IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 25.11.2016
JUDGMENT PRONOUNCED ON : 30.11.2016

CORAM:

THE HON'BLE MR. JUSTICE P. VELMURUGAN

Crl.R.C.No.535 of 2012

Banumathi ... Petitioner/ Accused 2

-vs-

State represented by its
Inspector of Police
V & AC, Coimbatore Unit
(Cr. No.5/2006/AC/CB)
... Respondent/ Complainant

This Criminal Revision is filed under Sections 397 r/w.401 of Cr.P.C. seeking to set aside the order of dismissal dated 09.03.2012 made in Spl.Crl.M.P.No.100 of 2011 in Spl.C.C.No.58 of 2011 on the file of the learned Special Judge, Special Court for Cases under the Prevention of Corruption Act, Coimbatore.

For Petitioner : Mr.R.Karthikeyan

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

O R D E R

This Criminal Revision is directed against the order of dismissal dated 09.03.2012 made in Spl.Crl.M.P.No.100 of 2011 in Spl.C.C.No.58 of 2011 on the file of the learned Special Judge, Special Court for Cases under the Prevention of Corruption Act, Coimbatore.

2. The averments of the Revision Petition in brief are as follows:-

The respondent herein had filed a final report before the Special Court for Corruption Cases against the petitioner and her husband for offences under Sections 13(2) r/w.13(1)(e) as well as under Sections 109 of IPC r/w.13(2), r/w.13(1)(e) of the Prevention of Corruption Act, 1988. A1 and the petitioner are husband and wife. The check period in this case is 01.10.1995 to 31.12.1998. The case is registered on the file of the complainant after a lapse of about 8 years and not on the basis of any specific allegations or complaint, but on the basis of secret enquiry, which is based on an anonymous and fictitious petition. The petitioner's husband/A1 had worked as Municipal Commissioner, Tiruppur from 01.10.1995 to 24.11.1997, worked as Municipal Commissioner, Ooty from 27.11.1997 to 21.05.1998 and worked as Erode Municipal Commissioner from 21.05.1998 to 06.09.2001. The petitioner / A2 has been charge sheeted for abetting her husband in committing criminal misconduct in holding properties, valued more than his known source of income. During the course of investigation, her husband had submitted his explanation dated 11.09.2008. The respondent herein, without even perusing the same and without conducting an investigation, has merely filed the final report before the Special Judge for Corruption Cases, Coimbatore. The allegation in the final report is that the total amount mentioned in disproportionate assets is Rs.47,94,394.75p. The petitioner was not given any opportunity of explanation of her assets and without even seeking for an explanation from her, the respondent herein has filed the final report against the petitioner. No immovable property was involved in this case and the amounts involving in this case consists of 8 items of deposits amounting to Rs.55,25,222/- and after completion of investigation, in the final report, the prosecution relies upon 44 documents and cited 27 witnesses in the charge sheet. The evidence against her as found in the final report does not at all implicate neither her nor her husband to prove her guilt and hence, she had filed a petition in Spl.Crl.M.P.No.10 of 2011 in Spl.C.C.No.58 of 2011 on the file of the learned Special Judge, Special Court for Cases under the Prevention of Corruption Act, Coimbatore, for discharging this petitioner. After hearing, the trial Court dismissed the above said petition. Aggrieved against the same, the petitioner has filed this Criminal Revision praying to set aside the dismissal order passed by the trial Court for the reasons mentioned in the Grounds of Revision.

3. The main grounds raised in the Revision Petition are that the ingredients of the offences under Sections 13(2) r/w.13 (1)(e) as well as under Sections 109 of IPC r/w.13(2), r/w.13(1) (e) of the Prevention of Corruption Act, 1988 have not been made out as against the petitioner herein and she is liable to be discharged of all charges; that the petitioner's husband had given an explanation to the notice issued by the respondent by letter dated 18.09.2008 and the respondent herein, without even taking into note of the same and without conducting any investigation after 18.09.2008 into those aspects, had chosen to file a final report on 20.07.2010, which is total non-application of mind; the father-in-law of the revision petitioner viz., Balaguru having served in the HR & CE Department of Tamil Nadu, engaged in money lending after retirement and used to lend money to his father's customers and he managed the monies and properties inherited from his father, who had constituted a Hindu Joint Family consisting of himself, his wife, two sons and their family members; After the death of

