(2012) 12 MAD CK 0113

Madras High Court

Case No: Criminal Revision Case No. 982 of 2006

P. Venkatesan and Another		APPELLANT
	Vs	
Deputy Superintendent of Police, Economic Offence Wing		RESPONDENT

Date of Decision: Dec. 5, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Penal Code, 1860 (IPC) - Section 409, 420
- Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act, 1997 - Section 3, 5, 5(A), 9

Citation: (2013) 1 LW(Cri) 470 : (2013) 2 MLJ(Cri) 104

Hon'ble Judges: B. Rajendran, J

Bench: Single Bench

Advocate: V. Manohar, for the Appellant; R. Prathap Kumar, Government Advocate (Crl. Side), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B. Rajendran, J.

The petitioners have filed this Criminal Revision Case as against the order dated 2.8.2006 passed by the learned Chief Metropolitan Magistrate, Egmore, Chennai by which the petition filed by them for discharge was dismissed. The petitioners were arrayed as A-3 and A-4 in C.C. No. 29325 of 2004 on the file of the learned Chief Metropolitan Magistrate, Egmore for the offence of buying the property from the main accused in C.C. No. 8 of 2000 thereby they have committed the offence punishable under the Tamil Nadu Protection of Interests of Depositors (in Financial Establishment) Act, 1997.

2. The case of the prosecution is that one Mukundran, his wife Indira Mukundan and her brother Asokan have established a financial company by name Maruthi Finance

at No. 58, Maddox Street, Chennai during the year 1994 to 1999. During the course of such business, they have invited applications from general public seeking investment of their money in the form of fixed deposit with their firm promising to return their money with attractive rates of interest. In response to the same, number of persons have deposited their money and with the help of the deposit amount, the above said three persons have purchased several properties. While so, when the depositors demanded repayment of the deposit amount on maturity, they have given evasive reply. Therefore, one of the depositors namely Maniprakash Guptha lodged a complaint with the respondent based on which a case in Crime No. 8 of 2000 came to be registered against the aforesaid persons namely Maruthi Finance, Mukundan and Indira Mukundan for the offences punishable u/s 409, 420 of IPC read with Section 5 of TNPID Act, 1997. In the case in Crime No. 8 of 2000, the firm namely Maruthi Finance was arrayed as A-1, Mr. Mukundan was arrayed as A-2 and Mrs. Indira Mukundan was arrayed as A-3. During the course of investigation, the respondent enquired the depositors who have deposited the amount with the accused and seized the material records. The Government also issued G.O. Ms. No. 637, Home (Courts-11A) Department dated 5.7.2001 by which the properties purchased by the above said firm namely Maruthi Finance at the instance of the accused namely Mr. Mukundan and Mrs. Indira Mukundan, came to be attached in exercise of the powers conferred u/s 3 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishment) Act, 1997 (Tamil Nadu Act 44 of 1997).

3. The respondent, after completing the investigation, filed charge sheet in Crime No. 8 of 2000 which was taken on file in C.C. No. 32 of 2001. During the course of trial in the said case, the prosecution has examined Pws 1 to 81 and marked Exhibits P1 to P197. On behalf of the accused, no witnesses were examined, however Exhibits D1 to D60 were marked. On appreciation of the oral and documentary evidence, the learned Special Judge under TNPID Act, Chennai, by a judgment dated 9.3.2006, convicted the first and second accused and imposed sentence together with fine, while acquitting the third accused.

4. Challenging the conviction and sentence imposed by the Special Judge, the accused 1 and 2 in C.C. No. 32 of 2001 have filed Criminal Appeal No. 401 of 2006. This Court, by an order dated 25.6.2007 allowed the appeal by recording the fact that the offences committed by the accused have been compounded by the Competent Authority/District Revenue Officer.

5. As far as the petitioners herein are concerned, they were arrayed as accused in Crime No. 11 of 2004 for having purchased the property from the accused in C.C. No. 32 of 2001 (Crime No. 8 of 2000). According to the respondent, one of the properties purchased by the above said accused in Crime No. 8 of 2000 was purchased by the petitioners herein namely the premises bearing Door No. 5, Old No. 4-A, Flowers Road, Chennai - 600 84 comprised in Survey No. 72, R.S. No. 40/22 in block No. 2 within Purasawalkam Village and therefore, the case came to be

registered against them. After completing the investigation, the respondent filed charge sheet against the petitioners herein, which was taken on file as C.C. No. 29325 of 2004.

