
(2014) 10 MAD CK 0321
In the Madras High Court
Case No : CrI.A. No. 864 of 2005

Javagar

APPELLANT

Vs

Ramasamy

RESPONDENT

Date of Decision : 17-10-2014

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 173, 195, 195(1)(b)(ii), 195(i), 195(i)(a)
Evidence Act, 1872 — Section 73
Penal Code, 1860 (IPC) — Section 193, 195, 196, 467, 471
Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act, 1997 — Section 13, 13(2), 14, 5, 5A

Citation : (2014) 4 MLJ(Cri) 548

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Judgement

M. Venugopal, J.—The Appellant/Petitioner/A.2 has focussed the instant Criminal Appeal before this Court as against the order dated 31/8/2005 in CrI.M.P. No. 1057 of 2005 passed by the Learned Special Judge under T.N.P.I.D Act (in Financial Establishments) Act, 1997. The Learned Counsel for the Appellant/Petitioner/A.2 submits that the Appellant/Petitioner and four others were charge sheeted for offence under Section 5 of the TNPID Act. based on the complaint filed by the Respondents (P.Ws. 1 and 2), alleging that in the year 1999, the Appellant/Petitioner as Managing Partner of Amaravathi Packing Industries, Udumalpet, received deposits of Rs. 2,50,000/- from the First Respondent and issued two Fixed Deposit Receipts for the said amount. Also that the Appellant/Petitioner, received deposits of Rs. 1,50,000/- from the Second Respondent and issued two Fixed Deposit Receipts and failed to return the principal amount and the interest. As a matter of fact, the Respondents 1 and 2 filed complaint before the Third Respondent, who after investigation filed a charge sheet against the Appellant/Petitioner and four others.

2. According to the Learned Counsel for the Appellant/Petitioner during the

investigation, the Fixed Deposit Receipts were not subjected to Expert's Opinion and it is the contention of the Appellant/Petitioner that the Fixed Deposit receipts were never issued by them and they were forged.

3. The prime contention advanced on behalf of the Appellant/Petitioner is that when C.C. No. 123 of 2004 on the file of the Special Court/Designated Court was posted for trial to the shock and surprise of the Accused, the Respondent Nos. 1 and 2 projected the application under Section 5A of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 praying to compound the offence mentioning that they had received payments towards the Fixed Deposit Receipts.

4. The Learned Counsel for the Appellant/Petitioner urges before this Court that the Appellant/Petitioner had never signed the application for compounding the offence and the action was self-serving/unilateral on the part of the Respondents 1 and 2.

5. At this stage, it is the plea of the Learned Counsel for the Appellant/Petitioner that the trial Judge called the First and Second Respondents to the witness box without even giving notice of the applications to the Accused and proceeded to record their evidence wherein, they had stated that they had received full payments towards the Fixed Deposit Receipts and as such, no further action was necessary and recording their statements, the trial Court acquitted the accused on 4/3/2005.

6. Advancing his arguments, the Learned Counsel for the Appellant/Petitioner, proceeds to take a plea that the First and Second Respondents were total strangers to the Accused and as such, the Appellant/Petitioner filed an application on 14/3/2005 praying for an enquiry under Section 340 of Cr.P.C., alleging commission of offences under Sections 193, 195, 196, 467, 471 and 472 of I.P.C., and also an application under Section 73 of the Indian Evidence Act, 1872 praying for subjecting the Fixed Deposit Receipts to Expert's Opinion. Ultimately, the trial Court, dismissed CrI.M.P. No. 1057 of 2005 holding that it was not expedient to lay a complaint in the interest of Justice and resultantly, dismissed the application filed under Section 73 of the Indian Evidence Act in CrI.M.P. No. 3061 of 2005 by a common order dated 31/8/2005.

7. The Learned Counsel for the Appellant submits that the trial Court had committed an error in holding that the Accused should have moved the Court under Section 239 of Cr.P.C., on the grounds of forgery. In fact, the trial Court, according to the Learned Counsel for the Appellant/Petitioner has lost sight of an important fact that the Accused can move an application under Section 239 of Cr.P.C., based on the "Records" filed under Section 173 of Cr.P.C., and at that stage, cannot rely on an alien materials.