the father-in-law of the petitioner, her mother-in-law viz., Jagadambal settled with the family of A1, who being the eldest son of the family had become the Kartha of the Joint Family consisting of himself, his family, his mother and younger brother Subbiah; As a Karth of Hindu Joint Family, her husband too deposited the family funds in the Canara Bank, R.S.Puram Branch and also the amounts received from his father-in-law and brother-in-law; The KArtha of the Hindu Joint Family is certainly the Manager of the family property. The Mitakshara law of joint family is formed upon agnatic relationship and the undivided family is characterized by community of interest and unity of possession among persons descended from a common ancestor in the male line and in the present case, there exists a coparcenary. Being the Kartha of the Hindu Joint Family, her husband (A1) managing the properties, is liable to render accounts to other members as and when the occasion arises; After the death of her father-in-law Balaguru, the brother Subbiah was giving pin-pricks to the smooth management of the Hindu Joint Family as the Kartha by her husband; Even though the Hindu Joint Family is holding immovable properties, her mother-in-law Jagadambal, now aged about two plus eighty belongs to the Old School of Thought was firm in her saying that the immovables should not be divided till her last breath and his brother Subbiah was making all efforts to get the money deposited in the bank, even though he was allowed to utilize the entire rental income for his expenses; in order to prevent the continuous disturbance of the brother Subbiah, the well wishers of the family intervened as Panchayators and a family arrangement was finally arrived at on 27.05.1998 between the members of the family including Subbiah; The said family arrangement was reduced into writing on plaint green sheets signed by the respective parties and Panchayators on 29.05.1998 and the only original was kept by the husband of the petitioner, and his brother Subbiah was not satisfied with the retention of the only original by the husband of the petitioner and he insisted his brother, viz., husband of the petitioner through the Mediator during the first week of June 1998 that he should be also given a original, typed on stamp paper so as to enable him to ask the husband of the petitioner to render accounts for the management of the joint family as Karta and it seems that he was so advised to get another original on stamp papers, otherwise he would not be entitled to agitate his claims and the petitioner's brother-in-law Subbiah brought a stamp paper and to fulfil the demand of the brother Subbiah, another original was copied from the earlier original and it was once again signed by all the parties and panchayators; The brother-in-law Subbiah used to stay both at Madurai and Coimbatore; When the house of the petitioner was searched by the Investigating Agency on 31.01.2006, both the family arrangements, one written on green sheets and another written on stamp papers were available during the house search and the Investigating Agency, who did the house search misconstrued the family arangement written on the stamp papers as original and another one written in the green sheets as copy; Even though both are original, the said Investigating Agency seized the family arrangement written on the stamp papers as original and left the another original in the greet sheets as copy there, which is a patent mistake; None of the panchayators had been cited as witness in the charge sheet and in view of the above, the respondent herein cannot dispute the said family arrangement; The Hon'ble Supreme Court of India and this Hon'ble Court have time and again held that the family arrangement need not be stamped and in the present case, the papers had been purchased by the brother of the petitioner for his copy and in view of the same, the proceedings against the petitioner herein are liable to be dropped; Further, the husband of the petitioner as Kartha has made some of the deposits; Some of the deposits had been made by the husband of the petitioner by way of encashing travelling allowance bills of her father-in-law during his tenure as Commissioner of Erode Municipality from 22.05.1998 to 06.09.2001; Out of the deposits made by the father-in-law of the petitioner, some of the deposits had been transmitted from Canara Bank, Ondipudhur Branch; A sum of Rs.10,03,671/- as on 31.12.1998 was shown in the account of the husband of the petitioner; The explanation submitted by her husband was not at all considered and no investigation had been done based on his explanation before laying the final report as against the petitioner herein and no explanation was called for from the petitioner herein.; The petitioner herein is a lady and having neurological problem and taking continuous treatment in the hospital and she is not able to travel for every hearing from Coimbatore.

