IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.07.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.R.C.No.788 of 2016

Anitha Vijayan ... Petitioner

Vs.,

State rep. by the Deputy Superintendent of Police,
SPE: CBI: ACB : Chennai,
RA MA/2011 A 003. ... Respondent

Prayer: Criminal Revision Case filed under Section 397 of Cr.P.C r/w 27 of Prevention of Corruption Act, against the order passed by the learned XIII Additional Special Court for CBI Cases, Chennai in Crl.M.P.No.7107/2015 in C.C.No.19 of 2014 dated 31.03.2016, dismissing the petition filed the petitioner under Section 451 of Cr.P.C., for return of documents pertaining to properties purchased before check period seized on 12.01.2011.

For Petitioner : Mr.R.Rajarathinam

For Respondent : Mr.B.Mohan, Spl PP for CBI Cases

* * * * *

ORDER

This Criminal Revision Case has been filed by the petitioner praying to set aside the order dated 31.03.2016 in Crl.M.P.No.7107 of 2015 in C.C.No.19 of 2014, in and by which the petition filed by the petitioner under Section 451 of Cr.P.C., for return of the documents pertaining to the properties purchased prior to the check period, was dismissed by the learned XIII Additional Special Court for CBI Cases, Chennai.

2.The petitioner herein has been arrayed as 2nd accused in C.C.No.19 of 2014 on the file of the learned XIII Additional Special Court for CBI Cases, Chennai. The petitioner (A2) is the wife of the 1st accused Dr.P.Vijayan, who is said to be a public servant as per prosecution. The said case has been registered against the accused persons under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act read with Section 109 IPC has been filed by the respondent. The allegation against the accused is that during the check period from 01.03.1995 to 13.01.2011, the 1st accused has amazed wealth of Rs.1,88,28,315.35 disproportionate to his known source of income and the 2nd accused (petitioner herein), being the wife of the 1st accused, abetted her husband (A1) to commit the offence under Section 13 (2) r/w 13(1)(e) of Prevention of Corruption Act.

3.As per the chargesheet, assets of the accused at the beginning of check period as on 01.03.1995 were mentioned in Statement-A and there are 20 items mentioned therein. The respondent-Police has seized the original documents and produced the same before the Court below. According to the petitioner, out of 20 properties mentioned in Statement-A annexed to the chargesheet filed by the respondent-Police, the properties mentioned at Serial Nos.3,4,6,8 & 10 were acquired prior to the check period. Hence, the petitioner filed a petition in Crl.M.P.No.7107 of 2015 in C.C.No.19 of 2014 before the Court below seeking to return the documents mentioned at Serial Nos. Nos.3,4,6,8 & 10 in Statement-A, which were acquired period to the check period. But, the said petition was opposed by the prosecution by filing a detailed counter. After hearing both sides, the Court below has dismissed the said petition. Aggrieved over the same, the petitioner has come forward with the present revision before this Court.

4.It is the only submission of the learned counsel for the petitioner that the present criminal case relates to the alleged disproportionate assets to the known source of income during the check period only; that the properties purchased prior and after check period can not be detained by the respondent-Police and the original documents pertaining to the said properties cannot be marked as exhibits before the Trial Court. Thus, the learned counsel for the petitioner sought for setting aside the impugned order and consequential direction to the Court below to return those original documents.

5.But, the learned Special Public Prosecutor appearing for CBI has vehemently opposed the prayer of the petitioner, contending that in the event of allegations against the petitioner being proved after completion of Trial, the properties covered under the documents mentioned at Serial Nos.3,4,6,8 & 10 in Statement-A, will also be attached by the State Government. If the documents are returned to the petitioner, there may not be sufficient properties for attachment. Thus, the learned Special Public Prosecutor sought for dismissal of the Revision.

6.Keeping in view the submissions made on either side, I have carefully gone through the materials available on record.

7.The case of the prosecution is that during the check period i.e, from 01.03.1995 to 13.01.2011, the 1st accused has amazed wealth to the tune of Rs.1,88,28,315.35. Even according to the prosecution, the value of the properties at the end of the check period, put together, comes to Rs.3,18,13,473.45; whereas the value of the properties acquired prior to the check period mentioned at Serial Nos.3,4,6,8 & 10 in Statement-A comes only to Res.6 lakhs and odd. Therefore, the submission made by the learned Special Public Prosecutor that in the event of allegations against the petitioner after completion of trial being proved, there may not be sufficient properties to attach and as such, the original documents pertaining to the properties mentioned at Serial Nos.3,4,6,8 & 10 in Statement-A cannot be returned, cannot be countenanced. Considering the factual aspects of the case, this Court is of the view that an appropriate direction could be given for return the original documents by imposing certain conditions.

8.Hence, the impugned order passed by the Court below is set aside and a direction is issued to the Court below to return the documents mentioned at Serial Nos.3,4,6,8 & 10 in Statement-A filed along with the chargesheet, to the petitioner on condition that the petitioner shall furnish bank guaranty to the extent of Rs.7 lakhs.

The Criminal Revision Case is ordered accordingly.

ssv

s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

The XIII Additional Special Court for CBI Cases,
Chennai

+ 1 cc to Mr.B.Mohan, Spl.P.P. for CBI , SR 37048

+ 2 ccs to Mr.R.Rajarathinam, Advocate SR 37219

mp1(co)
prk14/7 Crl.R.C.No.788 of 2016