HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.2304 of 2012

ORDER:-

The revision case is filed by the petitioners/A.1 and A.2 in C.C.No.12 of 2007 on the file of the III-Additional Special Judge for CBI Cases, Hyderabad, being aggrieved by the order dated 11-09-2012 made in Crl.M.P.No.1178 of 2009 which was filed by the petitioners/accused under Section 239 Cr.P.C., to discharge them of the accusations.

2. The respondent/CBI filed the charge sheet in RC.09(A)/2005/CBI/HYD alleging offences punishable under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act (for short 'the Act') and Section 109 of IPC. The petitioners/A.1 and A.2 are husband and wife. The petitioner/A.1 was working as Deputy Commissioner of Income-Tax, Tirupathi. He is alleged to have amassed wealth disproportionate to his known sources of income. Investigation was carried out which revealed that during the check period from 01-01-2001 to 06-04-2005, the petitioner/accused had assets to a tune of Rs.30,54,087/- which were in excess of the known sources of income. The petitioner/A.2 was having a Xerox shop at Tirupati under the name and style of Yamini Xerox Centre. The values of the movables and immovables standing in the name of the family members of the petitioner/accused has been taken into account and they are shown in statements A, B, C and D in the charge sheet. The net result of the above exercise was the *prima facie* conclusion that the accused Officer has disproportionate assets to an extent of Rs.30,54,087/-.

3. Insofar as the petitioner/A.2/wife is concerned, it is alleged that she has abetted her husband/A.1 in accumulation of disproportionate

assets by aiding him in concealing his ill-gotten wealth in the form of movable and immovable properties purchased in her name and in the name of their children. In that view of the matter, both the petitioners/accused were charge sheeted.

4. They filed the petition under Section 239 Cr.P.C., to discharge them on the ground that a false case is registered against the accused, that A.1 never acquired assets disproportionate to his known sources of income, that A.2 never abetted A.1 in the alleged acquiring of assets, that A.1 never acquired assets in the name of A.2, that A.2 is a business lady having her own independent source of income and she also filed the income-tax returns, that the income of the children of the petitioners/accused was not taken into consideration, that the petitioners had two sons and one daughter who were all medical graduates and one of their sons is settled in United Kingdom, that the properties mentioned at Sl.Nos.7, 9 and 10 of statement-B were in fact acquired by the children of the petitioners/accused with their own sources, that the searches were conducted by the Investigating Officer without following the provisions of the Code of Criminal Procedure and therefore they are liable to be discharged.

5. The respondent/CBI filed counter opposing the petition contending that the assets which were acquired by the petitioners/accused could not be satisfactorily accounted for, and since the properties were acquired in the name of wife/A.2, both of them were charge sheeted and there are no grounds to discharge.

6. By the impugned order, dated 11-09-2012, the learned Special Judge dismissed the petition holding that *prima facie* there is sufficient material to proceed against the accused and there are no grounds to discharge them.

7. Learned Counsel appearing for the petitioners/accused has

strenuously contended that the investigating agency did not investigate the case in proper perspective. Even though, it was brought on record that the mother of the petitioner/A.1 by name Subbayamma had vast agricultural and non-agricultural properties and she was earning substantial amounts by way of rents etc., the properties standing in her name have also been clubbed with the assets of the petitioner/A.1. It is further submitted that admittedly all the three children of the petitioners/accused are Doctors by profession and they had their independent income and even though the properties standing in their names have been acquired by them, the same has been tagged on with the assets of the petitioner/accused. It is further submitted that the 2nd petitioner/A.2 was admittedly a business woman and running Yamini Xerox Centre at Tirupati and having substantial income and from out of her own income, she acquired the properties which cannot be said to be acquired by A.1 in the name of A.2. Learned Counsel further submits that the Investigating Officer has failed to take into account all the assets and by clubbing the properties standing in the names of the wife, children and mother of the petitioner/A.1 they have been shown to have been acquired by the petitioner/A.1, thereby alleging that he had assets worth about Rs.30.50 lacs which were excess of his known sources of income. It is also submitted that the learned Special Judge has not taken into consideration the well settled legal proposition that if there is no sufficient material to presume that the accused might have committed an offence, charges cannot be framed and the petitioners/accused are entitled to discharge.