4. The case of the prosecution is as folows:-

Previously A1 was working as Municipal Commissioner of Pollachi Municipality, Pollachi and has been now working as Regional Director of Municipal Administration (RDMA), Tiruppur, Coimbatore District. He is a public servant defined under Section 2(c) of Prevention of Corruption Act, 1988. The petitioner is a private individual. During the check period between 01.10.1995 and 31.12.1998, A1 served as Municipal Commissioner at Tiruppur from 07.08.1995 to 24.11.1997, served as Municipal Commissioner at Ooty from 27.11.1997 to 20.05.1998 and served as Municipal Commissioner at Erode from 21.05.1998 to 06.08.2001 and as on 01.10.1995, A1 was found to have been in possession of properties and assets in his name and in the name of his wife, the petitioner herein, to the value of Rs.1,28,403.25/- and as on 31.12.1998, A1 was found to have been in possession of properties and assets to the value of Rs.53,43,999/- and hence, during the check period between 01.10.1995 and 31.12.1998, A1 found to have acquired assets and properties to the value of Rs.52,15,595.75/- (Rs.53,43,999/- minus Rs.1,28,403.25/-) in his name and in the name of his wife, the petitioner herein. During the said period, A1 and the petitioner had a total income of Rs.6,64,219/- earned through the known sources of income and the total expenditure incurred by him and his family has been assessed to a sum of Rs.2,43,018/-. By deducting the amount of expenditure incurred from the amount of income earned, the resulting amount of Rs.4,21,201/- is the likely savings of A1 as on 31.12.1998. As the total value of assets acquired during the check period is Rs.52,15,595.75/- and after deducting the likely savings of Rs.4,21,201/- from it, A1 is found to have acquired assets worth about Rs.47,94,394.75/- during the check period from 01.10.1995 to 31.12.1998 in his name and in the name of the petitioner herein and their two daughters, which is disproportionate to his known sources of income. During the check period from 01.10.1995 to 31.12.1998, A1 served as Municipal Commissioner at Tiruppur in Coimbatore District, Ooty and Erode. A1 being a public servant was found to have acquired and was in possession of properties and pecuniary resources in his name and in the name of the petitioner and their daughters, which are disproportionate to his known sources of income to the extent of Rs.47,94,394.75/-, for which, he could not satisfactorily account for and thereby, A1 committed the offence of criminal misconduct punishable under Section 13(2) r/w. 13(1)(e) of Prevention of Corruption Act, 1988. In the course of the same transaction, during the said period and at the said places, the petitioner being the wife of A1, abetted A1 to acquire properties in her name and by holding the same on his behalf and such properties are found to be disproportionate to the known sources of income of A1 as stated above and thereby, the petitioner committed an offence punishable under Section 109 IPC r/w. 13(2) r/w. 13(1)(e) of Prevention of Corruption Act, 1988.

5. On completion of investigation in Crime No.5/2006/AC/CB, the Inspector of Police, Vigilance and Anti-Corruption, Coimbatore Unit, filed the charge sheet under Section 13(2) r/w. 13(1)(e) of Prevention of Corruption Act, 1988 against A1 and under Section 109 IPC r/w. 13(2) r/w. 13(1)(e) of Prevention of Corruption Act, 1988 against the petitioner on 20.07.2010 and the same was taken on file in Spl.C.C.No.58 of 2011 on the file of the learned Special Judge, Special Court for Cases under the Prevention of Corruption Act, Coimbatore.

6. After taken on file and pending for framing charge, the petitioner herein filed discharge petition in Spl.Crl.M.P.No.100 of 2011 before the trial Court. After hearing both sides, the same was dismissed on 09.03.2012. Aggrieved with the order passed by the trial Court, the petitioner has filed the present Revision Petition before this Court.

7. The learned counsel for the petitioner would submit that the petitioner is only house wife and her husband was working as Municipal Commissioner at Tiruppur, Ooty and Erode and after the death of her father-in-law, being the elder member and Kartha of the family, her husband managed the properties and also made some deposits in the name of various persons/members of the family out of the joint family income; this petitioner is nothing to do with the amount lying either in the name of her husband individually or as the Kartha of the family or any members of the family and the trial Court has failed to consider her case and simply dismissed the discharge petition filed by the petitioner.

8. The learned Additional Public Prosecutor would submit that the husband of the petitioner was a public servant and during the check period between 01.10.1995 and 31.12.1998, as on 01.10.1995, A1 was found to have been in possession of properties and assets in his name and in the name of his wife, the petitioner herein, to the value of Rs.1,28,403.25/- and as on 31.12.1998, A1 was found to have been in possession of properties and assets to the value of Rs.53,43,999/-. During the said period, A1 and the petitioner had a total income of Rs.6,64,219/- earned through the known sources of income and the total expenditure incurred by the petitioner's family has been assessed to a sum of Rs.2,43,018/-. Therefore, A1 is found to have acquired assets worth about Rs.47,94,394.75/- in his name and in the name of the petitioner and their two daughters, which is disproportionate to his known sources of income, for which he could not satisfactorily account for, thereby, A1 committed an offence of criminal misconduct punishable under Section 13(2) r/w. 13(1)(e) of Prevention of Corruption Act, 1988. This petitioner, being the wife of A1, abetted her husband. Therefore, there is prima facie materials to frame the charge against this petitioner and therefore, the Revision Petition is liable to be dismissed.

