



Crl.O.P.(MD)Nos.7798, 7799 & 7800 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED : 02.07.2025

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

Crl.OP(MD)Nos.7798, 7799 & 7800 of 2025 and
Crl.MP(MD) Nos.5837,5838,5840, 5841,5842 and 5843 of 2025

Murugan

... Petitioner

Vs

1.State of Tamil Nadu,
Rep by the Inspector of Police,
EOW Police Station,
Karur District.
Crime No.1 of 2023.

2.T.Selvaraj

...Respondents

(In all Crl.OPs)

Common Prayer : Criminal Original Petitions filed under Section 528 of BNSS, to issue a direction, to call for the records relating to the charge sheet in CC No.6, 7 & 8 of 2024, on the file of the Special Court for TNPID Act Cases, Madurai District and quash the same as illegal insofar as the petitioner is concerned.

For Petitioner

: Mr.K.Althar Sheriff

For R1

: Mr.A.S.Abul Kalaam Azad

Government Advocate(Crl.side)

(In all Crl.OPs)



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ORDER

The petitioner/ accused in CC Nos.6,7 & 8 of 2024, on the file of the Special Court for TNPID Act cases, has moved these petitions to quash the above proceedings, which is pending as against him.

2.The learned counsel for the petitioner has made his submissions:

- i. The petitioner is only a sleeping partner in the Firm, namely M/s.Sivaparvathi Financiers (A1) and he has nothing to do with the transactions, which have been conducted by the other accused A2 and A3, who are the Managing partners of A1 Company.
- ii. A2 & A3 have collected deposits from the public and issued receipts without the knowledge of the other partners, including this petitioner.



Crl.O.P.(MD)Nos.7798, 7799 & 7800 of 2025

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- iii. The receipts for payment made by the depositors have been signed by A2 and A3 alone and this petitioner has not made any endorsement in those receipts.
- iv. The petitioner has relied on the complaint lodged by one of the directors of A1 Company, who is similar to that of this petitioner/ the other sleeping partner as against A2 and A3.
- v. Without ascertaining the role played by the petitioner, the respondent police has mechanically filed the final report as against him and the same is now pending in CC Nos. 6, 7 & 8 of 2024, before the Special Court for TNPID Act Cases, Madurai District.
- vi. In order to substantiate his contentions, the petitioner has relied on the Judgment of this Court, reported in **2013 SCC Online Madras 818, in S.Thamayanthi Vs. State of Tamil Nadu** and the relevant paragraph is extracted as under:-



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Crl.O.P.(MD)Nos.7798, 7799 & 7800 of 2025

"11. The words "responsible for the management of affairs of the Financial Establishment" could be interpreted to mean that only those persons, who were responsible for collection of the deposits and failed to return the money or the interest on such deposit, are criminally liable. That is why the word "responsible" is expressed and not the word "management" alone is used. The severity of the punishment with imprisonment for a term, which may extend to 10 years and with fine, which may extend to Rs.1,00,000/- would only refer to those persons, who were responsible in collecting the amounts from the depositors on promise to give higher interest and failed to return the said deposit even after its maturity.

11.In the case arisen under Section 138 of the Negotiable Instruments Act in 2006-10-SCC-581 (Ramamurthy Vs. R.B.S.Chinnabasavaradhya), on the complaint lodged by the aggrieved person on dishonour of the cheque, he did not allege that the accused was in charge of and responsible for the conduct of the business of the company and the statement of the witnesses examined on the side of the complainant also did not speak about the charge that the accused was in charge of the affairs of the business of the Company. Therefore, the Honourable Supreme Court has held that the requirement of Section 141 of the Negotiable Instruments Act was not complied with and as a result of which, the criminal proceedings as against the 6th and 8th accused therein were ordered to be quashed.