8. The Learned Counsel for the Appellant/Petitioner contends that the Respondents 1 and 2 in order to escape liability, projected an application unilaterally to compound the offence and the Appellant/Petitioner was not a party

to the application.

9. The Learned Counsel for the Appellant/Petitioner, vehemently submits that the delay in moving the Court for an enquiry under Section 340 of Cr.P.C., by the Appellant/Petitioner cannot be a reason to reject an enquiry and further, the Special Court/trial Court had rejected CrI.M.P. No. 1057 of 2005 based on superfluous grounds.

10. The Learned Counsel for the Appellant cites the decision of Madan Lal Sharma Vs. Punjab and Haryana High Court Thr. Its Registrar, , wherein it is held as follows:

"A reading of S. 340 Cr.P.C., shows that the Court is empowered to make such preliminary inquiry as it thinks necessary. The very word used in S. 340 Cr.P.C., contemplates that it is always for the Court to hold a preliminary inquiry. The Section does not envisage hearing of the accused before filing a complaint. It is always open to the accused to raise all the defences that are open to him under Law before the Magistrate in whose Court the complaint has been filed. The principle of audi-alteram-partem means that no party should be condemned unheard. It does not postulate that before making complaint, a part should be heard."

11. Further, in the aforesaid decision, at paragraph Nos. 10 and 11, it is observed as follows:

"10. In this view of the matter, there is no delay in filing the complaint. Further, simply on the basis of the delay, this Court in its inherent jurisdiction will not quash the complaint. It is however open to the petitioner to show the trial Court that the delay in filing the complaint caused prejudice to him, but it is not a ground for quashing the complaint.

11. The last and 3rd point raised by the learned counsel for the petitioner is that the prosecution was launched more than 16 years ago and some of the witnesses have expired and because of delay in the trial, the petitioner is entitled to have the criminal proceedings against him dropped. He relied upon Article 21 of the Constitution of India. This arguments overlooks that even the victims of the crimes are entitled to the protection of Article 21 of the Constitution of India."

12. In response, the Learned Counsel for the Respondents 1 and 2 submits that the Respondents/Depositors 1 and 2 had filed CrI.M.P. No. 850 of 2005 on 4/3/2005 before the Special Court/Designated Court under Section 5A of the TNPID Act and the same is maintainable in law. Further, it is the stand taken on behalf of the Respondents 1 and 2 that except the Respondent Nos. 1 and 2, no one has lodged the complaint against the Appellant and as such, there is no necessity for the competent authority to file a petition for and on behalf of the body of other depositors. Even otherwise, it is the plea of the Respondents 1 and 2 that the District Revenue Officer being the Competent Authority had to file a petition only for the benefit of the Respondents 1 and 2. That apart, the Special

Court/Designated Court under T.N.P.I.D (in F.E.S) Act, 1997 granted permission after subjective satisfaction and the said order passed in Crl.M.P. No. 850 of 2005 had become final. Moreover, neither the order passed in Crl.M.P. No. 850 of 2005 nor the order made in C.C. No. 123 of 2004 is under challenge in the present Criminal Appeal before this Court.

13. Besides the above, the Learned Counsel for the Respondents 1 and 2 strenuously contends that a procedural irregularity in law would not stand in the way of delivering substantial Justice to the parties. Further, it is brought to the notice of this Court on behalf of the Respondents 1 and 2 that the Competent Authority (D.R.O) had not done any job in the present case to attach the properties to settle the dues to the Depositors and as such, the Petition in Crl.M.P. No. 850 of 2005 filed by the Respondents 1 and 2 before the Special Court/Designated Court would not vitiate the proceedings.

