

(2013) 04 MAD CK 0268

In the Madras High Court

Case No : Criminal R.C No. 569 of 2013 and M.P. No. 1 of 2013

R. Suresh

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

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

Citation : (2013) 2 LW(Cri) 234 : (2013) MLJ(Cri) 414

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : M. Loganathan, for the Appellant; C. Emilias, Assistant Public
Prosecutor (Crl. side), for the Respondent

Judgement

S. Palanivelu, J.—Mr. C. Emilias, learned Additional Public Prosecutor (Crl. Side) takes notice for the respondent. The petitioner has come forward with the present Criminal Revision Petition, to aside the order passed by the learned Special Judge in Crl.M.P. No. 1999 of 2012 in C.C. No. 1 of 2011 dated 14.03.2013 and consequently discharge the petitioner in C.C. No. 1 of 2011 on the file of the learned Special Judge, Special Court under the TNPID Act, Chennai.

2(a) The learned counsel for the petitioner Mr. M. Loganathan, submits that based on the final report filed by the respondent Police, in C.C. No. 8871 of 1996, the petitioner had been arrayed as 10th accused and subsequently, arraigned as accused No. 9 and after the TNPID Act 1997, the case was renumbered as C.C. No. 16 of 1998 and as ordered by this Court, the case was transferred to the Chief Metropolitan Magistrate at Egmore, Chennai and again renumbered as CC. No. 8815 of 2013.

(b) The learned counsel further submits that the respondent Police filed another final report u/s 5 of the TNPID Act and the same was taken on file as C.C. No. 23 of 2008 and based the petition filed by the accused for consolidation and sale of all assets and equal distribution of sale proceeds to all depositors in respect of

cases pending in C.C. No. 8815 of 2003 and C.C. No. 23 of 2008, were transferred before the Special Court under TNPID Act, Chennai, to be tried along with C.C. No. 28 of 2008 and therefore the case in C.C. No. 8815 of 2003 was renumbered as C.C. No. 01 of 2011 and the same is now pending on the file of the Special Court under TNPID Act, Chennai.

(c) The learned counsel also contended that the petitioner/Accused No. 9, along with other accused filed Discharge Petition being CrI.M.P. No. 1999 of 2012 in C.C. No. 01 of 2011 and since the said Petition was dismissed against the petitioner herein, he has come forward with this Criminal Revision Case.

3. The learned counsel appearing for the petitioner submits that some of the other accused were working as General Manager, Assistant Manager, Manager and Branch Manager in Snegam Financial Establishments and some other accused as relatives of the first accused and two other accused are employees; that the petitioner herein has nothing to do with the financial establishment run by the first accused; that he has also not canvassed any person for investment and inasmuch as other accused have been discharged from the charges, this petitioner alone has been discriminated and he has been ordered to face the trial, praying for discharge from the charges levelled against him.

4. On the other hand, the learned Additional Public Prosecutor submits that, no ground has been made out by the petitioner for discharging him from the charges and hence, he has to face the trial.

5. This Court heard the submissions made by the learned counsel appearing on either side and perused the materials available on record.

6. The learned counsel appearing for the petitioner, in support of his contention relied on the Judgment of this Court in Smt. Prasannadevi Vs. State of Tamil Nadu, , wherein the learned Judge in paragraph No. 8, has observed as follows:

8. Here, in this case, though the first information report which set the law in motion did not disclose the specific allegation that the petitioner herein was responsible for the management of the affairs of the financial institution, the statements recorded from various witnesses by the respondent police would indicate that the petitioner canvassed for the deposit for the partnership firm. Therefore, the aforesaid ratio does not apply to the facts and circumstances of this case.

7. The learned counsel for the petitioner also placed reliance upon a decision of mine reported in State Vs. K.P. Jai Xavier and Others wherein I have referred and followed various decisions of the Honourable Supreme Court and observed that not only at the time of trial the benefit of getting acquittal by the accused who had not appealed against conviction but also at the time of interlocutory proceedings such as quashing of criminal proceedings against the accused or seeking for discharge from the case. Following the relevant passage touching the point: 31. In this case, A1 to A3 and A8 have filed petitions for discharge and

the Court below has discharged them and also the other non petitioning accused viz., A4 to A7. It is legally permissible. The learned Senior counsel for respondents has cited the decisions of the Supreme Court for this proposition. It is held by the Supreme Court in Hari Nath and Another Vs. State of U.P., that the conviction and sentence of non-appealing accused cannot be sustained as the findings are inter-dependant and inextricably integrated.

32. A Full Bench of the Supreme Court in its decision Kameshwar Singh and Others Vs. State of Bihar, , has held that when other accused are granted benefit of doubt, the non-appealing co-accused are also entitled for the same grant and consequential acquittal. The same view has been expressed by the Division bench of this Court in Sobitharaj 6 others Vs. State,

33. The learned senior counsel also submits that not only at the time of trial such benefits will go to the accuse but also at the time of interlocutory proceedings, such as, quashing of criminal proceedings against the accused or seeking for discharge from the case. In Ashok Chaturvedi and Others v. Shitur H. Chanchani and Another (supra) the Supreme Court while quashing the private complaint laid against accused persons, it was also quashed the criminal proceedings against other accused, who did not prefer special leave petition.

34. Following the above said decisions, this Court is of the view that even though A4 to A7 accused have not preferred application for discharge they are entitled to get the benefit when other co-accused are receiving the same.

In view of the law laid down by the Honourable Supreme Court, it has to be necessarily held that not only after trial along the rights available to the non-appealing accused for acquittal but also the same benefits would be available to the co-accused who is remaining in the case after discharged all other accused. In such view of the matter, it is observed that since the majority of co-accused who are holding key positions in the financial establishment have been already discharged, the petitioner will also be getting discharged from the case. Hence, the order passed by the Court below is liable to be set aside and it is accordingly set aside. The revision deserves to be allowed.

In fine, the Criminal Revision Case is allowed, discharging the petitioner from the charges levelled against him. Consequently, connected Miscellaneous Petition is closed.