IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2014

DELIVERED ON : 24.06.2015

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal Nos.982 of 1998 & 33 of 1999
and
Criminal Revision Nos.1318 &1319 of 2007
and
Criminal Original Petition Nos.26062 & 26063 of 2007

Criminal Appeal No.982 of 1998:

State represented by
Inspector of Police,
Vigilance and Anti Corruption,
Erode Detachment at Erode. …. Appellant/Petitioner

vs.

1.Hassan Kutti Haji
2.R.V.Mohammed
3.Kalaiselvi
4.A.Santhanapandian
5.A.Murugan Adiyaman …. Respondents/Respondents

Criminal Appeal filed under Section 11 of Criminal Law Amendment Ordinance, 1944, against the common judgment dated 11.08.1998 made in Crl.M.P.No.6601 of 1997, 6602 of 1997, Crl.M.P.No.785 of 1997 and Crl.M.P.No.863 of 1997 in Crl.O.P.No.7 of 1997 passed by learned Chief Judge, Small Causes Court, Chennai and prays this Court to order attachment of the properties mentioned in the application filed by the appellant herein before the lower Court by setting aside the order dated 11.08.1998.

Criminal Appeal No.33 of 1999:

C.Aranganayagam …. Appellant/1st respondent

vs.

State by Inspector of Police,
D.V. & A.C.
Erode Detachment,
Erode. …. Respondent/Petitioner

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Criminal Appeal filed under Section 11 of Criminal Law Amendment Ordinance, 1944, against the common judgment passed in Crl.M.P.No.863 of 1998 and Crl.M.P.No.785 of 1997 and Crl.O.P.No.7 of 1997 dated 11.08.1998 passed by learned Chief Small Causes Judge, Chennai.

Criminal Revision Nos.1318 & 1319 of 2007:

1.A.Kalaselvi (alias) R.Kalaiselvi
2.A.Santhana Pandian
(alias) C.R.Santhana Pandian
3.A.Murugan Athiyaman
(alias) R.Murugan Athiyaman .... Petitioners/Accused 2 to 4/ in Crl.R.C.No.1318 of 2007

C.Aranganayagam .... Petitioner/Accused 1/ Petitioner in Crl.R.C.No.1319 of 2007

vs.

Deputy Superintendent of Police,
Vigilance & Anti Corruption,
C.S.V.I. Chennai. .... Respondent/Complainant/ Respondent in both revisions

Criminal Revisions filed under section 397 r/w 401 of the Code of Criminal Procedure against the order passed by learned Special Judge I/X Additional Judge, Chennai, in Crl.M.P.Nos.40 and 41 of 2007 in Special C.C.No.2 of 2006 dated 19.07.2007.

Criminal Original Petition Nos.26062 & 26063 of 2007:

C.Aranganayagam .... Petitioner/Accused 1 in Crl.O.P.No.26062 of 2007

1.A.Kalaselvi (alias) R.Kalaiselvi
2.A.Santhana Pandian (alias)
C.R.Santhana Pandian
3.A.Murugan Athiyaman (alias)
R.Murugan Athiyaman .... Petitioners/Accused 2 to 4 in Crl.O.P.No.26063 of 2007

vs.

Deputy Superintendent of Police,
Vigilance & Anti Corruption,
C.S.V.I. Chennai. .... Respondent/Complainant/ Respondent in both revisions

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Criminal Original Petitions filed under section 482 of the Code of Criminal Procedure praying to call for the records of learned Special Judge-I/X Additional Judge, Chennai, in Crl.M.P.Nol.40/2009 in Special C.C.No.2 of 2006 and quash the same in Crl.O.P.26062/2007 and against the order by the Special Judge-I/X Additional lJudge, chennai in Crl.M.P.No.40 of 2007 in Spl.C.C.No.2/2006 dated 19.7.2007 in Crl.O.P.No.26063 of 2007.