14. The Learned Counsel for the Respondents 1 and 2 submits before this Court that in any event, the "Rules of Procedure" are "Hand Maid" of Justice and not the mistress of Justice. In this regard, the Learned Counsel for the Respondents 1 and 2 cites the decision of the Hon"ble Supreme Court in Rabindra Kumar Shaw (dead) thr. LRs. Vs. Manick Lal Shaw, , wherein in paragraph 26, it is observed as follows:

"It is trite that no man should suffer a wrong by technical procedure of irregularities. The rules or procedures are the handmaids of Justice and not the mistress of justice. Ex debito justitiae, we must do justice to him (vide A.R. Antulay Vs. R.S. Nayak and Another, . However, in the present case, although we feel that the appellant has suffered on account of confusion in the nature of the licence to be issued to it but the appellant's main prayer for conversion of special imprest licence into a project import licence having been granted by the High Court, the wrong caused stands remedied to a large extent."

15. He also relies on the decision of the Hon"ble Supreme Court in S. Amarjit Singh Kalra (dead) by Lrs. and Others and Smt. Ram Piari (dead) by L.Rs. and Others Vs. Smt. Pramod Gupta (dead) by Lrs. and Others, , wherein in paragraph No. 26 at special page Nos. 300 and 301 and in paragraph No. 31 at special page Nos. 305 and 306, it is held as follows:

"26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights to citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 of CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination into an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and

independent rights to property or any claim remain in tact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the Khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in Jamabandhi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even dehors the cause for the delay in filing the applications keeping in view the serious manner it would otherwise jeopardize an effective adjudication on merits, the rights of other remaining appellants for no fault of them. Interest of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttle the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of Court to do real, effective and substantial justice. Viewed in the light of the fact that each one of the appellants had an independent and distinct right of his own not inter-dependant upon the one or the other of the appellants, the dismissal of the appeals by the High Court in their entirety does not constitute a sound, reasonable or just and proper exercise of its powers. Even if it has to be viewed that they had a common interest, then the interests of justice would require the remaining other appellants being allowed to pursue the appeals for the benefit of those others, who are not before the Court also and not stultify the proceedings as a whole and non-suit the others, as well."

.....

"31. But, in our view also, as to what those circumstances are to be cannot be exhaustively enumerated and no hard and rule for invariable application can be devised. With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law, inevitably necessitates it. Consequently, having regard to the nature of the proceedings under the Act and the purpose of reference proceedings and the appeal therefrom, the Courts should adopt a liberal approach in the matter of condonation of the delay as well as the considerations which should weigh in adjudging nature of the decree, i.e., whether it is joint and inseverable or joint and severable or separable. The fact that the Reference Court has chosen to pass a decree jointly in the matters before us is and should be no ground by itself to construe the decree to be joint

and inseparable. At times, as in the cases on hand, the Court for this convenience might have combined the claims for joint consideration on account of similar nature of the issues in all such cases and for that reason the parties should not be penalized for no fault of them. *Actus curiae neminem gravabit* (an act of Court shall prejudice no one) is the maxim of law, which comes into play in such situations. Number of people, more for the sake of convenience, may be counseled to join together to ventilate, all their separate but similar nature of claims and this also should not result in the claims of all such others being rejected merely because one or the other of such claims by one or more of the parties abated on account of death and consequent omission to bring on record the legal heirs of the deceased party. At times one or the other parties on either side in a litigation involving several claims or more than one, pertaining to their individual rights may settle among themselves the dispute to the extent of their share or proportion of rights are concerned and may drop out of contest, bringing even the proceedings to a conclusion so far as they are concerned. If all such move is allowed to boomerang adversely on the rights of the remaining parties even to contest and have their claims adjudicated on merits, it would be a travesty of administration of justice itself."

16. The Learned Counsel for the Respondents invites the attention of this Court to the decision of the Hon''ble Supreme Court in *Central Bank of India Vs. Vrajlal Kapurchand Gandhi and Another*, wherein at special page Nos. 578 and 579 : LNIND 2003 SC 554, whereby and whereunder in paragraph No. 12, it is observed as follows:

"The only course open to a party taking the stand that an order does not reflect actual position is to move the High Court in line with what has been said in *State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another*, . In recent decisions i.e., *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, and *Roop Kumar Vs. Mohan Thedani*, the view in the said case was reiterated. Statements of fact as to what transpired at the hearing recorded in the judgment of the Court are conclusive of the facts so stated and no one can contradict such statements by an affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to a party to contend before this Court to the contrary. This Court cannot launch into an enquiry as to what transpired in the High Court. It is imply not done. Public policy and judicial decorum do not permit it. Matters of judicial record in that sense are unquestionable. However, the Court can pass appropriate orders if a party moves it contending that the order has not correctly reflected happenings in Court."

