
(2010) 10 MAD CK 0088

In the Madras High Court

Case No : Criminal R.C. No. 1088 of 2010 and M.P. No. 1 of 2010

J.B. Associates

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239

Penal Code, 1860 (IPC) — Section 420

Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act, 1997 — Section 5

Citation : (2011) 1 Crimes 75

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : E. Kannadasan, for the Appellant;

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—The first Petitioner herein, namely J.B. Associates, is a partnership firm, doing business as a financier and the other

Petitioners are the partners in the first Petitioner firm. They are being prosecuted for offences punishable under Sections 420 IPC and Section 5 of

the TANPID Act.

2. A case was registered on the file of Economic Offences Wing II, Vellore as Crime No. 1 of 2008, on receipt of a complaint from the depositors

that Petitioners 2 to 4, as the partners of the first Petitioner firm, collected deposits from public with a promise to give them higher rate of interest

and lured them to make such deposits and that when the time for making repayment of the deposited amount came, they committed default and

failed to repay the amount collected as deposits with the promised interest. Upon conducting an investigation, the Investigating Officer, on the

materials collected by him submitted a final report, in which it has been stated that Petitioners 2 to 4 started a financial institution originally in the name and style of Hi-yield Finances and Hi-yield Investments in the year 1995 and the same was dissolved as per Document No. 2/2003 dated 28.05.2003 with effect from 31.03.2002; that subsequently, they started a new firm in the name and style of J.B. Associates and collected deposits to the tune of Rs. 96,95,400/- from 57 depositors and that they failed to pay either interest or principal, except the payment of the interest upto certain period alone. The said final report was taken on file by the learned Special Judge under TANPID Act, Chennai as C.C. No. 1 of 2009.

3. On appearance, the Petitioners filed a petition before the trial Court in CrI.M.P. No. 462 of 2010 in the above said calendar case u/s 239 Code of Criminal Procedure seeking discharge. The learned Special Judge under TANPID Act, after considering the petition and the materials produced by the Investigating Officer along with the final report, came to the conclusion that there were materials to make out a prima facie case for the alleged offences and there were grounds to proceed further against the Petitioners. Accordingly, the said petition was dismissed by an order dated 24.09.2010. The said order is sought to be challenged in this criminal revision.

4. Mr. E. Kannadasan, learned Counsel for the Petitioners mainly relies on the contention that the provisions of TANPID Act are not attracted against the Petitioners herein, because they did not receive any deposit and what they did was to borrow certain amount from a number persons on promissory notes. In support of his contention, the learned Counsel makes reference to four documents, copies of which have been included in the typed-set of papers from pages 1 to 4.

5. It is true that those four documents are titled as pronotes. But the tabulation found on the reverse side of the said documents and the entries found therein, would provide evidence to make a prima facie case that by a careful device to avoid the deposits collected to be termed as deposits, they have chosen to prepare such promissory notes. The very fact that periodical interest was paid and provision had been made in the tabulation found on the reverse side will make the case of the prosecution that those were only deposits collected by the financiers but assigned the

name of Pronotes, seems to be quite probable.

6. Under such circumstances, the criminality of the act of the Petitioners in getting those amounts from so many persons can be decided only after

full trial and it can not be assumed that, simply because such documents have been executed by the Petitioners in favour of the depositors that what

they did was to borrow amount and not collect deposits. The Court below has rightly held that the case is not a fit one for discharging the

Petitioners. The criminal revision case does not even merit admission and the same deserves to be dismissed in limine.

7. Accordingly, this criminal revision case is dismissed. Consequently, the connected miscellaneous petition is closed.