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CrI.O.P.No.30022 of 2022

IN THE HIGH COURT JUDICATURE AT MADRAS

Dated: 22.08.2023

Croam:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

CrI.O.P.No.30022 of 2022

State represented by
Inspector of Police,
SPE, CBI, EOW, Chennai
in RC.12(E)/2011, CBI/EOW

.. Petitioner/Complainant

/versus/

1.K.Mohanraj

2.K.Kathiravan(died)

3.Kamalavalli

4.M/s Pazee Forex
Trading Pvt.Ltd.,
represented by K.Mohanraj(A-1)
K.Kathiravan(A-2) and Kamalavali(A-3)

5.M/s Pazee Trading Inc.
Represented by K.Mohanraj(A-1)
K.Kathiravan(A-2) and Kamalavali(A-3)

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6.M/s Pazee Marketing Company,
represented by K.Mohanraj(A-1),
K.Kathiravan(A-2) and Kamalavali(A-3) ..Respondents/Accused

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P., praying to quash/expunge the observations made by the learned Trial Court in para No.45, Para No.108 and 109 of the judgment dated 26.08.2012 in C.C.No.9 of 2011.

For Petitioner :Mr.K.Srinivasan
Special Public Prosecutor for CBI Cases

For Respondents :Mr.S.UdayaKumar
Government Advocate (CrI.Side)

ORDER

The CBI, which has investigated the case in C.C.No.9 of 2011 taken on file by the Special Judge for TNPID Cases, Coimbatore, is before before this Court to expunge certain remarks made by the trial Court while passing the judgment in C.C.No.9 of 2011 on 26.08.2012.

2. The trial Judge, while passing the judgment, had observed that

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though more than 58,571 depositors had invested their money and been cheated by the accused persons, in the final report, the CBI has shown only 1402 depositors and out of them, 1021 depositors alone were examined. Pointing as a lapse, the trial Court has passed remark condemning the CBI for not examining all the depositors. Further, the trial Court has observed that all the genuine depositors, to get back their principal with interest from the accused shall lodge fresh complaint before the CBI for prosecution.

3. The learned Special Public Prosecutor for CBI submitted that the offence committed in the year 2008-2009, final report filed in the year 2011 and trial after examining 1033 witnesses and nearly 2000 documents ended in the year 2023. It is not necessary to examine all 58000 depositors in the case of this nature. The First Information Report, which has the set criminal law into motion, had culminated prosecution of the accused persons. In the judgment, the trial Court has observed that the accused have collected deposits from about 58571 persons to the tune of Rs.930,71,29,883/-. So, CBI ought to have examined them all.

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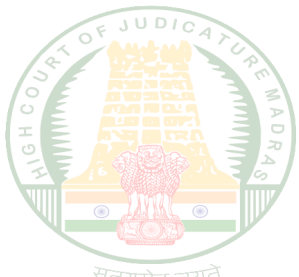


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4. TNPID, which is a composite act empowers the competent authority DRO to distribute the money to the depositors from and out of the money recovered from the accused persons. There is no bar for him to distribute the money to the genuine deposit on being satisfied. It is not necessary for every depositor to give evidence before the Court. The crime of the accused had already been tested by the Court. The genuineness of the depositors be done by the competent authority notified under the Act. The Indian Evidence Act rely on the quality of evidence and not on the quantity. Further, when one of the depositors by name Saravanakumar, approached this Court by filing a petition to reopen the investigation and to examine him as depositor/victim, this Court dismissed that petition stating that the depositor like the petitioner can approach the competent authority for claiming the amount in the manner known to law. Similar petition filed by the another depositor by name, Eadu.Radhakrishnan was also dismissed by this Court making it clear that examination of all the depositors is not required and if they are entitled for any refund, they can approach the

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competent authority.
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5. Therefore, the learned Special Public Prosecutor for CBI submitted that the trial Court observation in paragraph No.42 under the caption “Remedy for remaining depositors, who are not examined by CBI” and the remarks in paragraph No.45, the result portion condemning the CBI for not examining all the depositors need to be expunged. Further, the direction to CBI to register fresh First Information Report, in case of new complaints need also to be set aside.

6. This Court, after perusing the judgment of the trial Court and the orders of this Court referred in paragraph No.11 and 12 of the petition, besides hearing the learned Government Advocate (Crl.Side) appearing for the State hold that the trial Court condemn the CBI for the reason stated is unwarranted. It is needless to examine all the depositors and it will be a superfluous exercise causing delay. By not examining all the depositors, the genuine depositors are not left without remedy. Under the Act the

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competent authority is empowered to determine their claim and entertain genuine claim petitions. There is no necessity to file fresh First Information Report for this purpose, since the guilt of the accused persons had already been tested and attained judicial finality.

7. With this observation, this Criminal original Petition is allowed.

22.08.2023

Index:yes/no

Speaking order/non speaking order

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To

1.The Special Judge of ro TNPID Cases, Coimbatore.

2.The Public Prosecutor, High Court, Madras.

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DR.G.JAYACHANDRAN,J

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