

(2012) 06 MAD CK 0202

In the Madras High Court

Case No : Criminal R.C. No. 947 of 2009 and M.P. No. 1 of 2009

Theiveegam Financiers and Other

APPELLANT

Vs

Competent Authority and District Revenue Officer, Karur
District, Karur and Others

RESPONDENT

Date of Decision : 18-06-2012

Acts Referred:

Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act,
1997 — Section 11, 2(2), 5, 5(A)(1), 5(A)(2)

Citation : (2012) MLJ(Cri) 11

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : V. Balaji, for the Appellant; M. Mohammed Riyaz, Government
Advocate (Crl. Side) and C. Prakasam, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The above revision petitioners had filed the Crl. M.P. No. 857 of 2009 in C.C. No. 12 of 2005, on the file of Special Judge under TNPID Act, Chennai dated 10.9.2009, for discharging them from the proceedings in C.C. No. 12 of 2005. The same was dismissed by the learned judge on merits. Aggrieved by the dismissal order, the above revision has been filed. The short facts of the case are as follows:

The second respondent herein, viz., Inspector of Police, attached to Economic Offences Wing-II, Karur has registered a case in Crime No. 1 of 2004, against the revision petitioners for the alleged offence u/s 5 of TNPID Act, 1997 for the default committed by the revision petitioners to the tune of Rs. 12,28,409/-. Subsequently, the case was taken on file in C.C. No. 12 of 2005. While the proceedings was pending, the petitioners have filed Criminal M.P. No. 5012 of 2005 u/s 5-A of TNPID Act to compound the offence before the competent authority and the same was allowed by the Special Judge and the petitioners have deposited a sum of Rs. 3,67,500/- on 12.1.2007, out of which Rs.

3,55,500/- was disbursed to all the depositors and the balance amount of Rs. 12,000/- is liable to be refunded to the petitioners herein. In furtherance to the disbursement of amount to the depositors, the first respondent, viz., District Revenue Officer, Karur District had also passed compounding order on 15.12.2008. Therefore, the petitioners herein pray that as the offence has been compounded u/s 5-A of TNPID Act, no proceedings shall be continued against the petitioners as per Section 5-A(2) of the Act.

2. The said discharge petition has been opposed by the respondents 1 and 2 after filing a counter statement. The second respondent stated that the first respondent, District Revenue Officer, Karur had not passed any compounding order in respect of the case as stated by the petitioners. While the case was taken up for trial, the accused 1, 2, 6, 8 and 10 expressed their readiness to deposit the principal amount of Rs. 3,67,500/- payable to the depositors, who are holding the deposit receipts, but were unwilling to pay any amount for the other document holders of document such as demand promissory note and the above said amount was deposited before the competent authority and the same has been disbursed by the first respondent as per the order passed by this Court on 4.1.2006. In fact, the total amount payable by the accused persons is Rs. 7,68,500/- as principal and Rs. 11,48,409/- as interest payable to 16 depositors. In any way, the prosecution is going to file a revision petition against the order passed by this Court on 4.1.2006 in CrI. M.P. No. 5012 of 2006 in respect of permission to compound the offence granted to the petitioners herein. The second respondent further stated that the deposit pronotes, which were given to the depositors, were couched as pronotes by mentioning that on demand, the petitioners are liable to pay what was received by them, it was not a loan but only deposit. Therefore, the purported pronotes could only be treated as receipts, since there are materials to show the claim of exorbitant interest and Section 5 of TNPID Act will also be applicable. If the discharge petition is allowed, the innocent depositors will be highly prejudiced and they cannot get back their hard earned monies. Hence, the respondent has prayed to dismiss the said discharge petition.

3. On considering the averments of both the parties and on submission made by the learned counsel for their respective parties, the learned judge had observed that charges had been framed on 12.8.2005 and trial commenced on 3.12.2005. As many as 17 witnesses were examined and 93 documents were marked on the side of the prosecution. Evidence of prosecution witness was closed on 22.11.2005. The accused were examined on 1.2.2006. On their side, two witnesses were also examined and evidence was closed on 25.9.2007 and the case was posted for arguments from 29.10.2007. Thereafter, the case was transferred to Madurai on jurisdictional point. At this stage, the revision petitioners have filed the petition on 17.4.2009. It is seen from the proceedings of the first respondent dated 15.12.2008, that the petitioners have settled an amount of Rs. 3,67,500/- only to 9 depositors mentioned therein, whereas it is claimed that the petitioners and other accused have collected deposits and

defaulted to repay the principal and interest amounting to Rs. 12,28,409/- to 16 depositors. However, the petitioners contention that since the claim of the depositors numbering 9 were settled after due permission from the Court, before the competing authority and the matter compounded u/s 5-A of TNPID Act, 1997, further proceedings have to be dropped and the petitioners discharged u/s 5(A)(2) of the TNPID Act. That apart, according to them, the due, if any, on the basis of promissory notes will not come under term deposit u/s 2(2) of the Act. Whatever, be the claim of the petitioners, it is an admitted fact that all the depositors, from whom monies were collected, were not settled and their respective monies were not disbursed. It is also an admitted fact that the case is pending for a long time for arguments. When that being the current position of the case, the learned judge is not able to understand as to why the petitioners are short circuiting the matter by filing the instant petition to drop the proceedings and seek for their discharge. Whether a promissory note can be included or excluded can very well be decided in the main case which is posted for arguments and is also pending for a long time. Therefore, the learned judge was not inclined to allow this petition and consequently dismissed the same. However, it was opined by the learned judge that the petitioners are at liberty to agitate the issues now raised in the petition during the course of the arguments of the main case. Against the dismissal of the said discharge petition, the above revision has been filed.

