IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2026

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.2011 of 2025
& Crl.M.P.No.18971 of 2025

R.Suresh Kumar Rajasekaran
S/o.V.T.V.Rajasekaran
No.9, Kamaraj Nagar First Street,
Sathya Garden, Saligramam,
Chennai - 600 093. ...Petitioner

Vs.

The State represented by
The Deputy Superintendent of Police,
EOW – II, Chennai. ...Respondent

Prayer: Criminal Revision case filed under Section 438 r/w Section 442 of BNSS Act, 2023 to set aside the order dated 08.07.2025 in Crl.M.P.No.591 of 2023 in C.C.No.7 of 2020 on the file of the Special Court, TNPID Act Cases, Chennai, pending trial.

For Petitioner : Mr.E.J.Ayyappan
For Respondent : Mr.R.Vinothraja,
Government Advocate (Crl. Side)

ORDER

The Revision challenges the dismissal of the discharge petition filed by the petitioner, who is arrayed as A9 in C.C.No.7 of 2020 on the file of the Special Court for TNPID Cases, Chennai.

2.The prosecution case is that the financial establishments, which are arrayed as A1 and A2, had collected huge deposits from the general public to the tune of Rs.55 Crores; that they failed to return the deposits; and thus committed the offences under Section 5 of the TNPID Act and Sections 120 B, 409 and 420 of the Indian Penal Code.

3.The respondents filed the final report against the financial establishments, the persons in the management of the financial establishments and the persons responsible for the management of the affairs of the financial establishments. The final report was taken on file in C.C.No.7 of 2020.

4.The petitioner filed discharge petition before the trial Court on the ground that he was an Independent Director of the financial establishments for a short period; that he did not take part in the affairs of the financial establishments; that unless the prosecution has collected materials to show that the petitioner was involved in the affairs of the financial establishments, the petitioner cannot be prosecuted for the offences alleged against him; that the petitioner was prosecuted by the Law Enforcing Agency in Maharashtra for a similar offence committed by the very same financial establishments in Maharashtra; that the petitioner was discharged by the said Court on the ground that the petitioner was only a Non Executive Independent Director of the financial establishments and therefore, could not be held liable for any of the offences committed by the financial establishments.

5.The respondent opposed the prayer for discharge and submitted that the question of whether the petitioner was involved in the management of the affairs of the financial establishments can be adjudicated only during trial; that the fact that the petitioner was a director of the financial establishments is not in dispute; that the financial establishments had collected money from the general public to the tune of Rs.55 crores; and that the default could not have happened without the knowledge of the petitioner.

6.The learned Judge after considering the rival submissions had observed that the petitioner though was a Non-Executive Independent Director of the Company, he had participated in Board Meetings; that therefore, he cannot claim that he had no knowledge of the collection of deposits or the default committed by the financial establishments; that the respondents have made out a *prima facie* case; and that grave suspicion is sufficient to frame charge and dismissed the petitioner's application.

7.The learned counsel for the petitioner would submit that form 32 produced by the petitioner, which is not in dispute, would show that the petitioner was appointed as the Additional Director of the financial establishments in the year 2013; that thereafter, his designation was changed to Independent Director and he resigned in the year 2015; that the fact that the petitioner was an Independent Director is not in dispute; that the petitioner was not involved in the affairs of the company; that he could never be made responsible for the management or mismanagement of the affairs of the financial establishments; and in the absence of material to proceed further, the learned Judge ought to have discharged the petitioner.

8.The learned Government Advocate (Crl. Side) *per contra* submitted that the statement of witnesses recorded by the respondents would show that the petitioner was a director of the financial establishments; that the question as to whether the petitioner was involved in the affairs of the financial establishments cannot be adjudicated at this stage, especially since the general public have been defrauded to the tune of Rs.55 crores by the financial establishments; and that there is no infirmity in the impugned order passed by the learned Judge.