17. He also seeks in aid of the decision of the Hon''ble Supreme Court in *Jagvir Singh and Others Vs. State (Delhi Admn.)*, at special page No. 360 : LNIND 2007

SC 781 : (2007) 2 MLJ (CrI) 819, wherein in paragraph No. 4, it is observed and held thus:

"If really there was no concession, the only course open to the appellants was to move the High Court in line with what has been said in *State of Maharashtra v. Ramdas Shrinivas Nayak* (supra). In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.* (supra), the view in the said case was reiterated by observing that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in the Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judge who has made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to the appellants to contend before this Court to the contrary."

18. Apart from the above, the Learned Counsel for the Respondents, cites the following decisions of the Hon"ble Supreme Court:

(i) In the decision of *D.P. Chadha Vs. Triyugi Narain Mishra and Others*, it is held that-

"Record made by Court is sacrosanct and doubt cannot be cast on it casually and further, it is held that where steps have not been taken for rectification before the Court which made the record, no other Court including Supreme Court can entertain a challenge to the correctness of the facts recorded in the order sheet and the explanation offered by the appellant advocate that he had not applied for rectification because the Judge concerned had meanwhile been transferred was a ruse."

(ii) In the decision of the Hon"ble Supreme Court in *Shankar K. Mandal and Others Vs. State of Bihar and Others*, it is observed and held that

"Wrong recording of party's submissions or non-consideration of plea raised by the High Court held cannot be alleged before the Hon"ble Supreme Court and the party should promptly approach the Judges of the High Court."

(iii) In the decision of the Hon"ble Supreme Court in *Dasari Siva Prasad Reddy Vs. The Public Prosecutor, High Court of A.P.,* , it is held as follows:

"The statement of, as to what transpired at the hearing, the record in the judgment of the Court is conclusive of the facts so stated and no one can contradict such statement on affidavit or by other evidence. If a party thinks that the happenings in Court have been erroneously recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges who have made the record corrected. It is not open to the appellant to contend before the Supreme Court to the contrary."

19. By way of reply, the Learned Counsel for the Appellant submits that it is the contention of the Appellant that Exs. R1 to R5 Deposit Receipts were forged one and based on the forged documents, a criminal case was instituted against the Appellant/A.2 and other accused.

20. The Learned Counsel for the Appellant proceeds to take a plea that on 4/3/2005, he was held up in the Hon'ble High Court and by that time, when he reached the Special Court/Designated Court, the examination of witnesses were over (P.Ws. 1 and 2) and in fact, P.Ws. 1 and 2 had filed a Compromise Petition in CrI.M.P. No. 850 of 2005 and in fact, in the Notice Petition, no notice was given to the Accused and ultimately, the said Petition was allowed by the trial Court. Also, that it is the fervent plea of the Learned Counsel for the Appellant/A.2 that in terms of Section 5A of T.N.P.I.D Act, 1997, the compounding of offence may be effected by the Competent Authority to compound the offence punishable under Section 5 of the Act. Unfortunately, in the present case on hand, the Competent Authority had not filed CrI.M.P. No. 850 of 2005 before the trial Court, but the same was filed by the Respondents (P.Ws. 1 and 2).

21. At this stage, the Learned Counsel for the Respondents/Depositors (P.Ws. 1 and 2) submits that the Appellant/A.2 filed before the trial Court in CrI.M.P. Nos. 1057/2005 and 3061 of 2005 after a lapse of 15 years. Further, it is represented on behalf of the Respondents that the first complaint was given by the First Respondent before E.O.W - II, Coimbatore on 20/11/2002 and later, the Second Respondent/P.W.2 lodged a complaint, he made deposits on 9/9/1999 for Rs. 1,50,000/- with the Accused. A.1 was the Financial Establishment and Exs. A.2 to A.5 were Accused of collecting deposits from the Depositors at 2/78, Bodipatti Post, Udumalpet Taluk, Udumalpet to the Coimbatore District and all the Accused are relatives.

