IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-07-2015

CORAM

THE HON'BLE MR.JUSTICE P.DEVADASS

Crl. O.P. No.2900 of 2014

State Represented by
Inspector of Police,
CBI, ACB, Chennai. .. Petitioner/Complainant

-vs-

P.Pandian .. Respondent/A-1

This Criminal Original Petition is filed under Section 482 Cr.P.C., against the order passed by the learned XIV Additional Special Judge for CBI Cases, Chennai in Crl.M.P.No.791 of 2012 in C.C.No.37 of 2009 dated 27.8.2013.

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

For Respondent : Mr.G.Jawaharlal

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O R D E R

This Criminal Original Petition under Section 482 Cr.P.C., has been filed by the CBI, ACB, Chennai as against the order dated 27.8.2013 passed by the learned Special Judge for CBI Cases, Chennai in Crl.M.P.No.791 of 2012 in C.C.No.37 of 2009 passed under Section 216 Cr.P.C.

2. A-1, Pandian and A-2, Vennila are spouses. During the relevant period, A-1 was a Public Servant in Employees' Provident Fund Organisation, Regional Office, Chennai. He was accused of having amassed wealth disproportionate to his known source of income.

3. Based on source information, CBI registered a case. Took the period between 1.1.2002 and 30.9.2006 as check period. It investigated the offence alleged and filed the Final Report under Section 173(2) Cr.P.C., before the Trial Court to the effect that during the said period, A-1 had amassed wealth disproportionate to the tune of Rs.25,16,295/- and calculated it at 44.16%. And A-2 has been accused of having abetted her husband by his acquiring certain landed property in her name and put up a construction thereon.

4. In the Trial Court, A-1 filed Crl.M.P.No.4023 of 2010 to discharge from the case. It was dismissed by the Trial Court. That was upheld by this Court in Crl.R.C.No.1047 of 2011. The discharge petition in Crl.M.P.No.973 of 2010 filed by his wife/A-2 has been allowed by the Trial Court and that was also upheld by this Court in Crl.R.C.No.1115 of 2011 on 2.7.2012.

5. In the circumstances, A-1 filed Crl.M.P.No.791 of 2012 in the Trial Court under Section 216 Cr.P.C., to alter the charges by excluding item Nos.1 and 2 pertaining to A-1's wife as they belongs to her, from the charge already framed on 7.9.2012. On 27.8.2013, the Trial Court allowed this petition to the effect that the cost of construction incurred by A-1's wife to the tune of Rs.10,08,000/- shall be deducted from the alleged disproportionate assets assessed at Rs.25,16,295/- and the charge shall be altered/amended accordingly.

6. Aggrieved as stated, at the outset, the prosecution directed this Crl. O.P.

7. According to the learned Special Public Prosecutor, CBI, in its order dated 2.7.2012, in Crl.R.C.No.1115 of 2011, this Court held that A-2 might have been discharged from the case by the order of the Trial Court as confirmed by the High Court in the revision, in considering the source of income and as regards the acquisition in the name of others, item Nos.1 and 2, namely, the property in the name of A-2 and the construction put up thereon and the monetary value of the same cannot be excluded.

8. Even this Court in its order in Crl.R.C.No.1115 of 2011 dated 2.7.2012, while confirming the discharge of A-2, held that whether the discharge of loans and other expenses were from ill-gotten money by A-1 or not is a matter to be decided by the Trial Court and the discharge of A-2 cannot be made use of by A-1 and it is for him to explain and establish it during the trial. Thus, a direction to exclude item Nos.1 and 2 from the charge by the impugned order is unsustainable in law.

9. On the other hand, the learned counsel for the respondent contended that the order of the High Court in Crl.R.C.No.1115 of 2011 dated 2.7.2012 is very crystal clear and as per that any acquisition expenses have to be explained by A-1 that they were not made out of any ill-gotten money. However, even the definite case of the prosecution with respect to A-2's property and A-2's construction expenses upto certain level are traced to A-2. That was reflected in the order of the High Court in Crl.R.C.No.1115 of 2011 dated 2.7.2012 and the said order in no way alter the position in the order of the Trial Court dated 27.8.2013 ordering alteration of the charge.

10. I have anxiously considered the rival submissions, perused the materials on record and the order of this Court in Crl.R.C.No.1115 of 2011 dated 2.7.2012.

11. Now, in this case, originally A-1 was proceeded with for his possession of income alleged to be disproportionate to his known source of income. While A-1's wife A-2 was proceeded with for having abetted her husband in his committing the offence.

12. By a detailed order, the Trial Court discharged A-2 from the case and that was also upheld by this Court in Crl.R.C.No.1115 of 2011 by its order dated 2.7.2012. In the impugned order dated 27.8.2013, the Trial Court adverted to the fact that item No.1, a landed property was acquired by A-2 long prior to the check period, namely, 1.1.2002 to 30.9.2006 and the property was disposed of, out of the sale proceeds another property was purchased and a construction was put up on the property and out of the total construction expenses Rs.10,08,000/- represented the income of A-2.