6. Pending C.C. No. 29325 of 2004, the petitioners herein have filed a petition for discharge in C.M.P. No. 1221 of 2006 in C.C. No. 29325 of 2004 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai to discharge them from the case in Crime No. 11 of 2004 by contending that they have purchased the properties with the knowledge of the depositors association and after entering into a compromise with the depositors association and therefore, the purchase of the property is valid. The petitioners also referred to the various proceedings initiated by the accused in Crime No. 8 of 2000 for settling the dispute and prayed for discharging them. The learned Chief Metropolitan Magistrate, Egmore, Chennai by the impugned order dated 2.8.2006 dismissed the petition filed by the petitioners for discharge, against which the present Criminal Revision Cases filed.

7. The learned counsel appearing for the petitioners brought to the notice of this Court the subsequent development in this case. According to the learned counsel for the petitioner, the second accused in C.C. No. 32 of 2001 (Crime No. 8 of 2000) namely Mukundan had initiated various steps to settle the depositors by filing appropriate application before the Courts below, as under:-

(i) The competent Authority namely the Commissioner of Land Administration had filed a Memo of Full Satisfaction before the learned Special Judge for TNPID Act in O.A. No. 10 of 2001 dated 25.2.2004 which would indicate that the said Mukundan paid a sum of Rs. 40 lakhs to the satisfaction of the depositor holders i.e., even prior to his conviction by the learned Special Judge on 9.3.2006.

(ii) Further, the said Mukundan filed a Petition in O.A. No. 60 of 2008 before the learned Special Judge under TNPID Act, 1997 u/s 9 of TNPID Act read with Section 151 of CPC to accept a sum of Rs. 1.50 crores as security, in lieu of cancelling the order of absolute attachment made in O.A. No. 10 of 2001 dated 9.9.2002. After contest, the said petition was allowed by an order dated 10.11.2009, the operative portion of which is extracted hereunder:-

24. In the result, the ad interim attachment effected by the Government of Tamil Nadu in G.O. Ms. No. 637, Home (Courts II A) Department dated 6.7.2001 and made absolute by this Court on 9.9.2002 in O.A. No. 10 of 2001 and subsequently sale ordered by this Court on 1.2.2005 in O.A. No. 16 of 2004 in respect of the petition mentioned property is cancelled, in lieu of depositing the amount of Rs. 1.50 crores (Rupees One Crore and Fifty Lacs Only) by the petitioner at Indian Bank, High Court Branch, Chennai - 104 in favour of The Special Judge, Special Court under TNPID Act, 1997, Chennai 104 for the fixed period of 6 months in the Credit of Crime No. 8 of 2000 and other cases in respect of Maruthi Group of Companies on the file of E.O.W. II, Chennai within 21 days from today (10.11.2009) failing which, the petition shall

stand dismissed and the order of attachment and the sale orders passed in respect of the petition mentioned properties shall stand revived.

Call on 1.12.2009.

(iii) The learned counsel for the petitioner also brought to the notice of this Court that the above said Mukundan has also filed Crl.M.P. No. 513 of 2010 in C.C. No. 32 of 2001 u/s 5-A of the TNPID Act, 1997 praying to compound the offence in view of the compliance of the order dated 10.11.2009 passed by the learned Special Judge for deposit of Rs. 1.50 crores. The said application was allowed on 8.6.2010, relevant portion of which is extracted hereinbelow:-

5. Therefore, taking all the facts and circumstances into consideration and in view of the order passed by the Hon''ble High Court in Crl.M.P. No. 46 of 2010 in Crl.A. No. 401 of 2006, I am inclined to allow this petition.

9. In the result, this petition is allowed and this Court hereby direct the office to transfer the amount of Rs. 2.95 crores (Two Crores and Ninety Five Lacs Only) lying at the credit of Crime No. 8 of 2010 along with accrued interest, if any, to the 2nd respondent Competent Authority and District Revenue Officer and the Competent Authority and District Revenue Officer, Chennai is hereby permitted to disburse the amount as per the list enclosed to this order and to compound the offence u/s 5(A) of the TNPID Act concerned in Crime No. 8 of 2000 of E.O.W. II, Chennai, and in C.C. No. 32 of 2001 on the file of this Court after satisfying himself and, also to send the compounding order to this Court.

(iv) Thereafter, by an order dated 10.6.2010 in Crl.M.P. No. 949 of 2010, the learned Special Judge for TNPID Act, 1997 permitted the petitioner to compound the offence and issued appropriate direction to the Competent Authority/District Revenue Officer to compound the offence in Crime No. 16 of 2004 as follows:-

4. In this case, it is not in dispute that the petitioner has deposited a sum of Rs. 2.95 crore under 3 Original Applications viz., O.A. No. 60/2008, O.A. No. 18 of 2009 and O.A. No. 12 of 2009 before this Court for raising the attachment of the immovable properties.