22. The First Respondent (P.W.1) deposited a sum of Rs. 2 lakhs and later, another sum of Rs. 50,000/-. After receiving the deposits, the Accused had not repaid the amount at the end of three years. As such, the First Information Report was filed.

23. It is to be pointed out that the aim of Section 340 of Cr.P.C., is to ascertain whether any offence affecting the Administration of Justice was committed in relation to any document produced given in evidence in Court during the time when the document or evidence was in custodia legis and whether it is also expedient in the interest of Justice to take such action as required under Section 340 of Cr.P.C. No doubt, Section 340 of Cr.P.C., is quite applicable to all the proceedings in all Courts irrespective of the fact whether the matter in Court in which allegedly in offence mentioned in Section 195 of the Code was committed, was a criminal case or civil case, as per decision K. Rajagopala Rao Vs. P. Radhakrishna Murthy, .

24. It cannot be brushed aside for a moment that an inquiry which is held under Section 340 of Cr.P.C., on a complaint which is preferred by a litigant, who is the

party to a litigation is to be perused with care and caution with a view to ensure that on the basis of false and frivolous complaint, action is not taken against the party, who has a legitimate right to pursue the litigation.

25. Moreover, the ingredients of Section 340 of Cr.P.C., confer a discretion on the trial Court to decide whether a complaint ought to be filed after the enquiry is held under Section 340 of Cr.P.C., as per decision *Jari Mari Coop. Hsg. Soc. Ltd. Vs. Shamshad Begum Abdul Hamid Khan and Others*, .

26. Although wide discretion is given to Court under the above said Section, the same has to be exercised with utmost care, circumspection and caution. The object of the Section is to provide a safeguard against a vexatious or frivolous prosecution, as per decision *Joginder Nath Vs. Sham Lal*,

27. A sanction should be granted only in a case where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. In fact, there ought to be a direct evidence fixing culpability on the accused persons, prima facie case of deliberate falsehood and reasonable probability of conviction, as per decision *Laxminarayan Deepak Ranjan Das Vs. K.K. Jha and Others*, .

28. It is to be noted that any Civil or Criminal or Revenue Court may proceed under Section 340 of Cr.P.C., and hold a preliminary enquiry. Thereafter, it is to record a finding, and should itself make a complaint in writing and forward it to the concerned Judicial Magistrate having jurisdiction, in the considered opinion of this Court. In terms of Section 340 of Cr.P.C., the prosecution is to be launched if it is expedient in the interests of Justice and not on mere allegation or personal vendetta. In reality, Section 340 of Cr.P.C., is mainly intended to be complimentary to Section 195 of Cr.P.C. The ingredients of Section 340 of Cr.P.C., cannot be permitted to be served as "Hand Maid" of private parties to achieve their own ends of revenge against the opposite/another person. A Court of Law is to consider whether there is any ulterior object which the party seeking to invoke the power under Section 340 of Cr.P.C., wants to achieve indirectly by using the Court as an instrument for its own ends, as per decision *Bishop Thorp College v. D. Anandsekharan Selvarajan* 2000 (2) Crimes 478 (Madras) : LNIND 1999 MAD 818.

29. At this juncture, this Court worth recalls and recollects the decision made in *Narain Singh Vs. Emperor*, whereby and whereunder, it is held as follows:

"No sanction should be granted, or prosecution directed, unless there is a reasonable probability of conviction though the authority granting a sanction under Section 195, or taking action under Section 476, should not decide the question of guilt or innocence. Great care and caution are required before the criminal law is set in motion, and there must be a reasonable foundation for the charge in respect of which a prosecution is sanctioned or directed: *M. Liaquat Husain Vs. Vinay Prakash and Another*, , Foll."