13. In the circumstances, while allowing the petition for alteration of charge in the impugned order, the Trial Court remarked as under:-

> "21. The Hon'ble High Court had also given a crystal clear findings in Crl.R.C. No.1115 of 2011 that the construction cost of the house to the tune of Rs.10,08,000/- was that of Mrs.P.Vennila, W/o.P.Pandian. So, that amount has to be completely deducted from the disproportionate asserts amount of Rs.25,16,295/- (as found in the charge). The said alterations are material essential and very much necessary in view of the categoric findings given by the Hon'ble High Court of Madras.
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> 22. In the light of the discussions made supra and in exercise of the powers conferred under Section 216 Cr.P.C., it becomes just and appropriate in the interest of justice that the charges have to be altered/amended in consonance with the material facts as stated above and thereby to frame specific charges in accordance with the available materials on records.
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> In the results,
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> This petition is allowed as prayed for and consequently the charge with regard to the cost of construction of the house incurred by Mrs.Vennila to the tune of Rs.10,08,000/- has to be deducted from the alleged disproportionate asserts amount of Rs.25,16,295/- and the charge has to be altered/amended correspondingly thereto."

14. Thus, while passing the impugned order, the Trial Court referred to the findings recorded by this Court in Crl.R.C.No. 1115 of 2011 on 2.7.2012.

15. In the Crl.R.C.No.1115 of 2011 dated 2.7.2012, while upholding the order of discharge passed by the Trial Court discharging A-2 from the case, this Court observed as under:-

> "11. It is to be seen that whether the discharge of the second accused is legal on other points. Admittedly, only items 1 and 2 shown in the 'Statement - B' i.e., assets shown at the end of check period, stands in the name of the second accused. Prior to the purchase of plot at Nainarkuppam, the accused was having a property in Thoraipakkam which was purchased in the year 1995 and the said property was sold for a sum of Rs.25,00,000/-. Out of Rs.25,00,000/-, a sum of Rs.7,00,000/- was used for clearing debts over the property and only Rs.18,13,840/- was received by the second accused and it is also shown in the details of income by the prosecution. As per the statement on the very same day, property at Uthandi village was purchased for a sum of Rs.10,08,000/-. There is no doubt that plot which stands in the name of the second accused was not purchased on behalf of the first accused. The question arises only with regard to the construction of houses over the said plot. According to the prosecution, construction value is Rs.46,08,000/-. After purchasing the plot, a sum of Rs.8,13,840/- was remaining which could have been used for construction purpose. Further more, housing loan was availed by both the accused 1 and 2 for a sum of Rs.12,00,000/- for constructing the house. Of course, according to the accused 1 and 2, the first accused obtained a sum of Rs.17,300 USD as a loan from his relatives and friends amounting to Rs.7,52,523/-. That amount also was utilised for constructing the building. On total calculation according to the prosecution, as per the statements filed, there is a disproportionate amount of Rs.25,16,295/. It has to be explained only by the first accused whether the second accused had independent income or not. It cannot be said that she had property on behalf of the first accused and also there is no prima facie material to show that she had facilitated or obliged her husband, the first accused by constructing house out of ill-gotten wealth by the first accused.

12. In this particular case, even it is to be said that second accused failed to produce any documentary evidence that she earned income out of beautician and other sources and she was not having any legal source of income, it cannot be said that she had lent her name on behalf of her husband for acquiring the only property which stood in her name. Therefore, the order passed by the Trial Court discharging the second accused has to be confirmed.

13. Though the second accused is discharged from the case, the burden remains on the first accused to prove that there is no disproportionate assets. Even according to the first accused for construction purposes, he had borrowed loan from his relatives and loans were also obtained from the bank. The discharge of those loans and other expenses were from ill-gotten money by the first accused or not is a matter to be decided only by the Trial Court. The discharge of the second accused cannot be made use of by the first accused and it is for him to explain and establish during trial that he was not holding disproportionate assets either in his name or in the name of others."

16. The above observations in the High Court's order dated 2.7.2012 clearly answers the contentions of the prosecution in the present Crl.O.P. Thus, there is no infirmity in the impugned order of the Trial Court dated 27.8.2013 passed in Crl.M.P.No.791 of 2012 and it does not call for any interference.

17. In the result, this Criminal Original Petition is dismissed.

Svn

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

Copy to:

1.The XIV Additional Special Judge for CBI Cases, Chennai.

2.The Special Public Prosecutor, CBI, Chennai.

3.The Inspector of Police, CBI, ACB, Chennai.

+ 1 cc to Mr.K.Srinivasan, Special Public Prosecutor for CBI Cases SR 35264

+ 1 cc to Mr.G.Jawaharlal, Advocate SR 35313

gj(co)
prk23/7