(2015) 06 MAD CK 0243

In the Madras High Court

Case No : Criminal R.C. No. 1280 of 2014 and M.P. No. 1 of 2014

Ulagananthan APPELLANT

Vs

State RESPONDENT

Date of Decision : 05-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 170, 173(2)
Penal Code, 1860 (IPC) — Section 120(b), 406, 420
Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act, 1997 — Section 5

Citation : (2015) 06 MAD CK 0243

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : S. Sadasharam, for the Appellant; P. Govindarajan, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—The petitioner/accused No. 3, charge sheeted in Cr. No. 1 of 2013, for offences, under Sections 420, 406 r/w. 120(B) IPC., and Section 5 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, has filed Crl. M.P. No. 1399 of 2013 in C.C. No. 1 of 2012, for discharge. Being aggrieved by the order, dated 11.10.2014, made in Crl. M.P. No. 1399 of 2013, rejecting the prayer sought for, the present criminal revision case has been filed.

2. Final Report filed under Section 173(2) Cr.P.C., by the Economic Offences Wing - II, Tiruchirappalli in Cr. No. 1 of 2012, for the abovesaid offences, reads as follows:

"B. The Nature of Information:

On 15.05.2012, one P. Murugaiyan, age 66/12, S/o. Pakkiriyapillai, Therkukadu, Kariyapattinam, Vedaranyam Tk, Nagappattinam District, approached in Chennai

High Court and got direction to register the case. Based on the complaint of P. Murugaiyan, Inspector of Police, Economic offences Wing II, Trichy, register the case against 1. P. Udayakumar @ Kumar, S/o. Peramaiyan, 3/360, Gopal Kattalai, Thani Kottam, Vedarayam (PO), and one 2. Ulaganathan S/o. Vaithiya Nathan, Kariyapattinam, Vedarayam (PO), alleging that the accused canvassed with the complainant to deposit amounts in their financial establishment namely, GPK Chit Funds and the accused promised to give higher rate of interest and collected deposits in the name of A1 GPK Chit Funds and the complainant P. Murugaiyan who deposited an amount of Rs. 3,00,000/- on various dates in his name and his son vengataraman''s name.

After the maturity, accused defaulted to repay the deposits to complainant with interest, Inspector of Police E.O.W. Trichy based on the complaint registered a case in Trichy E.O.W. Cr. No. 01/2012 u/s. 406, 420 IPC, r/w 5 of TNPID Act. As per the complaint all the accused stated that they were running at the Raja complex Kariyapattinam, Saru Madaikadai street, Vedaranyam T.K, Nagapattinam D.T, financial establishment in the name of A1 GPK Chit Funds before the year 2002. A2 and A3 are cousin brothers; A4 is friend of A2 and A3.

The investigation revealed that the A1 GPK Chit Funds is financial Establishments A2 to A4 was the partners and responsible for the management of the affairs in the financial establishment who are mutually agreed to collect the deposits from the Depositors individually an association of individuals with scheme and arrangement between the accused.

GPK Chit Funds was a registered financial Establishment in the year 2002 with registration No. 11/2002 by P. Udayakumar @ Kumar and singaravel. And there Al. Financial Establishment not Registered before the register of company and chits. The accused promised to repay the deposited amount with 12% of interest. The investigation officer received complaints from 8 depositor defaulted deposit a sum of Rs. 10,46,500/-.

A2 to A4 are responsible for the management of the affairs of the financial establishment. A2 to A4 canvassed and collected the deposit from the Depositors. A2 to A4 closed the Financial Established in the car 2008 and absconded. The accused conspired together agreeing with each other to collect the deposit from the depositors in the name of GPK Chit Funds and promised to give higher rate of interest of 12% for their deposits. A2 to A4 had collected Rs. 10,46,500/- from 8 depositors. The Accused dishonestly misappropriated the deposits and converted the deposits for their personal gain to purchase the properties, in the name of Accused. The accused collected depositors in the name of A1 and defaulted to return the deposit amount Rs. 10,46,500/- and defaulted interest a sum of Rs. 4,80,000/-. Total sum of Rs. 15,26,500/- from 8 depositors.

Hence this charge.

C. The names of the persons who appear to be acquainted with circumstances of the cases.

Memo of evidence and list of the witness enclosed separately.