4. The learned counsel for the revision petitioner had filed written arguments which are as follows:

It was pointed out that in the counter affidavit filed by the second respondent, they have admitted that the Hon''ble Court has permitted the competent authority to compound the offence with the petitioners who are the accused Nos. 1, 2, 6, 8 and 10. It was also pointed out that u/s 11 of the Act, if the appeal is not preferred within 30 days by the order of the Special Court, the order reaches the finality. Admittedly, no appeal was filed against the order in CrI. M.P. No. 5012 of 2005, dated 4.1.2006, wherein the Hon''ble Court has allowed the petition filed u/s 5(A)(1) of the Act. In the said order, the compounding authority had stated that "the accused 1, 2, 6, 8 and 10 had deposited the amount of Rs. 3,67,500/- with the District Revenue Officer/competent authority, Karur on 21.1.2008 and this amount has been disbursed to the above mentioned depositors as per the Court direction and the depositors themselves, had acknowledged the receipt of their deposit amounts.

5. The above facts were reported to the Special Court through a statement filed by the said Inspector of Police for dropping the case pending before it on 7.6.2004 and the Special Court gave directions to the investigating agency to approach the competent authority in the matter for compounding the offence u/s 5A of TNPID Act, 1997. The Inspector of Police, Economic Offences Wing-II, Karur has requested to compound the case as per the Court direction.

6. Under the circumstances, discussed above and in view of the Special Court

permission, therefore, the offence made out in this regard against the accused 1, 2, 6, 8 and 10 in C.C. No. 12 of 2005 has been compounded u/s 5A on the TNPID Act, 1997.

7. It was pointed out that once the offence has been compounded, the petitioners are entitled for acquittal.

8. It was also pointed out that the pronotes comes under the purview of the Negotiable Instruments Act and Central Government alone is competent to legislate law on promissory note. It was also pointed out that the Hon'ble High Court in In Re: Travancore National and Quilon Bank Ltd., S. Barkatally and Others, had categorically held that fixed deposit receipt is not a negotiable instrument. It was also pointed out that the deposit receipt is merely a written acknowledgment by the banker that he holds a certain sum to the use of the customer and that the document is usually marked "not transferable" and it is also not negotiable.

9. As such, it was pointed out that a pronote cannot be construed as fixed deposit.

10. The learned counsel for the first and second respondent argued that the case is posted for arguments of the learned counsels. At this stage, the petitioners are not entitled to receive the remedy as prayed by them. As per contentions of the revision petitioner, there is a legal aspect about the pronote which can be decided by the learned judge. The learned judge had also given liberty to the revision petitioners to raise all issues at the time of arguments. The learned counsel for the other respondents argued that the amount had not been settled to the depositors as full and final settlement. As such, the revision petitioners cannot be discharged from the case. The learned counsel further submits that the case was filed in the year 2005 and the discharge petition was filed in the year 2009. Therefore, the revision petitioners have filed the discharge petition belatedly as an after thought.

11. The learned counsel for the State would submit that on the side of the prosecution, 17 witnesses had been examined and 93 documents were marked to establish the prosecution case against the accused persons. As per the contentions of the revision petitioners, the deposited amount had already been disbursed to the depositors. If such be the case, the learned counsel for the State, has pointed out that the amount settled to the depositors as full and final have to be brought out in the form of a Memo of calculation at the time of trial.

12. On verifying the facts and circumstances of the case, arguments advanced by the learned counsels for the respective parties and on perusing the impugned order passed in CrI. M.P. No. 857 of 2009 in C.C. No. 12 of 2005, on the file of Special Judge under TNPID Act, Chennai, dated 10.9.2009, this Court is of the considered view that even though the case was compounded in CrI. M.P. No. 5012 of 2005, dated 15.12.2008, subsequently disputes has arisen regarding settlement of the payment to the depositors and as such, the dispute can be

sorted out only on merits. Therefore, discharge at this stage cannot be entertained. Hence, the revision is dismissed. Resultantly, the above revision is dismissed. Consequently, the order passed in Crl. M.P. No. 857 of 2009 in C.C. No. 12 of 2005 on the file of Special Judge under TNPID Act, Chennai, dated 10.9.2009 is confirmed. Consequently connected miscellaneous petition is closed.