Appearance:

Crl.A.No.982 of 1998

For Appellant : Mr .Shanmugavelayutham, Public Prosecutor
For Respondents : Mr.S.Jayakumar

Crl.A.No.33 of 1999

For Appellant : Mr.S.Jayakumar
For Respondent : Mr.Shanmugavelayutham, Public Prosecutor

Crl.R.C.Nos.1318 & 1319 of 2007 and Crl.O.P.Nos.26062 & 26063 of 2007:

For Petitioners : Mr.A.Mohandoss
For Respondent : Mr.Shanmugavelayutham, Public Prosecutor

*****

COMMON JUDGMENT / COMMON ORDER

As the parties are common in all these matters and the same question is raised for consideration in them, they can be disposed of by a common judgment/common order.

2. Crl.A.Nos.982 of 1998 & 33 of 1999:

(i) Criminal Appeal No.982 of 1998 is filed against the common judgment passed by learned Chief Judge, Small Causes Court, Chennai, in Crl.M.P.Nos.6601, 6602 and 785 of 1997 in Crl.O.P.No.7 of 1997 and Crl.M.P.No.863 of 1998 in Crl.M.P.No.785 of 1997 in Crl.O.P.No.7 of 1997 dated 11.08.1998 and for a direction to order attachment of the properties mentioned in the application filed by the appellant herein before the trial Court.

(ii) Criminal Appeal No.33 of 1999 is filed against the common judgment passed by learned Chief Small Causes Judge, Chennai, in Crl.M.P.No.785 of 1997 in Crl.O.P.No.7 of 1997 and Crl.M.P.No.863 of 1998 in Crl.M.P.No.785 of 1997 in Crl.O.P.No.7 of 1997 and Crl.O.P.No.7 of 1997 dated 11.08.1998.

(iii) The case in Crime No.11/AC/96/HQ, V&A.C. was registered against the accused for offences u/s.13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988). In brief, the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

prosecution case is that A1, as a Minister of Government of Tamil Nadu and later, a member of the Tamil Nadu Legislative Assembly and as a public servant, had, during the period 1991 to 1996 acquired and possessed in his name and in the names of the accused 2 to 4 properties of value of Rs.1,15,01,352/- and that the same were disproportionate to his known sources of income. The second accused is the wife of the first accused while the accused 3 and 4 are his sons. The State moved Crl.O.P.No.7 of 1997 before learned Chief Judge, Small Causes Court, Chennai, seeking an order of attachment u/s.4 of the Criminal Law Amendment Ordinance, 1944 (hereinafter referred to as "Ordinance"), the offence alleged under the Prevention of Corruption Act, 1998 (hereinafter referred to as "Act") being a scheduled offence within the meaning of such Ordinance. The prosecution informed of Nos.1 to 9 and 12 of the listed properties belonging to the first accused, of his holding a half share in Nos.10 and 11, of his wife/A2 holding Nos.13 to 30, of A3, one of his sons, holding Nos.31 to 40 and of A4, one other son, holding properties listed Nos. 41 to 51.

(iv) Crl.M.P.Nos.6601 and 6602 of 1997 in Crl.O.P.No.7 of 1997 were moved by third parties seeking raising of interim attachment passed in respect of Item Nos.10 and 11 properties under orders in Crl.M.P.No.785 of 1997 in Crl.O.P.No.7 of 1997 dated 21.02.1997. Crl.M.P.No.863 of 1998 in Crl.M.P.No.785 of 1997 in Crl.O.P.No.7 of 1997 was moved by the State seeking extension of the order of interim attachment made in Crl.M.P.No.785 of 1997 in Crl.O.P.No.7 of 1997 on 21.02.1997. Counters and reply statements were filed and after hearing the counsel for respective parties, all the petitions were disposed of by a common order dated 11.08.1998. The following points were framed for consideration by learned Chief Judge, Small Causes Court, Chennai:

(1) Whether the properties described in the schedule as Item Nos.1 to 51 are liable for attachment?
(2) Whether the claim petitioners have interest in the properties attached?
(3) Whether the attachment in respect of any of the items in the schedule is liable to be raised?