6. Taking all the facts and circumstances into consideration and in order to achieve the object of the Act, and in view of the no objection endorsements having been made by both the respondents, this Court is of the view that the petitioner may be permitted to compound the offence before the Competent Authority/District Revenue Officer, Chennai.

7. In the result, this petition is allowed and the 2nd respondent Competent Authority/District Revenue Officer, Chennai is hereby directed to compound the offence in Crime No. 16 of 2004 of E.O.W. II, Chennai as per the list enclosed to this order, and submit the report within 1 month.

(v) On 13.8.2010, in Crl.M.P. No. 1136 of 2010, the learned Special Judge also permitted the petitioner to compound the offence in C.C. No. 5 of 2010, the operative portion of which is as follows:-

9. Taking all the facts and circumstances into consideration and in order to achieve the object of the Act and in view of the no serious objections ventilated by both the respondents, this Court is of the view that the petitioner may be permitted to compound the offence before the Competent Authority/District Revenue Officer, Chennai.

10. In the result, this petition is allowed and the 2nd Respondent Competent Authority/District Revenue Officer, Chennai is hereby directed to disburse the amount as per the list enclosed to this order in C.C. No. 5 of 2010 on the file of this Court and to compound the offence, and to report the factum of compliance to this Court within one month.

(vii) By proceedings dated 1.3.2012, the Competent Authority and District Revenue Officer, Chennai Collectorate, Chennai compounded the offence against the accused in Cr. No. 8 of 2010 (CC No. 32 of 2001), Crime No. 30 of 2000 (C.C. No. 5 of 2010) and Crime No. 16 of 2004. The relevant portion of the order dated 1.3.2012 is extracted hereunder.

The offences for 69 depositors of Tvl. Maruthi Finance, in Cr. No. 8 of 2000 in C.C. No. 32 of 2001, 196 depositors of Tvl. Madras Periamet Benefit Fund Ltd., in Cr. No. 30 of 2000 in C.C. No. 5/2010 and 20 depositors of Tvl. Maruthi Finance, in Crl.M.P. No. 949 of 2010 in Crl. No. 16/2004, have been compounded u/s 5A of TNPID Act.

(viii) Ultimately, in view of the aforesaid proceedings, this Court, passed the judgment dated 25.6.2012 in Crl.A. No. 401 of 2006 whereby the first accused Maruthi Finance and the second accused Mukundan in Crime No. 8 of 2000 have been acquitted of all the charges. The relevant portion of the judgment is extracted below:-

5. On perusal of the proceedings of the Competent Authority/District Revenue Officer, Chennai Collectorate, dated 15.3.2012, it is seen that as per the order of the Special Judge, TNPID Act, Chennai made in Crl.M.P. No. 513 of 2010 in C.C. No. 32 of 2001, dated 8.6.2010, as the amount had been disbursed to 68 depositors and the amount of remaining 9 depositors has to be paid, the offences have been compounded u/s 5-A of TNPID Act.

6. As per the report filed by the Competent Authority/District Revenue Officer, the amount of remaining nine depositors has also been deposited in the Nationalised Bank as per the order of this Court dated 22.3.2012. Hence, the competent authority has compounded the offences.

7. Considering the fact that the offences have been compounded by the Competent Authority/District Revenue Officer, the appeal is allowed and the accused is

exonerated from the charges leveled against him and the fine amount paid by him is ordered to be refunded.

8. By relying on the above said proceedings, the learned counsel for the petitioners submitted that when the main accused in Crime No. 8 of 2000 himself was exonerated of all the charges based on the various steps taken by him to settle the amount payable to the depositors, the petitioners herein, who are bona fide purchasers of the property from the accused in Crime No. 8 of 2000 have to be discharged from the criminal prosecution especially in view of the subsequent developments narrated above.

9. I heard the learned Government advocate appearing for the respondent. The investigation officer is also present before this Court as per the earlier directions issued by this Court.

10. The short point for consideration in this revision is whether the petition filed by the petitioners for discharge has to be allowed in view of the subsequent development taken place in this case.

11. The offence complained against the petitioners is that they have purchased one of the properties purchased by the accused in Crime No. 8 of 2000 and therefore they are guilty of the offences punishable under the Tamil Nadu Protection of Interests of Depositors (in Financial Establishment) Act, 1997 (Tamil Nadu Act 44 of 1997). According to the prosecution, one among the properties purchased by the accused in Crime No. 8 of 2000 was purchased by the petitioners thereby the depositors were made to suffer. According to the prosecution, even in the year 2004, the petitioners have purchased the property for Rs. 25 lakhs when the value of the property was worth more than a crore. It was also the case of the prosecution that when the properties belonged to the accused in Crime No. 8 of 2000 were attached, the petitioners ought not to have purchased the same.