30. At this stage, this Court pertinently points out that in the decision Jagdish Vs. Ashok Kumar Gureja, , it is held that an application under Section 340 of Cr.P.C., for taking action for perjury for filing false affidavit moved after the expiry of 4 1/2 years was dismissed as not maintainable. It is true that after the case ended in acquittal, an accused can file application under Section 340 of Cr.P.C.

31. Also, this Court aptly points out the decision of the Hon"ble Supreme Court in K.N. Mishra Vs. Jiwaji University, Gwalior, , wherein in paragraph 2, it is held as under:

"Shri. J.P. Goyal, learned counsel for the appellant contended that the Additional District Judge who had dismissed the application for default on July 12, 1979 had no Jurisdiction to restore the application. He also submitted that having regard to the long lapse of time during which period the appellant must certainly have undergone mental suffering, it was not expedient, in the interests of justice, to now enquire into the question whether a complaint should be laid against the appellant. We do not desire to go into the first question raised by Shri Goyal as we are inclined to accept his second submission. We do think that it is not expedient in the interests of justice that a complaint should be laid against the appellant after so many years. We think that the laying of a complaint at this belated stage would make the prosecution a vertitable persecution. Shri Kohli, learned counsel for the University very vehemently contended that the appellant had obtained a decree against the University for a large amount of making a false statement on oath and therefore, the interests of justice required that a complaint should be laid against him. He submitted that unless a complaint was laid the university would not be able to get back its money from the appellant. We hearing an application under Section 476 to cater to the acrimonious and elsewhere. It will of course be open to the university to take suitable steps by filing a suit, if so advised, to recover the money paid under the decree, alleged by the university to have been obtained by the appellant by fraud. We express no opinion on the maintainability or advisability of a such a suit. All that we say for the purposes of this appeal is that we do not consider it expedient to permit the continuance of proceedings for the laying of a complaint in regard to a stale matter which took place years ago. We also notice that at that time the university itself had amply opportunity to contest the statement of the appellant. In the light of the discussion we allow the appeal, set aside the orders of the Additional District Judge and High Court and quash the proceedings in Criminal Petition 1 of 1974 in the Court of the Second Additional District and Sessions Judge, Gwalior."

32. Besides the above, the expediency under Section 340 of Cr.P.C., cannot be judged by the Court by weighing not the magnitude of an injury suffered by the person affected by such forgery or forged document, but having regard to the effect of impact, such commission of offence has upon administration of Justice.

33. It is to be noted that the term "compounding" signifies that an individual has received some gratification to abstain from prosecution. After all, "compounding"

is in the nature of contract. Further, a "Court of Law" is not concerned with the nature and value of consideration, as opined by this Court.

34. In this connection, this Court relevantly points out that word "composition" is an arrangement or settlement of differences between the parties. No wonder, ordinarily, after compromise, an accused in a given case cannot be prosecuted. Moreover, as soon as the offence was compounded by the complainant, it operated as an acquittal even if no acquittal was recorded, as per decision *Mathew v. State of Kerala* 1986 (2) Crimes 393, 396 (Ker). Added further, where the complainants have compromised, received compensation and no rancor is now left in their heart, the Court would grant permission to compound the offence, as per decision *Chiranjit Lal v. State of Uttar Pradesh* (1982) 3 SCC 370 (2).

35. The policy of Law as envisaged under Section 5A relating to compound of offence under T.N.P.I.D. Act, obviously, is meant to purchase peace. Further, it is true that Section 13 of the T.N.P.I.D Act speaks of procedure and powers of Special Court regarding offences. In fact, Section 13(2) speaks of the provisions of the Code of Criminal Procedure, 1973 (Central Act 2/1974) shall so far as may be applied to the proceedings before the Special Court and for the purpose of said provisions, a Special Court shall be deemed to be a Magistrate. Further more, Section 14 of T.N.P.I.D Act, says that the said Act is to overwrite other laws.