(v) By order dated 11.08.1998, the attachment of properties standing in the name of A1 was made absolute, the claims of the third party petitioners of interest over Item Nos.10 and 11 were upheld and attachment of such properties was raised as was the order of interim attachment against properties listed Nos.13 to 51 standing in the names of accused 2 to 4. Aggrieved by such order, the State has preferred C.A.No.982 of 1998 and the first accused has preferred C.A.No.33 of 1999. As regards the holdings of the first accused, the learned Judge has reasoned that properties listed as Item Nos.1 to 9 and 12 admittedly were acquired by him during the check period and Section 3 of the Ordinance provided for making of an application for attachment if Government had reasonable belief that the person had committed any scheduled offence and property

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

had been procured thereby. Quite rightly, it has been observed that u/s.5 of the Ordinance, the District Judge was obliged to order ad interim attachment unless he found no prima facie grounds to believe that the person in respect of whom application had been made had committed scheduled offence or procured thereby any money or property. Taking note of the limited scope of enquiry u/s.5 of the Ordinance, the learned Judge concluded that it was not possible to hold that the first respondent had not by means of the said offence procured any money or property. He, thus, rejected the prayer for raising of attachment of properties standing in the name of the first accused. Again, quite rightly, the learned Judge has allowed the petitions moved by third parties in Crl.M.P.No.6601 and 6602 of 1997 in Crl.O.P.No.7 of 1997 on the reasoning that they had purchased Item Nos.10 and 11 properties under sale deeds prior to attachment and had been owners in their own right. It also was found that there was nothing to inform that such petitioners/third parties had knowledge of the registration of the case against the first accused, though an erroneous line of reasoning has been adopted in touching upon Section 53 of the Transfer of Property Act and in informing that Government could not be considered as a creditor or that no question of fraudulent preference of creditors arose. Learned Judge further held that the provision of the Benami Transactions Prohibition Act, 1988, was a bar to the State's contention of properties having been purchased in the names of accused 2 to 4 "Benami" for the first accused. The reasoning is that any claim of properties standing in the name of another as belonging to a particular person could not be made as such claim or defence stood prohibited under the Benami Transactions Prohibition Act, 1988 and that when even the first accused could not do so, it was not open to the State so to contend. In so holding, the Court below found inapplicable the decision of this Court in Kuppuswamy v. State [1990 LW (Crl.) 384] to the effect that the provisions of the Benami Transactions Prohibition Act, 1988, could not be applied to claims made u/s.5(2)(3) in respect of properties attached u/s.4 of the Ordinance, on the specious reasoning that there was no attachment in such case and a revision petition praying quash of proceedings alone was decided and the effect of Section 4(2) of the Benami Transactions Prohibition Act, 1988, was not considered. The learned judge informed that the Benami Transactions Prohibition Act, 1988, was a special enactment which contained no reservation against application thereof to the Ordinance.

(vi) This Court sees the reasoning of the Court below as a concerted effort to avoid the decision of this Court in Kuppuswamy's case. Therein, this Court has informed thus:

> "21. ... The argument based on the provisions of Benami Transactions (Prohibition) Act, 1988 has to be stated only to be rejected. The Act has a purpose behind it, to prohibit benami transactions and to prohibit any claim, suit or action by or on behalf

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

of a person claiming to be the real owner of such property. Section 3 of the Act, which prohibits any person from entering into a benami transaction, provides that it shall not apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed unless the contrary was proved, that the said property had been purchased for the benefit of the wire or the unmarried daughter. The Benami Transactions (Prohibition) Act, 1988, will not erase the offence under S.5(1)(e) of the Act, if it is remembered that the burden of showing that a particular transaction is benami and the owner was not the real owner always rested on the person asserting it to be so and this burden has to be strictly discharged by adducing legal evidence of a definite character, which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. As observed by the Supreme Court in Krishnan vs. State of M.P. [AIR 1977 SC 796], the essence of benami is the intention of the parties and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be Benami of the serious on us that rests on him, nor justify the acceptance of mere conjectures or surmises as a substitute for proof. The Benami Transactions (Prohibition) Act is intended to prevent fraud and not is perpetuate it. A man cannot take advantage of his own wrong and plead for exclusion by attempting to frustrate the objects behind S.5(1)(e) of the Act. The Benami Transactions (Prohibition) Act, and the Prevention of Corruption Act operate in different fields. I am unable to accept the contention that under S.5(1)(e) of the Act the petitioner cannot be asked to explain the source for the fixed deposits found in the name of his wife and unmarried daughter. The petitioner certainly has an opportunity during trial to disprove the allegations made by the prosecution. This contention is not acceded to."

