IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.08.2015

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THE HONOURABLE MR.JUSTICE A.SELVAM

Crl.R.C.Nos.388 and 389 of 2015

State represented by
The Public Prosecutor,
High Court, Madras- 600 104.
[V & A.C., Chennai
Crime No.3/2007/SIC] .. Petitioner in both the Crl.R.Cs'/Complainant

Vs

S.Raman .. Respondent in Crl.R.C.No.388/2015 (A2)

S.Lakshmanan .. Respondent in Crl.R.C.No.389/2015 (A3)

Prayer:- Criminal Revision Cases filed under Sections 397 and 401 Cr.P.C., to set aside the order of discharge passed by the Special Court for the Cases under Prevention of Corruption Act at Chennai in Crl.M.P.Nos.524/2012 and 523/2012 dated 06.06.2014.

For Petitioner : Mr.P.Govindaraj, Additional Public Prosecutor

For Respondents : No Appearance

COMMON ORDER

These Criminal Revision Cases have been directed against the common order dated 06.06.2014 passed in Crl.M.P.Nos.523/2012 and 524/2012 in Calender Case No.09 of 2012 by the Special Court for the cases under Prevention of Corruption Act, Chennai.

2. The respondents herein have been shown as Accused 2 and 3 in C.C.No.09 of 2012, whereas their father has been arrayed as the 1st accused. During pendency of the same, the respondents herein as petitioners have filed the petitions in question under Section 239 of the Code of Criminal Procedure, 1973 praying to discharge them from the proceedings of C.C.No.09 of 2012 and the same has been taken on file in Crl.M.P.Nos.523 and 524 of 2012.

3. In both the petitions, it is averred that in the name of the 2nd accused some vehicles have been purchased by utilising his separate funds and likewise in the name of the 3rd accused, a house

flat has been purchased by utilising his separate funds. The accused 2 and 3 have had no connections whatsoever with the allegations made against the 1st accused, since the accused 2 and 3 have utilised their separate funds for purchasing vehicle and also immovable property, they have been unnecessarily roped in C.C.No.09 of 2012. Under the said circumstances, these petitions have been filed for getting the relief sought for therein.

4. On the side of the respondents therein/complainant detailed counter has been filed, wherein it has been contended to the effect that the petitioners are nothing but sons of the prime accused and by utilising ill-gotten money, the prime accused (A1) has purchased the properties in question in the names of the petitioners and the petitioners are not having any independent income and therefore, both petitions are liable to be dismissed.

5. On the basis of the rival contentions raised on either side, the Court below has allowed the petitions and thereby discharged both the petitions from the proceedings of C.C.No.09 of 2012 by way of passing the impugned common order. Against the common order passed by the Court below, these Criminal Revision Cases have been preferred at the instance of the respondents/complainant as criminal revision petitioner.

6. Even though notices have been sent to the respondents herein and received by them, they failed to make their appearance. Under the said circumstances, these Criminal Revision Cases are liable to be disposed of on the basis of the contentions put forth on the side of the criminal revision petitioner.

7. The learned Additional Public Prosecutor has meticulously contended that Section 13 (1) (e) of the Prevention of Corruption Act, 1988 can be invoked either against a Government servant or any person on his behalf. Under the said circumstances, the accused 2 and 3/petitioners therein are found guilty under the said Section. But the Court below without considering the definition of the said Section has erroneously given a finding to the effect that the said Section can be invoked only against Government servant(s) and therefore, the order passed by the Court below is liable to be set aside.

8. Further, the Court below without considering the lack of materials on the part of the petitioners to substantiate their contentions, has simply found that the petitioners are having independent income so as to purchase the properties in question and on that ground also the impugned order passed by the Court below is liable to be set aside.

9. The specific case of the revision petitioners/complainant is that during the check period, the 1st accused served as an Assistant Cashier in the Institute of Mental Health, Kilpauk and by way of indulging malpractice, he acquired ill-gotten money and by utilising the same, he purchased various properties in the names of

his sons viz., the respondents herein and therefore, they are also liable to be mulcted with liability.

10. It is seen from the final report that the revisions petitioners/complainant has charged the respondents and the 1st accused under Sections 13 (1) (e) and along with Section 13 (1) (d) of the Prevention of Corruption Act, 1988.

11. As stated earlier, the Court below has allowed both the petitions mainly on the ground that for invoking Section 13 (1) (e) of the said Act the accused must be a Government servant. Since the Court below has taken a definite view to that effect, necessarily the Court has to look into Section 13 (1) (e) of the said Act.

12. Section 13 (1) (e) of the Prevention of Corruption Act, reads as follows:

> "If he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account of pecuniary resources or property disproportionate to his known sources of income."

13. A cursory look of the said Section denotes that any person on his behalf means that he need not be a Government servant.

14. The Court below without considering the words any person on his behalf has erroneously found that for invoking the said Section, the concerned accused must be a Government servant.

15. Since in the said Section it has been clearly mentioned that if he or any person on his behalf it is easily discernible that the words any person on his behalf may indicate non Government servant. Therefore, it is needless to say that the interpretation given by the Court below with regard to Section 13 (1) (e) of the said Act is totally erroneous.

16. The specific case put forth on the side of the revision petitioners/complainant is that by utilising ill-gotten money, the 1st accused has purchased various properties including the properties mentioned in the petitions in the names of his sons viz., the respondents herein. Since the respondents can also be brought within the contour of the said Section, it is needless to say that the conclusion arrived at by the Court below is erroneous.

17. In the light of the discussions made earlier, the contention put forth on the side of the criminal revision petitioner is having acceptable force and consequently, common order passed by the Court below is liable to be set aside.

18. In fine, these Criminal Revision Cases are allowed and the common order passed in Crl.M.P.Nos. 523/2012 and 524/2012 in C.C.No.09 of 2012 is set aside and the petitions filed in Crl.M.P.Nos.523 and 524 of 2014 in C.C.No.09 of 2012 are dismissed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vsm

To

The Presiding Officer,
The Special Court for the Cases
under Preventions of Corruption Act, Chennai.

+1 cc to Public Prsecutor, sr.41767

Crl.R.C.Nos.388 and 389 of 2015

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