8. In support of his contention, learned Counsel relied upon a decision reported in **STATE OF M.P. v. MOHANLAL SONI**[1]. It is laid down that at the stage of framing charge, the Court has to prima

facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. Per contra, if the evidence which the prosecution proposes to produce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the particular offence, then the charge can be quashed. Learned Counsel further relied upon a decision reported in **RUKMINI NARVEKAR v VIJAYA SATARDEKAR AND OTHERS**[2], wherein it is laid down that even though the Court at the stage of framing charges has to look into the material that is placed along with report but there is no scope for the accused to produce any evidence in support of his submissions, but, however, in a proceeding under Section 482 Cr.P.C., the Court is free to consider the material that may be produced on behalf of the accused to arrive at a decision whether charge as framed could be maintained.

9. Insofar as the petitioner/A.2 is concerned, it is contended that even though she was a business woman and had her own income, the properties which she acquired out of her own income has been erroneously treated as the property acquired by her husband/A.1 from out of his ill-gotten wealth. It is further submitted that the petitioner/wife cannot be said to have abetted in acquiring the disproportionate assets of her husband/A.1. In the charge sheet except for a vague allegation that she has abetted her husband to acquire the properties in her name, no specific allegation is made against her. Learned Counsel relied upon a decision of the Supreme

Court reported in **P.NALLAMMAL v. STATE[3].** In the said decision, it is laid down that a non-public servant can be tried along with public servant for abetment of an offence punishable under Section 13(1)(e) of the Act. However, in order to prosecute a non-public servant, the charge sheet should *prima facie* show that there was an abetment by the wife or instigation made by her to her husband to acquire properties. In the said decision, the following example is described as an apt example of how the offence under Section 13(1)(e) of the Act can be abetted by non-public servant:-

> "If *A,* a close relative of the public servant tells him of how other public servants become more wealthy by receiving bribes and *A* persuades the public servant to do the same in order to become rich and the public servant acts accordingly. If it is a proved position there cannot be any doubt that *A* has abetted the offence by instigation.
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> Four persons including the public servant decide to raise a bulk amount through bribery and the remaining persons prompt the public servant to keep such money in their names. If this is a proved position then all the said persons are guilty of abetment through conspiracy.
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> If a public servant tells *A,* a close friend of his, that he has acquired considerable wealth through bribery but he cannot keep them as he has no known source of income to account, he requests *A* to keep the said wealth in *A's* name, and *A* obliges the public servant in doing so. If it is a proved position *A* is guilty of abetment falling under the "Thirdly" clause of Section 107 of IPC."

Learned Special Standing Counsel for CBI contended that at the stage of framing charge, what is all that is required to be considered by the Court is as to whether a perusal of the material so placed is sufficient for framing a charge against the accused and it is only an allegation and its truthfulness or otherwise can be adjudicated only after a full-fledged trial. If the material placed on record gives rise to a great suspicion that the accused might have committed an offence, it will be sufficient for the Court to call upon the accused to answer the charges. Learned standing Counsel submits that at the stage of framing of the charge, the Court should be satisfied that the allegations might be true unlike at the conclusion of the trial, where the Court has to conclude, as an allegation must be true. In support of his contention, he relied upon the following authorities:-

> **STATE OF H.P. v. KRISHAN LAL PARDHAN[4]; HEM CHAND v. STATE OF JHARKHAND[5]; and SHEORAJ SINGH AHLAWAT v. STATE OF U.P.[6].**

In **Hem Chand's case (referred 5th supra),** the Supreme Court made the following observations at paragraph Nos.9, 10 and 13:-