(vii) Section 13(1)(e) of the Prevention of Corruption Act, 1988, makes punishable any act of a public servant, or anyone on his behalf, being in possession or having been or at any time during the period of his office in possession of pecuniary resources or property disproportionate to his known sources to income and for which the public servant satisfactorily is unable to account. Therefore, when, in a charge u/s.13(1)(e) of the Prevention of Corruption Act, 1988, the prosecution alleges that disproportionate

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

assets are held in the names of persons other than the public servant, the implication is that it is the public servant who has purchased/provided the funds for such assets and permitted them to be held in the names of such other persons towards screening the offence committed by him. In otherwords, the allegation is that the source of funds for the assets standing in the names of/held by others is unlawful. Such is an allegation which the prosecution has to establish in the course of trial. As informed in Kuppuswamy's case, the accused certainly have an opportunity to disprove the prosecution allegations thereat.

(viii) These appeals arise out of common judgment dated 11.08.1998. These appeals have been pending from 1998/1999. This Court for the reasons above mentioned, considers it necessary to interfere with the finding of the Court below insofar as the raising of attachment of assets standing in the name of Accused 2 to 4 is concerned. Given the inordinate delay in disposal of the appeals, occasioned also by a short spell of 'Madurai sitting', this Court considered it appropriate to require the investigating officer to file a report informing which of the assets held in the name of Accused 2 to 4 and listed as Nos.13 to 51 continue to be held by them for the simple reason that properties which have changed hands subsequent to the judgment under challenge and are now in the possesion of third parties cannot be proceeded against. The investigating officer vide report dated 11.06.2015 has informed as follows:

> "Item Nos.21 to 28 & 30, properties possessed by A2 Tmt.Kalaiselvi, have been sold during 2005 - 2009. Item Nos.37 to 39, properties possessed by A3, have been sold in 2005. Item Nos.47 to 50, properties possessed by A4, have been sold in 2005."

(3) Crl.R.C.Nos.1318 and 1319 of 2007

(i) These revisions arise against the order of learned Special Judge I/X Additional Judge, Chennai, passed in Crl.M.P.Nos.40 and 41 of 2007 in Special C.C.No.2 of 2006 on 19.07.2007.

(ii) Petitioner in Crl.R.C.No.1319 of 2007 is the first accused in case pending trial in Special C.C.No.2 of 2006 on the file of learned Special Judge I/X Additional Judge, Chennai, while petitioners in Crl.R.C.No.1318 of 2007 are accused 2 to 4 therein. The case in Crime No.11/AC/96/HQ, V & A.C. was registered against the accused for offences u/s.13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988.

(iii) A1 sought discharge in Crl.M.P.No.41 of 2007 and accused 2 to 4 sought discharge in Crl.M.P.No.40 of 2007 before learned Special Judge I/X Additional Judge, Chennai. Against dismissal thereof under orders dated 19.07.2007, petitioners have moved the present revisions.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(iv) In dismissing the discharge petitions of accused, the Court below has found as follows:

Accused No.1:

- the income earned by A1 as an Advocate had not been disclosed;

- the income earned by A2 as a teacher, publisher and the income derived through Government contracts had not been disclosed;

- The final report informed that A1 to A4 were not income tax assessess prior to the check period. As per Document No.149, submitted by A1, the total value of assests of the family, prior to the check period, was Rs.12,77,880.42 and the assets and cash of A1 were Rs.45,974/- and Rs.5,60,000/- respectively. At the end of the check period, the value of total assets were Rs.1,41,00,484.65 and the assets and income of A1 were Rs.22,41,634.44 and Rs.6,60,980/- respectively. Income Tax returns for the relevant periods had not been produced. Only after filing of final report, A1 had filed income tax returns on 22.02.1997;