36. It is to be borne in mind that Section 460 of Cr.P.C., speaks of "Irregularities which do not vitiate proceedings." In fact, this Section deals with acts done by a Magistrate in no way empowered by Law to do those acts. However, it has no reference to a Magistrate empowered otherwise under the Act to do an act but not possessing jurisdiction over the offence, as per decision *Chidha* (1897) 20 ALL 40, 41. That apart, Section 461 of Cr.P.C., deals with "irregularities which vitiate proceedings."

37. Really speaking, Section 462 of Cr.P.C., speaks of "proceedings in wrong place". Where no prejudice would cause to the Accused, trial of the case at wrong place does not vitiate the conviction, as per decision of the Hon'ble Supreme Court *Nasiruddin Khan Vs. State of Bihar*, . The question of jurisdiction should be taken as a plea at the commencement of the trial and it cannot be gain said that it should be decided before the commencement of the trial. The application of Section 462 of Cr.P.C., arises only after such a decision is given by a Court which has no territorial jurisdiction, as per decision *Abhay Lalan Vs. Yogendra Madhavlal*, Further, an order which is void for want of jurisdiction should nevertheless be regarded as valid unless it is set aside by a Court of Competent Jurisdiction.

38. In the instant case, the stand taken on behalf of the Respondents/Depositors (P.Ws. 1 and 2) is that they had not forged the Fixed Deposit Receipts Exs. P.1, P.2, P.4 and P.5. Further, even assuming without admitting that Exs. P.1, P.2, P.4

and P.5 were forged during the year 2002. The case was taken on file as C.C. No. 123 of 2004 on the file of the Special Court/Designated Court under T.N.P.I.D Act in the year 2004 and added further, P.Ws. 1 and 2 had deposed only on 4/3/2005. Under these circumstances, the present case would not fall within the ambit of Section 195 of Cr.P.C.

39. It is true that the provisions of Section 195 of Cr.P.C., are mandatory in character. In fact, Section 195 of Cr.P.C., creates a bar and Section 340 of Cr.P.C., confers Jurisdiction on the Court to proceed for the offences mentioned in Section 195(1)(b)(ii). These two Sections are supplementary to each other, as opined by this Court. The one creates a bar on the filing of complaint by all and sundry and the other removes the bar and confers exclusive jurisdiction on the Court to file the complaint after satisfying itself prima facie about the correctness of the offences said to have been committed and covered by Section 195(i) or (ii) as such both the Sections should be read together. In fact, Section 340 of Cr.P.C., has no application to an offence mentioned in Section 195(i)(a) of Cr.P.C. Section 195 of Cr.P.C., has no application to a case for which a document was fabricated prior to its petition or giving in evidence, as per decision Harbans Singh v. State of Punjab 1986 Cr.L.J 1834 (P & H - FB). A complaint by a Court is essential only when offence is committed after a commencement of the proceedings and not prior to it as per decision Philip Vs. Raphael and Others, .

40. At this stage, it is to be pertinently pointed out by this Court that the plea of forgery committed in respect of Fixed Deposit Receipts was not taken by the Appellant/Petitioner and other Accused before the Special Court/Designated Court at the time of framing of charges. The trial of the main case commenced and the Respondents (P.Ws. 1 and 2) entered into witness box and deposed they had deposited with A.1 Financial Establishment run by the Appellant/A.2 for which Exs. P.1, P.2, P.4 and P.5 Fixed Deposit Receipts were issued.

41. Before the Special Court/Designated Court in CC. No. 123 of 2004, P.W.1/ First Respondent had deposed that the Appellant/Petitioner had paid the principal and interest amount and settled the matter and therefore, he had filed a petition seeking permission to compound the case. Pin pointedly, in his evidence, P.W. 1 had categorically submitted that he had received the full amount in cash. Likewise, P.W.2 (Second Respondent) in his evidence in CC. No. 123 of 2004 had deposed that he had received the principal and interest amount and he had filed a Petition seeking permission of the Court to compound the case with the Accused.