9. Heard both sides. Considered the submissions made by the learned counsel for both sides. Perused the records placed before the Court carefully.

10. On perusal of the records, it is admitted fact that the petitioner is the wife of A1, who was the public servant and was working as Municipal Commissioner at Tiruppur, Ooty and Erode and a case under Section 109 IPC r/w. 13(2) r/w. 13(1)(e) of Prevention of Corruption Act, 1988 is filed against this petitioner and her husband. According to the prosecution, during the check period from 01.10.1995 to 31.12.1998, the husband of the petitioner made wealth and made so many deposits in his name and in the name of his wife, the petitioner herein, and their two daughters. After investigation, it was found that there was misappropriation of funds by the husband of the petitioner during the check period, as a public servant. The

petitioner has abetted her husband for disproportionate of assets. According to the petitioner, this petitioner married to A1 on 23.06.1983 and out of the lawful wedlock, there are two daughters and their names are Subashree and Jayashree and their ages are 27 and 24 respectively. The amounts of Rs.13,13,144 and Rs.14,15,575/- in the name of her daughters were deposited by her father-in-law Balaguru, while they were minors and those amounts could not be clubbed either in the assets of this petitioner or her husband. The deposits were periodically reflected in the Hindu Undivided Family of A1, who acted as Kartha of the family. The petitioner owned two accounts in the Canara Bank, R.S.Puram Branch, Coimbatore. The said two accounts were clubbed into one, in the year 1999 and prior to the commencement of check priod. No opportunity was given to this petitioner, during the time of investigation. Prima facie there is no material to frame charge against this petitioner.

11. As already stated, from the admitted facts and on perusal of charge sheet, it is clear that specifically, there are certain allegations against this petitioner for the offence under Section 109 IPC r/w.13(2) r/w.13(1)(e) of Prevention of Corruption Act, 1988. Further from the materials produced by the prosecution under Section 173 of Cr.P.C to the petitioner, viz., the charge sheet, order of sanction of prosectuion, the statement of sanctioning Authority, statement of prosecution witnesses and other material documents, prima facie materials are available to proceed the case against this petitioner also. Ordinarily, the documents filed by the defence cannot be considered in framing charge.

12. Considering the facts and circumstances, this Court bearing in mind an important fact that as far as the present stage is concerned, there are enough materials to implicate the petitioner in this case, at this stage, this Court is not expected to go deep into the probative value of the materials on records. Further, the charge sheet as laid down in the present case in Spl.C.C.No.58 of 2011 for the offence under Section 109 IPC r/w. 13(2) r/w. 13(1)(e) of Prevention of Corruption Act, 1988 cannot be ignored and this Court comes to a conclusion that there are enough materials in the form of records to bring home the role played by this petitioner. Therefore, the petition filed by the revision petitioner before the trial Court seeking to discharge her from the case in Spl.C.C.No.58 of 2011, is liable to be dismissed. Under the above said circumstances, the dismissal order passed by the trial Court in Spl.Crl.M.P.No.100 of 2011 in Spl.C.C.No.58 of 2011 dated 09.03.2012, does not suffer from any patent illegality or any impropriety in the eye of law.

13. In fine, the Criminal Revision Petition is dismissed. The order passed by the learned Special Judge, Special Court for

Cases under the Prevention of Corruption Act, Coimbatore, in Spl.Crl.M.P.No.100 of 2011 in Spl.C.C.No.58 of 2011 dated 09.03.2012 is confirmed. Consequently, connected Miscellaneous Petition is closed.

14. Since the alleged commission of offence is in the year 2006 and the Calendar Case is of the year 2011, the trial Court is directed to frame the charge, if not already framed, and expeditiously dispose the case, preferrably within six months from the date of receipt of a copy of this order. Both the learned Additional Public Prosecutor and the learned defence counsel will give their co-operation to the trial Court to complete the case in time. It is made clear that the learned trial Judge, uninfluenced by the observations made in this order, will dispose of Spl.C.C.No.58 of 2011 on merits in accordance with law.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

Mra

To

1. The Special Judge
Special Court for cases under
prevention of corruption ACt
Coimbatore

2.The Inspector of Police
V & AC, Coimbatore

3. The Public Prosecutor,
High Court, Madras

4. The Section Officer
Criminal Section,
High Court, Madras

1 cc to Mr.R. Karthikeyan, Advocate, Sr. 71315

Crl.R.C.No.535 of 2012

MSM (CO)
kk 29/12