- the investigating officer, in the final report, had stated that value of assets of A1 at the beginning of the check period was Rs.5,27,880/- and the value of assets of the family at the end of the check period was Rs.1,66,30,069/-. Income of A1 to A4 during the check period was Rs.98,05,835/-; expenditure - Rs.29,24,557/- and savings - Rs.68,81,278/-. Finding as above, the investigating officer had arrived at a conclusion that there was disproportionate asset to the tune of Rs.92,20,911/-. Though A1 has stated that the income of A1 to A4 during the check period was Rs.1,40,26,582/-, no account there regards or income tax statements for the relevant periods had been produced. In the absence of such records, the statement of A1 could not be accepted.

- Though accused had placed much reliance on the order of learned Chief Judge, Small Causes Court, to the effect that Item Nos.10, 11 and 13 to 51 of the listed properties belonged to A2 to A4, the Court below has rejected the same on the reasoning that an appeal against such order is pending before this Court.

  On the above reasoning, the Court below found that a prima facie case stood made out against A1.

Accused 2 to 4:

- No income tax assessment was done on the accused income prior to the check period and only after filing of final report, A2 to A4 had filed their Income Tax Returns in 1996 for the years 1992 to 1996;

- During the course of investigation, accused had not placed any material before the investigating officer regards their independent income as also they had not disclosed the details of their independent assets.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

- Though income statements of A1 to A4 were produced by A1, no documents regards income tax assessment and accounts relating thereto were produced. Only the income tax returns of A1 filed on 28.02.1997 were enclosed.

- Though accused had placed much reliance on the order of learned Chief Judge, Small Causes Court, to the effect that Item Nos.10, 11 and 13 to 51 of the listed properties belonged to A2 to A4, the Court below has rejected the same on the reasoning that an appeal against such order is pending before this Court. Since the income tax returns of A2 to A4 had not been filed, it could not be concluded that they had enough source of income during the check period.

- The contention of accused that their individual income was not considered during the course of investigation has been negated by the Court below on the reasoning that (i) they were living along with A1 as one family and (ii) the investigating officer has assessed the income of A2, A3 and A4 during the check period and found the total income of A1 to A4 as Rs.98,05,835/-.

- The investigating officer on the basis of the following statements viz.,

I	II	III	IV	V
Assessment of Assets at the beginning of the check period	Assessment of Assets at the end of the check period	Income during the check period	Expenditure during the check period	Total assets acquired during the check period
Rs.5,27,880/-	Rs.1,66,30,069/-	Rs.98,05,835/-	Rs.29,24,557/-	Rs.1,61,02,189/-

valued the income after expenditure at Rs.68,81,278/- and found that there were disproportionate assets to the tune of Rs.92,20,911/-. The investigating officer further found that the properties standing in the names of A2, A3 and A4 were not acquired by independent means but through A1.

- Accused 2 to 4 had not produced any document or record to establish that they had income over and above the income shown by the investigating officer in Statement III.

- The investigating officer, after considering the properties standing in the names of accused 2 to 4, their value, stamp duty and registration fee spent towards purchase of those properties and considering the income of the accused 2 to 4, found that the properties standing in the names of accused 2 to 4 were disproportionate to their known sources of income and laid charge

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

sheet informing that accused 2 to 4 had abetted A1 for committing the offence under the Prevention of Corruption Act, 1988.
On the above reasoning, the Court below found that a prima facie case stood made out against A2 to A4.

(v) Learned counsel for petitioners/accused placed reliance on the following judgments and particularly on the portions extracted:

(a) in Jamuna Chaudhary & Others v. State of Bihar [1974 (3) SCC 774], it was observed as follows:

> "11. The duty of the Investigating Officers is not to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth....."