9.It is not in dispute that the petitioner was appointed as an Additional Director on 29.10.2013 and thereafter, his designation was changed as Independent Director-Non Executive on 13.02.2014. He resigned as the director on 25.05.2015. Section 5 of the TNPID Act makes any financial establishment which had defaulted in the return of deposits liable for punishment along with every person responsible for the management of the affairs of the financial establishments. It is not in dispute that as the

Independent Non-Executive Director, the petitioner had no role in the affairs of the company. In fact, when the petitioner was prosecuted in his capacity as Independent Director along with the very same financial establishments in Maharashtra, the District Court had discharged the petitioner by observing that the petitioner was only a Non-Executive Independent Director and he had no role in the affairs of the financial establishments.

10.In ***Pooja Ravinder Devidasani Vs. State of Maharashtra***, the Hon'ble Supreme Court while discussing the role of an Independent Director had held as follows;

> *"17....Non-executive Director is no doubt a custodian of the governance of the Company but does not involve in the day-to-day affairs of the running of its business and only monitors the executive activity"*

11.Similarly, in ***Sunita Palita Vs Panchami Stone Quarry***, the Hon'ble Supreme Court in SLP(Crl.) No.10396 of 2019**,** had held as follows;

> *"43.Liability depends on the role one plays in the affairs of a company and not on designation or status alone as held by this Court in S.M.S. Pharmaceuticals Ltd. (supra).*

The materials on record clearly show that these Appellants were independent, non-executive Directors of the company. As held by this Court in Pooja Ravinder Devidasani V. State of Maharashtra and Anr. (supra) a non-Executive Director is not involved in the day-to-day affairs of the company or in the running of its business. Such Director is in no way responsible for the day-to-day running of the Accused Company"

12.Admittedly, except for the averment that the petitioner was working as an Independent Non-Executive Director, there is no allegation that the petitioner played any role either in the collection of deposits or in the defaults made by the financial establishments. It is well settled that there is no vicarious liability in penal law unless the stature specifically provides for the same. In order to prosecute a person, the role played by the person in the alleged offence must be clearly spelt out. This Court in ***K.Suresh Vs. Deputy Superintendent of Police*** vide order dated 26.02.2021 has held as follows;

"17.In order to make an officer of the Company an accused, there must be sufficient evidence to establish his active role in the transaction, coupled with criminal intent. This is more so due to the fact that the offence in question are I.P.C., offences where there is no scope for invoking the

concept of the vicarious liability like in many of the special statutes. An officer of the Company cannot be presumed to be involved in the day-to-day affairs of the Company and their involvement in a crime must be necessarily supported by some materials. It is true that even a strong suspicion is enough to frame charges against the accused persons. However, this suspicion must be borne out by the materials collected in the course of investigation and it cannot be left to the imagination of the Investigation Officer."

13.The above observations will squarely apply to the facts of the instant case. Except for stating that the petitioner is a Non-Executive Independent Director of the financial establishment, there is no other material to show that the petitioner was involved in the affairs of the company to prosecute him under Section 5 of the TNPID Act or under any of the penal code offences stated above. That apart, as stated earlier, in a similar prosecution, the petitioner was discharged by the designated Court under TNPID Act in Maharashtra in Spl.SC.No.1237 of 2021.

14.In view of the above said reasons, this Court is of the view that the impugned order is liable to be set aside and petitioner entitled to be discharged and is accordingly discharged.

15.Accordingly, the Revision is allowed. It is represented that the petitioner was directed to deposit Rs.2,00,000/- to the credit of C.C.No.7 of 2020 before the trial Court at the time of admission of this Revision. The petitioner would be entitled to return of the said money. Consequently, the connected criminal miscellaneous petition is closed.

08.01.2026

Tsg
Index : Yes/No
Speaking order : Yes/No

To

1.The Special Court,
TNPID Act Cases, Chennai.

2.The Deputy Superintendent of Police,
EOW – II, Chennai.

3.The Public Prosecutor,
Madras High Court.

SUNDER MOHAN.J.,

Tsg

Crl.R.C.No.2011 of 2025

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