Crl.O.P.(MD)Nos.7798, 7799 & 7800 of 2025

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12. *It has been held in Srikanth Singh K Vs. North East Securities Limited (2008-1-MLJ-Crl-1098) as under:-*

"4. It is not in dispute that for showing a vicarious liability of a Director of a Company, upon the complaint it is incumbent to plead that the accused was responsible to the Company for the conduct of the business of the Company. No such allegation having been made in the complaint petition, in our opinion, the High Court was not correct in passing the impugned judgement. The allegation contained in the complaint petition was that all the accused Directors participated in the negotiations for obtaining financial help for the accused No.1 which in our opinion would not give rise to an inference that the Appellant was responsible for day-today affairs of the Company."

13. *In the present case, the fact remains that no material was placed before the court below to show that the Petitioner was a partner of A1 Firm charged in the case on hand under Section 5 of the Act. The only allegation leveled by the witnesses examined on the side of the Prosecution is that the Petitioner canvassed for deposits for financial institution. In the counter, it is admitted by the Respondent that the Petitioner is neither signatory to the cheques nor issued any receipts to the depositors on behalf of the Firm. Even assuming that the Petitioner was partner of A1 Firm, she cannot be mulcted with liability, merely because she was the partners of the Firm or she*



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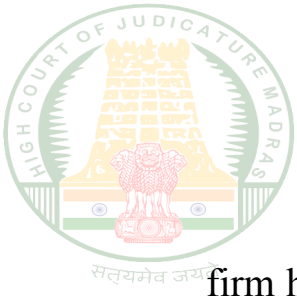


Crl.O.P.(MD)Nos.7798, 7799 & 7800 of 2025

was the wife of A3, who was managing the affairs of the Partnership Firm and collecting deposits from the depositors.

14. More often, it is common that some of the partners of a firm may not even be knowing of what is going on day to day in the firm. There may be partners better known as sleeping partners who are not required to take part in the business of the firm. There may be ladies and minors who were admitted for the benefit of partnership. They may not know anything about the business of the firm. It would be a travesty of justice to prosecute all partners and ask them to prove that the offence was committed without their knowledge. It is significant to note that the obligation for the accused to prove that the offence took place without their knowledge or that he exercised all due diligence to prevent such offence arises only when the Prosecution establishes that the requisite condition mentioned in Section 5 of the Act is established. The requisite condition is that the partner was responsible for carrying on the business and was during the relevant time in charge of the business. In the absence of any such proof, merely because he is a partner of the Firm, he cannot be convicted."

3.Mr.A.S.Abul Kalaam Azad, learned Government Advocate (Crl.side), who takes notice for the first respondent submits that this petitioner is one of the partners of A1 Firm. This partnership



Crl.O.P.(MD)Nos.7798, 7799 & 7800 of 2025

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firm has not obtained any permission from the competent authorities to collect deposits, however, collected deposits to the tune of Rs.9,63,00,000/- and cheated the depositors. Therefore, on the complaint of the depositors, a criminal case has been registered and after the investigation, they have filed the final reports in CC Nos.6,7 & 8 of 2024 before the Special Court for TNPID Act cases, Madurai. He further submits that during the course of investigation, they have conducted raid and has recovered some of the deposit receipts, promissory notes, application forms and other relevant documents from the petitioner's house. The learned Government Advocate has also relied on the statements given by some of the depositors stating that this petitioner has collected the amount and has also issued receipts for some time. He has also refunded part payment to the depositors to some extent.

4.This Court considered the rival submissions made and also perused the materials placed on record.



Crl.O.P.(MD)Nos.7798, 7799 & 7800 of 2025

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5.Though the petitioner has raised several grounds, this

Court is of the opinion that it can be appreciated only during the trial.

Therefore, this Court is not inclined to entertain these petitions and

accordingly, these Criminal Original Petitions are dismissed. However,

liberty is granted to the petitioner to raise all these grounds before the

trial Court, during trial. Consequently, connected Miscellaneous

Petitions are closed.

02.07.2025

NCC : Yes/No

Index : Yes/No

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To

The Inspector of Police,
EOW Police Station,
Karur District.



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B.PUGALENDHI,J

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