
(2003) 07 MAD CK 0050

In the Madras High Court

Case No : Criminal Original Petitions No's. 20498 to 20504 of 2003 and Criminal M.P. No's. 5794 to 5807 of 2003

S. Mohan

APPELLANT

Vs

State, by The Inspector of Police

RESPONDENT

Date of Decision : 16-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2003) 07 MAD CK 0050

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : C. Prakasam, for the Appellant; A.N. Thambidurai, Government Advocate (crl. side), for the Respondent

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—The petitioner, who is admittedly one of the Directors of a Benefit Fund viz. Vizhima Nagar Benefit Fund Private Limited

from 26.7.1999 has come forward to file all the above criminal original petitions praying to call for the records in C.C. Nos. 5 to 11 of 2002 on

the file of the Court of Additional District Judge-cum-Chief Judicial Magistrate, Villupuram and quash the same on averments such as that he

resigned from the Board of Directors of the said Benefit Fund from 7.1.1999 on Form-32 being issued relieving him from the said responsibility as

per the Companies Act, 1956; that the defacto-complainants connected to all the above criminal original petitions are the depositors who have

respectively lodged the complaints alleging that they deposited the amounts and in spite of their deposits having matured, their amounts were not

repaid and the said complaints have been registered for the commission of

offences punishable under Sections 120-B, 420, 409 etc. further

pleading that his name was not figuring in the complaint; that there was no mens rea for indulging in the criminal act and hence the charges levelled

against him are liable to be quashed.

2. The petitioner also would cite an order passed by this Court in Crl.O.P. No. 10193 of 2000 wherein the complaint has been quashed on

ground that no mens rea was attributed against the accused persons therein and would pray to allow all the above criminal original petitions and

quash the criminal proceedings pending against him.

3. During arguments, the learned counsel appearing on behalf of the petitioner besides laying emphasis on the facts pleaded in the above criminal

original petition, as extracted supra, would lay emphasis on the order mentioned therein, passed in Crl.O.P. No. 10193 of 2000 dated 7.7.2000

wherein the learned Judge traced the facts showing that the petitioner, a lady, therein was not paid the entire amount due in a chit fund in which she

became a member of the chit and later became the prize winner and still there was a due; that the defacto-complainant executed a promissory note

and on the complaint of the defacto-complainant therein, the case was registered and investigated into, in which, on a criminal original petition

having been filed by the accused therein, accepting the argument of the accused therein to the effect that it was settled law that in a criminal case,

there must be presence of guilty mind i.e. mens rea, which is an essential element of a crime and since it was lacking in the case and since the

defacto-complainant therein had also filed a suit for recovery of the said sum, the learned Judge had allowed the petition filed by the accused

quashing the said proceeding.

4. Since the learned counsel appearing on behalf of the petitioner in the cases in hand is entirely depending on the order passed in the said case,

cited supra, it has become incumbent on the part of this Court to go into the aspect `whether the norms based on which the said decision was

arrived at by a learned single Judge of this Court could be applied to the case in hand"?

5. While considering the said aspect, it must be stated firstly that the facts are entirely different since majority of the amount had been paid in favour

of the complainant therein and only a paltry sum remain unpaid regarding which

also, the complainant therein has filed a civil suit for the recovery of the said sum as per the terms and conditions entered into in between the defacto-complainant and the accused company. But, it is not the same facts and circumstances that are prevalent in the case in hand and they are entirely different. Secondly, regarding the question whether mens rea i.e. the guilty mind to cheat the defacto-complainant is present is concerned, it could only be arrived at on facts and circumstances encircling each and every case and the evidence gathered from various sources during trial and therefore it is a subject that has to be dealt with in application of the entire evidence collected in the given case by the trial Court and it is not for this Court to bluntly arrive at the conclusion that mens rea is not there without having any materials placed on record for the absence of mens rea on the part of the company and its Directors and hence this Court is of the firm view that no decision could be arrived at regarding the presence of mens rea for the accused and therefore the only valid conclusion that could be arrived at in the circumstances of the above cases is that the trial is the answer for all the grounds pleaded and therefore no hasty conclusion could be arrived at applying the norms of the said case cited and it is only proper to permit the trial Court to go ahead with the trial in the manner provided by law without causing any unnecessary and unwarranted obstruction or hindrance for the trial proceeding by the lower Court and hence the following order:

In result,

(i) all the above criminal original petitions are devoid of merits and they are dismissed accordingly.

(ii) The Court of Additional District Judge-cum-Chief Judicial Magistrate, Villupuram is hereby directed to conduct a full trial into the facts and

circumstances of all the cases in hand in the manner required by law, so as to deliver a judgment on merits and in accordance with law as

expeditiously as possible.

Consequently, CrI.M.P. Nos. 5794 to 5807 of 2003 are also dismissed.