> "9. It is beyond any doubt or dispute that at the stage of framing of charge, the Court will not weigh the evidence. The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidence is brought on record at the trial. The documents whereupon the appellant intended to rely were: (i) an order of assessment passed by the Income Tax Authority and (ii) his declaration of assets.
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> 10. It is one thing to say that on the basis of the admitted documents, the appellant was in a position to show that the charges could not have been framed against him, but it is another thing to say that for the said purpose he could rely upon some documents whereupon the prosecution would not rely.
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> 13. The learned Counsel for CBI is, thus, correct in his submission that what has been refused to be looked into by the learned Special Judge related to the documents filed by the appellant along with his application for discharge. The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a *prima facie* case has been made out. Whether a case of probable

conviction for commission of an investigation should be the concern of the Court. It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any."

In **Sheoraj Singh Ahlawat's case (referred 6th supra)**, the Supreme Court held as under:-

"While framing charges, Court is required to evaluate the materials and documents on record to decide whether facts emerging therefrom taken at their face value would disclose existence of ingredients constituting the alleged offence. At this stage, the Court is not required to go deep into the probative value of the materials on record. It needs to evaluate whether there is a ground for presuming that accused had committed offence. But it should not evaluate sufficiency of evidence to convict accused. Even if there is a grave suspicion against the accused and it is not properly explained or Court feels that accused might have committed offence, then framing of charges against the accused is justified. It is only for conviction of accused that materials must indicate that accused had committed offence but for framing of charges if materials indicate that accused might have committed offence, then framing of charge is proper. Materials brought on by prosecution must be believed to be true and their probative value cannot be decided at this stage. The accused entitled to urge his contentions only on materials submitted by prosecution. He is not entitled to produce any material at this stage and the Court is not required to consider any such material, if submitted. Whether the prima facie case is made out depends upon facts and circumstances of each case. If two views are possible and materials indicate mere suspicion, not being grave suspicion, against accused then he may be discharged. The Court has to consider broad probabilities of case, total effect of evidence and documents produced before it. The Court should not act as mouthpiece of prosecution and it is impermissible to have roving enquiry at the stage of framing of charge."

Learned standing Counsel further submits that the contention of the petitioner/accused that the income of the petitioner/A.2/wife and his mother Subbayamma and sons and daughter were not taken into consideration is erroneous. It is submitted that the entire income of all the family members has been minutely taken into consideration and the same is shown in the statements A to D. With regard to the properties standing in the names of sons and daughter of the petitioners/accused, it is contended that by the date they were acquired, the sons and daughter of the petitioners/accused were not the medical practitioners and they had no independent income by then. Therefore, since the properties were acquired in the names of sons and daughter even before they became earning members, the same has been taken as the properties acquired by the petitioners/accused in the name of his family members in computing the disproportionality of the assets vis-à-vis, the sources of income. Learning standing Counsel submits that since the properties were standing in the name of the petitioner/A.2/wife and their children, the petitioner/A.2 is alleged to have abetted in the commission of the offence by the petitioner/A.1. It is submitted that the Court below has taken into consideration all the aspects in proper perspective and has refused to discharge the petitioners/accused and the said order warrants no interference.

10. In a case which is based on acquisition of assets disproportionate to known sources of income, what is required to be seen is as to whether the assets exceed the known sources of the capacity of a public servant to acquire the assets and if no satisfactory explanation is forthcoming, a presumption can be drawn that the said assets are acquired by a public servant out of his ill-gotten wealth. In the instant case, the petitioner/A.1 was working as Deputy Commissioner of Income Tax at Tirupati and during the check

period from 01-01-2001 to 06-04-2005, the investigating agency has taken into consideration all the declared incomes of the petitioner/A.1, his wife/A.2, his mother Subbayamma and other family members. The extract, as mentioned in the charge sheet, is as follows:-