D. Whether any offence appear to have been committed and if so by whom

A1 is a financial establishment and A2 to A4 are the accused who collected deposits from 8 depositors at Kariyapattinam, Vedharanyam T.K., Nagai District. One P. Murugaiyan age 66/12, S/o. Pakkiriyapillai, Therkukadu, Kariyapattinam, Vedaranyam T.K., Nagappattinam District, lodged as first complaint a case in EOW-II Trichy Crime No. 01/2012 registered against the accused subsequently 7 depositors gave complaints that they made deposits on various dates with the accused as. fixed deposits all defaulted amount a sum of Rs. 10,46,500/-. The accused A2 to A4 had canvassed with the depositors, to Deposit in the name of A1 Financial establishment. Even after the demand by the depositors after maturity the accused defaulted in the repayment of the deposits, and defaulted in payment of interest on the deposits. A2 to A4 are responsible for the management affairs of A1 financial establishment. The accused A2 to A4 collected the deposits and defaulted the deposit a sum of Rs. 10,46,500/- and defaulted interest a sum of Rs. 4,80,000/- total Rs. 15,26,500/- from 8 depositors by giving 19 deposit receipts.

The Accused A2 to A4 are responsible for the management affairs of the A1 GPK Chit Funds A2 to A4 Collected and defaulted deposit with interest a sum of Rs. 15,26,500/- from 8 depositors. Thereby A1 to A4 committed offence each punishable 5 of TANPID Act of 1997.

In the course of same transaction, A2 to A4 conspired to make unlawful gain by collecting deposits in the name of A1 with fraudulent and dishonest intention from the public in a calculated manner knowingly the impossibility to repay the deposits with interest and promised the depositors to repay higher rate of interest 12% per annum. A2 to A4 have defaulted to repay the deposits with interest and converted deposits for their personal gain and own use entrusted by depositors, defaulted with interest total a sum of Rs. 15,26,500/- deposit the 8 depositors in 19 receipts, There fore A2 to A4 committed offence each punishable under section 406, 420, IPC r/W 120(b) IPC.

E. WHETHER THE ACCUSED HAVE BEEN ARRESTED

A2 and A3 were got anticipatory bail in High Court Chennai. A4 praying for issuing the summons.

F. WHETHER THEY HAVE BEEN RELEASED ON BAIL AND IF SO WITH OR WITHOUT SURITES.

A2 and A3 were got anticipatory bail in the High Court, Chennai.

G. WHETHER THE ACCUSED HAVE BEEN FORWARDED CUSTODY U/S. 170 Cr.P.C.

No

A1 is the financial establishment and A1 to A4 had committed offence u/s. 5 of

TANPID Act. of 1997 and A2 to A4 committed offence U/s. 406, 420, IPC r/w 120(b) IPC. It is prayed that this Flonourable Court may be pleased to take the final report on file, try the case against the accused A1 to A4 Sec 5 of TNPID Act and A2 to A4 u/s. 406, 420 IPC r/w 120(b) IPC dispose off the same according to law and thus render justice."

3. In Crl. M.P. No. 1399 of 2013, the petitioner, arrayed as Accused No. 3, has contended that the financial transaction between him and the defacto complainant, is that he borrowed a sum of Rs. 50,000/- on 05.08.2012, further sum of Rs. 50,000/- on 18.05.2003 and another sum of Rs. 50,000/- on 13.02.2004, from the defacto complainant and executed promissory notes on those dates, which are time barred, as on the date of the complaint, dated 15.05.2012. The petitioner has further contended that the transactions are purely civil in nature and with the time barred promissory notes, complaint has been filed, as if, the petitioner has committed an offence, under the TANPID Act.

4. Counter affidavit filed by the Inspector of Police, Economic Offence Wing-II, Tiruchirappalli, is that on the basis of the complaint given by one Mr. P. Murugaiyan, a case in Cr. No. 1 of 2012, has been filed against the petitioner and three others, for the offences, mentioned above. After thorough investigation, a report has been filed to the Court. According to the Police, 8 depositors have been cheated to the tune of Rs. 15,26,500/-. The petitioner, along with other accused, have canvassed and collected deposits from the depositors and they are also responsible for the management of the affairs of the Financial Establishment, which is registered before the Registrar of Firms, with registration at Nagapattinam Serial No. 11/2002, by Mr. Udayakumar @ Kumar (Accused No. 2) and Singaravel (Accused No. 4.).

5. The Inspector of Police has further contended that the petitioner has signed the receipts of Kodhandapani (LW-8). Witnesses have named the petitioner for canvassing and collecting the deposits. In the receipts, name of the Financial Establishment has been printed. Crl. O.P. No. 22753 of 2012, praying to quash Cr. No. 1 of 2012, has been dismissed by this Court on 13.08.2013. According to him, petition has been filed only to drag on the proceedings.

6. After considering the rival submissions, the learned Special Judge for the TANPID Act, dismissed Crl. M.P. No. 1399 of 2013 on 11.10.2014. Being aggrieved by the same, the present revision case has been preferred.

Heard the learned counsel for the parties and perused the materials available on record.