12. At the outset, it is to be mentioned that the first and second accused in Crime No. 8 of 2000 have been exonerated by this Court by judgment dated 25.6.2012 in Crl. A. No. 401 of 2006 taking note of the subsequent developments. The third accused was acquitted by the trial Court itself. In fact, the properties purchased by Maruti Finance, A-1 in Crime No. 8 of 2000 was attached for non-payment of the amount invested by the depositors. However, the depositors, who have lost their money, have formed an association among themselves and such association was paid Rs. 40 lakhs towards full and final settlement on 25.2.2004 i.e., even before the trial Court could convict the accused in Crime No. 8 of 2000 on 9.3.2006. Thus, it is evident that only a sum of Rs. 45 lakhs remained to be settled to the depositors at that point of time and the same was also settled to the purchasers by the 2nd accused in Crime No. 8 of 2000.

13. As mentioned above, the properties, which were attached by the Government was also subsequently raised by the order dated 8.6.2010 by accepting the offer

made by the second accused in Crime No. 8 of 2000 to pay Rs. 1.50 crores in lieu of attachment of the property. Thereafter, the offence against the first and second accused in Crime No. 8 of 2000 was compounded and the same was also recorded.

14. It is seen from the records that the application for discharge was dismissed on the ground that the guilt or otherwise of the petitioners can be determined only after trial and therefore the trial Court refused to discharge the petitioners. As mentioned above, when the accused 1 and 2 in Crime No. 8 of 2000 were exonerated of all the charges, the petitioners, who have purchased the properties at the time when the attachment was in force, have to be discharged in view of the subsequent development.

15. The accused in Crime No. 8 of 2000 were prosecuted for not repaying the depositors the amount and the petitioners herein have only purchased a property from the accused in Crime No. 8 of 2000. Subsequently, the depositors have been settled and all the properties, which were purchased by the accused in Crime No. 8 of 2000, have been lifted on payment of money. It is also to be noted that out of 30 properties attached, 18 properties have been sold through auction sale by the Court, amount have been realised and paid to the depositors, Thereafter, the offence, for which the A-1 and A-2 in Crime No. 8 of 2000 were charged has been compounded and they were exonerated of the charges. Therefore, in view of the above subsequent developments, the petitioners, who are subsequent purchasers of the property from the accused in Crime No. 8 of 2000, have to be discharged. Furthermore, the offences for which the petitioners have been charged cannot be regarded as a criminal offence with any intention to cheat any one. In fact, the petitioners have to be considered to be bona fide purchasers of the property for a valuable sale consideration.

16. In this connection, it is useful to refer to the decision of the Honourable Supreme Court Princl. Chief Conservator of Forest and Another Vs. J.K. Johnson and Others, it was held as follows:-

28. One thing is clear that the statutory provisions noticed above do not in explicit terms provide for the forfeiture of the seized items by the departmental authorities from a person who is suspected to have committed offence/s against the 1972 Act. Chapter VI-A which has been inserted in the 1972 Act by Act 16 of 2003 that provides for forfeiture of property derived from illegal hunting and trade is entirely different provision and has nothing to do with forfeiture of the property seized from a person accused of commission of offence against the 1972 Act. Insofar as Section 39(1) (d) of the 1972 Act is concerned, it provides that every vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of the Act shall be the property of the state government and in a certain situation, the property of the central government. The key words in Clause (d) of Section 39(1) are "..... has been used for committing an offence.....". What is the meaning of these words? The kind of absolute vesting of the seized property in the

state government, on mere suspicion of an offence committed against the 1972 Act, could not have been intended by the Parliament. It is not even scarcely disputed that every enactment in the country must be in conformity with our Constitution. In this view, it is not sufficient - nor the law-makers intended to make it - to deprive a person of the property seized under the 1972 Act on accusation that such property has been used for committing an offence against the Act. Section 39(1)(d) does not get attracted where the items, suspected to have been used for committing an offence, are seized under the provisions of the Act. It seems to us that it is implicit in Section 39(1)(d) that for this provision to come into play there has to be a categorical finding by the competent Court of law about the use of seized items such as vehicle, weapon, etc. for commission of the offence. There is merit in the submission of the learned counsel for the respondent nos. 1 to 3 that if the construction put upon Section 39(1)(d) by Mr. R. Sundervardhan is accepted, the expression ''has been used for committing an offence'' occurring therein has to be read as, ''is suspected to have been used for committing an offence''. In our view, this cannot be done.