(b) in State Inspector of Police, Vishakapatnam v. Surya Sankaram Karri [2006 (7) SCC 172], it has been held thus:

> "19. ... The least that a Court of law would expect from the prosecution is that the investigation would be a fair one. It would not only be carried out from the stand of the prosecution, but also the defence, particularly, in view of the fact that the onus of proof may shift to the accused at a later stage."

(c) in State of Andhra Pradesh v. J.Satyanarayana [Manu/SC/3124/2000], it was observed thus:

> "7. ... Loans received by the wife from the lenders had found reflection in the accounts of those lenders with their accounts also prepared much earlier to the date of raid. House belonging to wife as per Income Tax Return filed by wife before registration of case and return placed on record by prosecution itself. Therefore, High Court rightly excluded house from the assets of the respondent."

(d) in State of M.P. v. Mohanlal Soni [2000 (6) SCC 338], it has been held thus:

> "6. ... All these documents pertain to the period prior to 26-3-1993. Some of them even relate to the year 1988. In the normal course the documents could not have been prepared in anticipation that the respondent would have to face such charges on a future date. The documents being the orders of assessment or returns filed with the Income Tax Authorities on their face value supported the case of the respondent."

(e) In Selvi.J.Jayalalitha & others vs. CBI [2012 MLJ (Crl.) 701], it has been observed as follows:

> "47. ... Inordinate and unexplained delay and further continuance of the criminal proceedings pending against the petitioner would certainly amount to abuse of process of Court.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Objection based on denial of right to speedy trial should first be addressed before the High Court, this Court has no hesitation to invoke and exercise the extraordinary inherent power under Section 482 of Cr.P.C. to quash the entire proceedings."

(vi) This Court finds inapplicable the decisions in Jamuna Chaudhary and Surya Sankaram Karri's cases since this Court does not find any reason to find that the investigating officer has acted unfairly. The reliance in J.Satyanarayana and Mohanlal Soni's cases is misplaced as in State of Tamil Nadu v. N.Suresh Rajan and others [2014 (3) SCC (Cri) 529], the Supreme Court has informed thus:

"32.3.While passing the order of discharge, the fact that the accused other than the two Ministers have been assessed to income tax and paid income tax cannot be relied upon to discharge the accused persons particularly in view of the allegation made by the prosecution that there was no separate income to amass such huge properties. The property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give opportunity to the corrupt public servants to amass property in the name of known persons, pay income tax on their behalf and then be out from the mischief of law."

(vii) The reliance on the judgment in Selvi.J.Jayalalitha's case is to be stated only to be rejected as in Niranjan Hemchandra Sashittal and another v. State of Maharashtra [2013 Cri.L.J.2143 (SC)], the Supreme Court has informed thus:

"19. It is to be kept in mind that on one hand, the right of the accused is to have a speedy trial and on the other, the quashment of the indictment or the acquittal or refusal for sending the matter for re- trial has to be weighed, regard being had to the impact of the crime on the society and the confidence of the people in the judicial system. There cannot be a mechanical approach. From the principles laid down in many an authority of this Court, it is clear as crystal that no time limit can be stipulated for disposal of the criminal trial. The delay caused has to be weighed on the factual score, regard being had to the nature of the offence and the concept of social justice and the cry of the collective. In the case at hand, the appellant has been charge-sheeted under the Prevention of Corruption Act, 1988 for disproportionate assets. The said Act has a purpose

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

to serve. The Parliament intended to eradicate corruption and provide deterrent punishment when criminal culpability is proven. The intendment of the legislature has an immense social relevance. In the present day scenario, corruption has been treated to have the potentiality of corroding the marrows of the economy. There are cases where the amount is small and in certain cases, it is extremely high. The gravity of the offence in such a case, in our considered opinion, is not to be adjudged on the bedrock of the quantum of bribe. An attitude to abuse the official position to extend favour in lieu of benefit is a crime against the collective and an anathema to the basic tenet of democracy, for it erodes the faith of the people in the system. It creates an incurable concavity in the Rule of Law. Be it noted, system of good governance is founded on collective faith in the institutions. If corrosions are allowed to continue by giving allowance to quash the proceedings in corruption cases solely because of delay without scrutinizing other relevant factors, a time may come when the unscrupulous people would foster and garner the tendency to pave the path of anarchism.

20. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality. Therefore, the relief for quashing of a trial under the 1988 Act has to be considered in the above backdrop."

(viii) All that a Court is required to do in considering a petition for discharge u/s.239 Cr.P.C. only is to satisfy itself as to the existence or absence of a prima facie case. The reasons informed by the Court below easily meet such benchmark.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. Crl.O.P.Nos.26062 & 26063 of 2007

These petitions seek quash of proceedings in Special C.C.No.2 of 2006 pending on the file of learned Special Judge I/X Additional Judge, Chennai. Once a prima facie case is made out, no occasion arises to consider favourably the petitions seeking quash of proceedings in Special C.C.No.2 of 2006 pending on the file of learned Special Judge I/X Additional Judge, Chennai.

5. In the result,

(i) Criminal Appeal No.33 of 1999 shall stand dismissed.

(ii) Criminal Appeal No.982 of 1998 shall stand partly allowed. The order of learned Chief Judge, Small Causes Court, Chennai, passed in Crl.M.P.Nos.6601 and 6602 of 1997 in Crl.O.P.No.7 of 1997 on 11.08.1998 raising the attachment of properties held by third parties is affirmed.

(iii) The order of the learned Chief Judge, Small Causes Court, Chennai, passed in Crl.M.P.No.785 of 1997 in Crl.O.P.No.7 of 1997 and Crl.M.P.No.863 of 1998 in Crl.M.P.No.785 of 1997 in Crl.O.P.No.7 of 1997 on 11.08.1998, raising the interim attachment/refusing the extension of interim attachment regards properties standing in the names of A2 to A4 are set aside. The attachment of properties standing in the names of A2 to A4 are made absolute. However, the same shall extend only to properties listed as Item Nos.13 to 20, 29, 31 to 36, 40 to 46 and 51.

(iv) Criminal Revision Nos.1318 and 1319 of 2007 shall stand dismissed.

(v) Criminal Original Petition Nos.26062 and 26063 of 2007 shall stand dismissed. The trial Court is directed to dispose of the case in Special C.C.No.2 of 2006 on the file of learned Special Judge I/X Additional Judge, Chennai, on a day-to-day basis, in any event, not later than four months from today.

It is the duty of this Court to inform and record its great displeasure in the action/inaction of the State agencies in earnestly not pursuing the proceedings before this Court. What is the effect?

In a case in which wrong doings between 1991 and 1996 are alleged, the final report has been filed in 2006. The order of the Court below was of the year 1998. Since then, over 17 long years, the matter has been pending before this Court. A perusal of the docket suggests that the matter has not been listed between September 2001 and November 2011. Leave alone the question of why in a case alleging offences under the Prevention of Corruption Act, 1988, more particularly, disproportionate possession of assets, the First Information Report of the year 1996 resulted in the filing of a

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

charge sheet only after 10 long years, the questions, of who is responsible for pendency of proceedings before this Court over 17 long years, what, if any, are the vested interests and are none accountable, cry for an answer.

gm

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Chief Judge,
   Small Causes Court,
   Chennai.

2. The Deputy Superintendent of Police,
   Vigilance & Anti Corruption,
   C.S.V.I. Chennai.

3. The Inspector of Police,
   Vigilance and Anti Corruption,
   Erode Detachment at Erode.

4. The Public Prosecutor,
   High Court, Madras.

5. Special Judge-I/X Additional Judge,
   Chennai.

6. The Inspector of Police,
   D.V. & A.E.Erode Detachment,
   Erode.

+ 1 cc to Mr.A.Mohandoss, Advocate SR 31371

ts(co)
prk25/6

Criminal Appeal Nos.982 of 1998 & 33 of 1999
& Criminal Revision Nos.1318 &1319 of 2007 &
Criminal Original Petition Nos.26062 & 26063 of 2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/