42. A mere running of the eye over the ingredients of Section 5A of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 shows that the "Competent Authority" alone is empowered to compound the offence punishable under Section 5 of the Act. When the charge sheet is filed in the Designated/Special Court only with the permission of the Special Court, the "Competent Authority" can compound the offence. If the offence is compounded by the Competent Authority then automatically, the proceedings

under the Act come to an end and the Accused shall be discharged from the charges.

43. In the present case, before the Special Court/Designated Court, CrI.M.P. No. 850 of 2005 (seeking permission to compound the offence) was not filed by the competent Authority, as per section 5 of the above said Act. Instead, the said application was filed before the Designated Court in C.C. No. 123 of 2004 by the Respondents. Since CrI.M.P. No. 850 of 2005 was allowed by the Special Court, the Accused in C.C. No. 123 of 2004 (including the Petitioner/A.2) were discharged from the main case which "Resulted in Acquittal".

44. At this juncture, this Court significantly points out that although the Competent Authority specified under Section 5A of the T.N.P.I.D (in F.E.S) Act had not filed the necessary application before the Special Court seeking permission to compound the offence on the ground that the Accused had settled the amounts (principal and interest to the Depositors) but the said Petition, viz., CrI.M.P. No. 850 of 2005 was filed by the Respondents/P.Ws. 1 and 2 as against the order of the Petition being allowed by the Special Court. The Petitioner/A.2 or other Accused had not filed any further proceedings before the competent forum in the manner known to Law. Even though, the CrI.M.P. No. 850 of 2005 was filed by the Respondents before the Special Court/Designated Court who are not, entitled to file the same and only the Competent Authority is to file necessary application as per section 5A of the Act in respect of compounding of an offence nevertheless the said order passed by the trial Court in that Miscellaneous Petition at best can only be a void one, in the eye of Law, but the same is valid unless it is set aside by a competent Court of Jurisdiction. Furthermore, the said order passed in Cr.M.P. No. 850 of 2005 by the Special Court had become final, conclusive and binding between the parties inter se unless the same is set aside in the manner known to law and in accordance with law.

45. It is true that in the present case, the Petitioner/Accused and other Accused were acquitted. Although in Law, an Accused is entitled to file an application under Section 340 of Cr.P.C., in a case which resulted in an acquittal. Yet, in the present case, this Court is of the considered view that CrI.M.P. No. 1057 of 2005 filed after merely fifteen years from the date of deposits made in the year 1999 is per se not maintainable.

46. Furthermore, the Petitioner/A.2 had not moved his little finger at the earliest point of time while framing charges to complaint about the forgery in respect of the Fixed Deposit Receipts, viz., Exs. P.1, P.2, P.4 and P.5. In short, the Petitioner/A.2 had not approached the Special Court/Designated Court about his perpetual plea of forged documents of Fixed Deposit Receipts at the earliest point of time and in fact, the perpetrated plea for prosecution made on behalf of the Petitioner/A.2 based on expediency and in the interest of Justice that an enquiry should be made are all cannot be countenanced in the eye of Law. In short, the present case is not fit for the Special Court/Designated Court to launch the prosecution case since there is no expediency in the interest of Justice to launch the

prosecution.

47. To put it precisely, the Petitioner/A.2 cannot initiate/launch the prosecution to obviously satisfy his private grudge against the Respondents/P.Ws. 1 and 2. Also that when the Petitioner/A.2 has not challenged the Order/Judgment of Acquittal passed by the Special Court, the filing of CrI.O.P. No. 1057/2005 after a lapse of nearly fifteen years from the date of Deposits made by the Respondents during the year 1999 is per se not maintainable in Law. Looking at from any angle, this Court comes to a resultant conclusion that CrI.M.P. No. 1057 of 2005 filed by the Appellant/A.2 before the Special Court/Designated Court is per se not maintainable in the eye of Law. Consequently, the Criminal Appeal fails. In the result, this Criminal Appeal is dismissed. Resultantly, the Order passed by the Special Court/Designated Court (T.N.P.I.D (in Financial Establishments) Act, 1997) in CrI.M.P. No. 1057 of 2005 dated 31/8/2005 is affirmed by this Court, for the reasons assigned in this Criminal Appeal.