1.	Assets at the beginning of the Check period i.e., on 01-01-2001	Rs.26,55,190/-
2.	Assets at the end of the check Period i.e., on 06-04-2005	Rs.98,97,796/-
3.	Assets acquired during the check Period (Sl.No.2 – Sl.No.1)	Rs.72,42,606/-
4.	Income during the check period i.e., from 1-1-2001 to 6-4-2005	Rs.53,35,270/-
5.	Expenditure during the check period i.e., from 1-1-2001 to 6-4-2005	Rs.11,46,751/-
6.	Likely savings during the check period (Sl.No.4 – 5)	Rs.41,88,519/-
7.	Extent to which assets are disproportionate to income (Sl.No.3 – 4)	Rs.30,54,086/-

The statements A to D contain all the details such as the incomes of the family members derived from different known sources. It is a matter of evidence as to whether the assets acquired were from out of the known sources of income or otherwise and at this stage *prima facie* it is evident that the assets of the petitioners/accused exceeded his known sources of income to a tune of about Rs.30.50 lacs. Therefore, insofar as the petitioner/A.1 is concerned, there is sufficient material to proceed against him by framing charges and the learned Judge has rightly dismissed the discharge petition.

11. Insofar as the 2nd petitioner/A.2 is concerned, admittedly she is a business woman and had an independent income. She is the wife of the petitioner/A.1. As already noticed, a non-public servant can be prosecuted along with a public servant for abetting in the act of accusation of disproportionate assets, provided there should be *prima*

facie material with regard to the charge of abetment. In the instant case, in the charge sheet except for alleging that the wife has abetted her husband in acquiring the properties in her name and in the names of her children, no other allegations are made. Therefore, to prosecute the petitioner/A.2 along with the A.1 cannot be justified in the absence of any specific acts which attract the provisions of Section 109 IPC. As per Section 107 of IPC., abetment is defined as under:-

> "**Abetment of a thing:-**
> A person abets the doing of a thing, who –
> **First:-** Instigates any person to do that thing; or
> **Secondly:-** Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
> **Thirdly:-** Intentionally aids, by any act or illegal omission, the doing of that thing;
> *Explanation 1:-* A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.
> *Explanation 2:-* Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate, the commission thereof, is said to aid the doing of that act."

A perusal of the definition of the abetment and the explanations appended thereto, leave no room for doubt that there should be a specific allegation that the wife has done anything in order to facilitate the commission of the act and thereby facilitate the commission thereof.

12. The petitioner/A.1 was working as a Deputy Commissioner of Income Tax and if he acquires certain movable and immovable properties in the name of the wife, it cannot be said that the wife has

facilitated her husband in commission of an offence punishable under Section 13(1)(e) of the Act. In that view of the matter, there is no sufficient material to proceed against the petitioner/A.2/wife for an offence punishable under Section 109 IPC., read with Section 13(1)(e) of the Act. This, however, does not mean that the properties either movable or immovable standing in the names of the petitioner/A.2, their two sons and daughter and Subbayamma – the mother of A.1, need to be excluded from the computation of assets of the petitioner/A.1. It is for the prosecution to prove that all the items that are mentioned in the statements A to D in the charge sheet were acquired from out of the earnings and income of the petitioner/A.1 and it is for the petitioner/A.1 to establish by oral or documentary evidence that the properties standing in the names of his family, such as the wife, two sons, daughter and mother, were acquired from out of their own independent incomes.

13. In view of the foregoing discussion, it is held that while there is material sufficient to proceed with the trial against the petitioner/A.1, however, there is no sufficient material against the petitioner/A.2/wife to frame charges against her. As already stated, except for stating that she has abetted her husband in acquiring the properties in her name, no specific allegations are made in the charge sheet. In that view of the matter, the petition is liable to be partly allowed.

14. In the result, the Criminal Petition is allowed in part. All further proceedings insofar as they are in respect of petitioner/A.2 – Smt.C.Lalitha are hereby quashed. The learned trial Judge is directed to frame appropriate charges, if not already framed, against the petitioner/A.1 and proceed with the trial in accordance with law.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

September, 2015

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[1] (2000) 6 SCC 338

[2] AIR 2009 S.C., 1013

[3] (1999) 6 SCC 559

[4] (1987) 2 SCC 17

[5] (2008) 5 SCC 113

[6] (2013) 11 SCC 476