7. Though Mr. S. Sadasharm, learned counsel for the petitioner assailed the correctness of the order, refusing to discharge the petitioner, on the grounds, inter alia, that the petitioner is not the partner of M/s. G.P.K. Chit Funds, alleged to have defaulted in making payments to the depositors and that persons, canvassing deposits, could not be said to be managing the affairs of the firm and in support of the above contention, placed reliance on a decision of this Court in

Smt. Prasannadevi Vs. State of Tamil Nadu, (2009) 2 LW(Cri) 1059 , this Court is not inclined to accept the same.

8. Material on record discloses that Mr. Udayakumar @ Kumar (Accused No. 2) and Singaravel (Accused No. 4.) have conducted the financial establishment, in the name and style of "M/s. G.P.K. Chit Funds". For the default committed by the Chit Fund Company, a case in Cr. No. 1 of 2013, has been registered under Sections 420, 406 r/w. 120(B) IPC., and Section 5 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997. Chit Fund Company has been arrayed as Accused No. 1. Mr. Udayakumar @ Kumar and Singaravel, have been arrayed as Accused Nos. 2 and 4. Investigation revealed that a sum of Rs. 15,26,500/- has been cheated and eight depositors were victims. The petitioner has been arrayed as Accused No. 3.

9. Mr. Kodhandapani (LW-8) has been issued with three receipts, wherein, the petitioner has signed. Receipts contain the name of the Financial Establishment. According to the petitioner, there was a financial transaction between him and the defacto complainant. Whereas, it is the case of the Police that the petitioner was involved in the offences, under Sections 420, 406 r/w. 120(B) IPC., and Section 5 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, by issuing receipts, duly signed by him, after receiving money.

10. Though the petitioner has contended that the defacto complainant cannot be permitted to invoke the provisions of TNPID Act, to realise the amount, under the promissory note, which are time barred, after perusal of the receipts, pass books, etc., the Court below has noticed that there were entries, regarding name of the depositors, their address, dates of the deposit and the amount deposited. On the contention that receipts were issued only to close the loan obtained, the Court below has observed that it is the matter for trial.

11. This Court in Smt. Prasannadevi Vs. State of Tamil Nadu, (2009) 2 LW(Cri) 1059 , has decided, as to whether, Clerks, Accountants, Office Assistants, who are just paid servants, would be responsible for the management. Though the said case would be inapposite to the case on hand, it is worthwhile to incorporate paragraphs 12 and 13 of the judgment in Prasanna Devi''s case for better appreciation.

"12. The fact remains that the petitioner was not a partner of the partnership firm charged in this case under section 5 of the TNPID Act. The only allegation levelled by the witnesses examined on the side of the prosecuting agency is that the petitioner canvassed for deposits for the financial institution. To invoke the penal provision under section 5 of the TNPID Act, one should shoulder the responsibility of managing the affairs of the financial firm or company. I find that the provision under section 5 of the TNPID Act has been drafted very carefully. A person who merely manages the affairs of a firm or a company viz., Clerks, Accountants, Office Assistants, who are just paid servants would not be responsible for the management in the sense that they are not answerable to the claim made against the financial firm. In other words, a person, who simply manages the affairs of a firm, cannot be said to have taken the responsibility of answering the allegation of mismanagement of the affairs of the firm. The Clerks, Accountants and Office Assistants come under the said category. They have been given a role to manage the affairs of the partnership firm, but, they are not responsible for the mismanagement of the firm when the same is under challenge by a third party. All the persons who manage the affairs of the financial institution need not necessarily be responsible for the management of the affairs of the institution. What is required under section 5 of the TNPID Act is that the person charged should have been responsible for the management of the affairs of the institution. The persons who simply manages the affairs of the financial institution as paid servant fall out the ambit and scope of the aforesaid provision of law.

13. The canvassing agents, as such, cannot be held responsible for the management of the affairs of the firm. A canvassing agent may contribute his mite by mobilising funds for the financial firm on contract basis for payment of brokerage or service charges. But, by no stretch of imagination, we can say that such a person shoulders the responsibility of the management of the affairs of the firm. A canvassing agent gives a rosy picture about the firm to mobilise the deposit. It is only the depositors who shall verify the veracity of such embellished version regarding the performance of a firm and the financial soundness thereof with the person who is responsible for the management of the firm and offer his deposit."

12. Prima facie, materials indicate that the petitioner, along with other accused, have collected money from the depositors and ultimately, the Company has defaulted for payment. He also signed the receipts of Kodhandapani (LW-8). There are prima facie materials to initiate prosecution against the petitioner and hence, a final report has been filed.

13. For the abovesaid reasons, there is no manifest illegality in the impugned order. Accordingly, revision petition is dismissed. No costs.

