery of 750 grams of heroin and considering the Section 31 (ii) of the NDPS Act, he has been sentenced to undergo 15 years RI.

21. No leniency should be shown to an accused who is found to be guilty for the offence under the NDPS Act. Those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to a number of innocent young victims who are vulnerable. Such accused causes deleterious effects and deadly impact on the society. They are hazard to the society. Such organized activities of clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have a deadly impact on the society as a whole. Therefore, while awarding the sentence or punishment in case of NDPS Act, the interest of the society as a whole is required to be taken into consideration. Therefore, even while applying discretion *under Section 427 of Cr.PC, the discretion shall not be in favour of the accused who is found to be indulging in illegal trafficking in the narcotic drugs and psychotropic substances."*

Thus it is clear that the Court has the power to issue direction that the subsequent sentence shall run concurrently with the previous sentence. The said discretion has to be exercised judiciously depending upon the nature of the offence or the offences committed.

19. It is relevant to extract the provision under Section 427 of Cr.P.C., as follows :-

"427. Sentence on offender already sentenced for another offence.

(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the

> *making of such order, the latter sentence shall commence immediately.*
>
> *(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."*

Therefore on a fair reading of Section 427 of Cr.PC, when a person who is already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced. Meaning thereby the sentences in both the conviction shall run "consecutively". However, there is an exception to that the Court may direct the subsequent sentence to run concurrently with such previous sentence. In addition to this there is another exception under Sub-section (2) of Section 427 of Cr.P.C. which states that, when a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

20. In the cases on hand, there were three entities arrayed as first

accused. But the said entities were represented by the same person viz., the second accused in all the cases. Therefore, the sentence imposed on the same entities represented by the second accused shall run **concurrently** as contemplated under Section 427 of Cr.P.C. The sentences imposed in C.C.Nos.16, 28 & 29 of 2012 on the file of the trial Court against the accused 1 & 2 alone shall run **concurrently**. Insofar as the fine imposed by the trial Court is concerned, it is separate and the accused 1 & 2 are liable to pay the fine as imposed by the trial Court. Insofar as the sentence imposed in C.C.No.1 of 2013 and C.C.No.3 of 2013, against the accused 1 & 2 is concerned, the same shall run **consecutively**.

(iii) Compounding the offences:-

21. Insofar as the compounding of the offences is concerned, as rightly pointed out by the learned Additional Public Prosecutor, on the strength of the status reported submitted by the competent authority, the accused 1 & 2 had involved totally in ten cases and they had collected huge deposits in four districts under three different entities from several depositors. The details of all the ten cases are as follows :-

Sl. No.	C.C. Nos.	Crime Nos.	Number of depositors	Default amount (in Rs.)	Status
1.	16 of 2012	2 of 2012 – EOW-II, Coimbatore	1087	19,02,22,336/-	Convicted
2.	28 of 2012	1 of 2012 – EOW-II, Namakkal	96	2,39,15,600/-	Convicted
3.	29 of 2012	2 of 2012 – EOW-II, Salem	385	7,61,09,300/-	Convicted
4.	1 of 2013	14 of 2012 – EOW-II, Erode	36	1,02,07,500/-	Convicted
5.	3 of 2013	20 of 2012 – EOW-II, Erode	45	88,10,000/-	Convicted
6.	10 of 2012	2 of 2012 – EOW-II, Erode	3305	94,94,64,954/-	Pending trial
7.	18 of 2013	2 of 2012 – EOW-II, Virudhunagar	165	4,33,75,000/-	Pending trial
8.	19 of 2013	1 of 2012 – EOW-II, Dindigul	292	8,67,25,000/-	Pending trial
9.	36 of 2013	2 of 2012 – EOW-II, Thirunelveli	16	24,95,410/-	Pending trial
10.	15 of 2013	4 of 2012 – EOW-II,	96	1,67,84,500/-	Pending trial

Sl. No.	C.C. Nos.	Crime Nos.	Number of depositors	Default amount (in Rs.)	Status
		Trichy			

Therefore, the amount which is now available with the competent authority cannot be disbursed in favour of the depositors in respect of the convicted cases alone. It shall be disbursed to all the depositors in all the ten cases proportionately, in accordance with law. Hence, compounding the offence in the convicted cases alone cannot be done and the submissions made by the learned counsel for the appellants to compound the offence cannot be considered with available funds in the credit of competent authority.