33. Now, we have to see whether Section 54(2) of the 1972 Act, after its amendment by Act 16 of 2003, empowers the specified officer to order forfeiture of the property, in respect of the offences against the Act suspected to have been committed by such person, on composition of such offence. In other words, whether in the absence of any specific provision in Section 54(2) that the property seized shall be released, the specified officer empowered to compound offences is authorized to order forfeiture of the seized property and not return the property to the person from whom it has been seized.

37. Section 54(2) of the 1972 Act, prior to the amendment by Act 16 of 2003, authorized the empowered officer, on payment of value of the property liable to be forfeited, to release the seized property, other than the government property. The provision underwent changes w.e.f. 1.4.2003 and the provision for release of the seized property has been deleted. Does the provision in new Section 54(2) authorize the empowered officer to order forfeiture of the seized property to the state government? We think not. In the first place, by deletion of such expression, it cannot be said that the Parliament intended to confer power on the specified officer to order forfeiture of the seized property which is nothing but one form of penalty in the context of the 1972 Act. Had the Parliament intended to do so, it would have made an express provision in that regard. Such conferment of power of penalty upon the specified officer cannot be read by implication in Section 54(2). Secondly, any power of forfeiture conferred upon Executive authority merely on suspicion or accusation may amount to depriving a person of his property without authority of law. Such power cannot be readily read by relying on the Statement of Objects and Reasons (Act 16 of 2003) without any express provision in the statute.

39. It is true that by Act 16 of 2003, the Parliament has consciously deleted from Section 54 the provision concerning release of seized property liable to be forfeited

on payment of value of such property but the plain language that is retained in Section 54 (2) after amendment which reads, ''on payment of such sum of money to such officer, the suspected person, if in custody, shall be discharged and no further proceedings in respect of the offence shall be taken against such person'' does not show that the Legislature intended to empower the specified officer u/s 54 to forfeit the seized property used by the suspected person in commission of offence against the Act. There is no replacement of the deleted words by any express provision. Section 54 substituted by Act 16 of 2003 does not speak of seized property at all - neither its return nor its forfeiture - while providing for composition of offence. The property seized u/s 50(1)(c) and Section 50(3A) has to be dealt with by the Magistrate according to law. This is made clear by Section 50(4) which provides that things seized shall be taken before a Magistrate to be dealt with according to law. Section 54 substituted by Act 16 of 2003 does not empower the specified officer to deal with the seized property. In this view of the matter, we are unable to accept the submission of the learned senior counsel for the appellants that a comparative reading of pre-amended Section 54(2) and Section 54(2) as substituted by Act 16 of 2003 makes the legislative intent clear that seized articles shall be forfeited on composition of the offence under the 1972 Act. When the language of the statutory provision is plain and clear no external aid is required and the legislative intention has to be gathered from the language employed. In our view, neither Section 54(2) of the 1972 Act by itself nor Section 54(2) read with Section 39(1)(d) or any other provision of the 1972 Act empowers and authorizes the specified officer u/s 54, on composition of the offence, to deal with the seized property much less order forfeiture of the seized property used by the person suspected of commission of offence against the Act.

17. From a reading of the judgment of the Honourable Supreme Court, it is very clear that when once the accused were allowed the offence to be compounded and compounding fee was also paid, the authority has no right to order for forfeiture or confiscating the vehicle and they have to only surrender the vehicle before the Magistrate concerned who shall deal with it in accordance with law. Therefore, applying the analogy of the above decision to the facts of the present case, the petitioners are liable to be discharged in view of the subsequent development in this case by which the offence committed by the said Mukundan was compounded. Even under the Tamil Nadu Protection of Interests of Depositors (in Financial Establishment) Act, 1997 also, provisions have been made to compound the offence against the accused and therefore, since compounding of the offence is permitted under the Act and the accused in C.C. No. 8 of 2000 also complied with all the conditions, he was acquitted of all the charges. In the present case, when once the attachment of the property has been lifted, after payment of money, the petitioner cannot be said to have committed any offence and therefore, they are entitled to be discharged from the criminal prosecution. In the light of the above discussion and in view of the subsequent developments narrated above, the order dated 2.8.2006

passed in C.M.P. No. 1221 of 2006 in C.C. No. 29325 of 2004 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai refusing to discharge the petitioners from the case in Crime No. 11 of 2004 is set aside and the Criminal Revision Case is allowed.