(iv) Vicarious liability on the employees:-

22. Insofar as the appellants in Crl.A.No.133 of 2023 & 317 of 2023 are concerned, even according to the case of the prosecution, they were acting as Manager and other staff in the first accused company. Further admittedly, they were neither Director of the first accused company nor they collected any amount from the depositors in their personal capacity. Though they had signed in the fixed deposit receipts, they had signed only on behalf of the first accused company and all the

amount was deposited into the account of the first accused company. No single penny was deposited into their personal account. They were only working under the first accused company on a monthly salary basis.

23. In this regard, it is relevant to extract the provision under Section 5 of the TNPID Act, as follows :-

> *"5. Default in repayment of deposits and interest honouring the commitment. - Notwithstanding anything contained in Chapter II, where any Financial Establishment defaults the return of the deposit or defaults the payment of interest on the deposit, or fails to return in any kind, or fails to render service for which the deposit has been made, every person responsible for the management of the affairs of the Financial Establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one lakh of rupees and such Financial Establishment is also liable for a fine which may extend to one lakh of rupees."*

Therefore in order to invoke the above provision, one should shoulder the responsibility of managing the affairs of the financial firm or company. 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. They have been given a role to manage the affairs of the company but they are not responsible for the mis-management of the company when the company is liable for any default. Therefore, all the persons who manage the affairs of the company or a financial institution need not necessarily be responsible for the management of the affairs of the financial institution.

24. The main ingredient which 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 institutions. The persons who simply manages the affairs of the financial institution as a paid servant will fall out the ambit and scope of the provision under Section 5 of the TNPID Act. Therefore, the prosecution failed to prove the charges against the appellant and this Court finds infirmity on the conviction and sentence imposed on the appellants in Crl.A.Nos.133 & 317 of 2023 and hence, the conviction and sentence cannot be sustained and is liable to be set aside.

25. In the result, this Court is inclined to pass the following orders :-

(I) The conviction and sentence imposed on the appellants in Crl.A.Nos. 133 & 317 of 2023 by the judgment dated 30.11.2021 & 17.03.2023 passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore in C.C.Nos.1 and 3 of 2013 are hereby set aside. The appellants in Crl.A.Nos. 133 & 317 of 2023 are hereby acquitted from the charges under Sections 120 r/w.420, 420 of IPC and Section 5 of the TNPID Act. Fine amount, if any paid, shall be refunded to them forthwith. Bail bonds, if any executed, shall stand cancelled.

(II) The conviction and sentence imposed on the appellants in Crl.A.Nos.21 of 2023 and 538 & 623 of 2025 by and judgments dated 22.09.2021, 29.01.2025 & 06.06.2025 passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore in C.C.Nos.28, 16 & 29 of 2012 respectively, are hereby confirmed. The fine amount imposed by the trial Court against the accused is also confirmed. However, the sentence imposed on the second accused in Crl.A.Nos.21 of 2023 and 538 & 623 of 2025 alone shall run concurrently.

(III) The conviction and sentence imposed on the appellants in

Crl.A.Nos.22 & 423 of 2023 by the judgment dated 30.11.2021 & 17.03.2023 passed by the learned Special Judge, Special Court under TNPID Act, Coimbatore in C.C.Nos.1 and 3 of 2013 are hereby confirmed and the sentence shall run consecutively.

26. Accordingly, the Criminal Appeals in Crl.A.Nos.133 & 317 of 2023 stand allowed; the Criminal Appeals in Crl.A.Nos.21 of 2023 & 538 & 623 of 2025 stand partly allowed and Criminal Appeals in Crl.A.Nos.22 & 423 of 2023 stand dismissed.

25.07.2025

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

rts

To

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

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

3. The Deputy Superintendent of Police,
Economic Offences Wing-II,
Salem District.

4. The Deputy Superintendent of Police,
Economic Offences Wing-II,
Erode District.

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

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

G.K.ILANTHIRAIYAN, J.
rts

Pre-delivery judgement in
Crl.A.Nos.21, 22, 133, 317,
423 of 2023 and 538 & 623 of 2025

25.07.2025