

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :09.10.2017

PRONOUNCED ON: 26.10.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.519 of 2017 and CrI.M.P.No.10552 of 2017

State rep. by
The Public Prosecutor,
High Court, Madras-600 104. ... Appellant/Complainant

Versus

1.Tr.S.Babu
2.Tmt.B.Mangaiyarkarasi
3.Selvi.Shobika
4.Selvi.Rasika ... Respondents/Accused 1 to 4

Criminal Appeal is filed under Section 11 of Criminal Law (Amendment) Ordinance 1944, against the order passed by the court of Special Judge (Special Court for Trial of Cases under Prevention of Corruption Act), Salem in CRL.M.P.No.56 of 2014 in Special C.C.No.46 of 2014, dated 30.10.2015.

For Appellant ... Mr.C.Iyyapparaj,
Addl.Public Prosecutor

For Respondent ... Mr.V.S.Venkatesh

JUDGMENT

The prosecution Agency is the appellant before this court. This appeal is preferred against the dismissal of the petition filed for attachment of the properties of the second accused under the provisions of Criminal Law Amendment Ordinance, 1944, in the case against her for offences under prevention of corruption Act, 1988.

2. According to the prosecution one S.Babu, Motor Vehicle Inspector, Grade I, attached to the office of RTO Kumbakkonam was found to be in possession of assets disproportionate to his known source of income. It was found that he has amassed wealth in his name and his wife and relatives name to a tune of Rs 62,50,530.06 during the check period 1/07/1998 to 30/06/2004. During the said period the tentative total income of S.Babu and his family members was

estimated at Rs.8,90,000/- and the expenditure of was estimated at Rs 3,57,484/-. The balance of Rs. 5,32,516 alone is likely to be the savings, whereas the assets at the hands of S.Babu and his family members were far in excess of that. Tmt. Mangaiyarkarasi w/o Babu, Selvi Shobika D/o Babu, Selvi Rasika D/o Babu have assisted and aided S.Babu for acquisition of wealth in their name on behalf of S.Babu. Hence, final report against S.Babu and others was laid on 09.11.2009 by the prosecution agency before the Chief Judicial Magistrate cum Special Judge, Salem to try them for offence under sections 13 (1)(e) r/w 13(2) of Prevention of corruption Act 1988 and section 109 IPC.

3. The chief judicial magistrate, Salem took cognizance of the offence and assigned Spl.C.C.No.80/2009 and proceeded. Meanwhile the Government passed order on 18.10.2010 permitting the investigating officer to file application for attachment of the properties which stood in the name of second accused Tmt.Mangaiyarkarasi w/o S.Babu. Pursuant to that, application was filed before the Chief Judicial Magistrate-cum Special Judge, Salem under section 3(1) of the Criminal Law Amendment Ordinance, 1944 to attach properties listed in annexures I to IV of the application. In the said application CrI.M.P 1546/2013 in Spl.C.C.80/99, the court passed an order of interim attachment on 10.10.2013 till 5.11.2013. On receipt of the notice, the respondent/accused filed objection and matter was pending for adjudication. While so, the case was transferred to the Special Court, Salem constituted to try cases under Prevention of Corruption Act exclusively.

4. The main case Spl.C.C.80/99 and the application CrI.M.P 1546/13 were taken on file and renumbered as Spl C.C.46/2014 and CrI.M.P No. 56/2014 respectively. After few adjournments, the Special Judge for PC Act cases, Salem, considering the objections has dismissed the application for attachment on 30.10.2015. The said order is under challenge before this court.

5. To decide the appeal, the operative portion of the impugned order is relevant hence extracted below:-

"9.Records reveal that in the present application an order of ad-interim attachment of the properties mentioned in the annexure was passed by this court on 10.10.2013 to be effective till 05.11.2013. Entries in the notes paper reveal that subsequent to the order of ad-interim attachment the complainant/petitioner did not pursue any further to have the properties attached. Notes paper reveal that subsequent to 05.11.2013 the ad-interim order of attachment was not extended by this court. Hence

it is patent that at present no interim order of attachment is in force and hence it is imperative that the prayer of the complainant/petitioner to make the interim order absolute has become redundant.

10. To compound the agony of the complainant/petitioner since the ad-interim order of attachment was passed on 10.10.2013, as per the rigour of Sec. 10 of the Ordinance the same in the natural course lapsed on 10.10.2014 as the interim order was not extended by the Special Judge/District Judge periodically after the expiry of the period. If an ad interim attachment is refused or if it lapses, the proceedings initiated U/s 3 no longer survives under the Ordinance because there remains no ad-interim order which can be made absolute. This being the position of law, in the present case since the earlier order of attachment was not extended by this court subsequent to 05.11.2013 and since the interim order passed has lapsed due to efflux of time stipulated U/s 10 of the Ordinance, it is very difficult to contemplate that the present proceedings still survives. The view of this court is fortified by the ratio laid down in the case of Inspector General of Police, Government of Bihar Vs Central Manbhum coal Co (P) Ltd reported in 1984 Cr.L.J.17603."

6. As per the records, cognizance of the offence had been taken by the Chief Judicial Magistrate-cum Special judge, Salem on 16.11.2009. The application for attachment under the Criminal Law Amendment Ordinance, 1944 was filed on 28.10.2011 and order of interim attachment has been ordered on 10.10.2013 for a limited period till 5.11.2013. The court has not extended the order of attachment thereafter. The prosecution could not effect attachment for that reason. The omission to extend the interim order or the default of the prosecution not taking steps to attach the property within the given time will justify the dismissal of the application is the question raised in this appeal.

7. To answer this question, it is pertinent to understand the scheme of the Criminal Law Amendment Ordinance, 1944. In the recent judgment, reported in 2017 (6) SCC (State of Karnataka vs. Selvi.J.Jayalalitha and others) the Hon'ble Supreme Court has capsulized the provisions of the ordinance which is extracted under:-

"531. The Criminal Law Amendment Ordinance,

1944 (referred to as the "Ordinance" as well), which was enforced w.e.f. 23.8.1944 is an yield of the exercise of powers under Section 72 of the Government of India Act, 1935 and is directed to prevent the disposal or concealment of property procured by means of the offences enlisted in the Schedule thereto. To iterate, for the instant adjudication, paragraphs 4A and 5 of the Schedule are extracted herein below for immediate reference:

4-A: an offence punishable under the Prevention of Corruption Act, 1988;

5 : Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in item 2,3 and 4 and 4-A.

As the present appraisal does not involve the other offences enumerated in the Schedule, those are not being dwelt upon.

532. Clause 3 of the Ordinance provides that where the State Government or as the case may be, the Central Government has reason to believe that any person has committed, whether after the commencement of the Ordinance or not, any scheduled offence and whether or not any court has taken cognizance thereof, it may authorise the making of an application to the District Judge within the local limits of whose jurisdiction, the said person ordinarily resides or carries on business, for attachment of any money or other property, believed to have been procured by means of such offence. It also permits that if such money or property cannot for any reason be attached, the prayer in the application may be extended to other property of the said person of the value as nearly as may be equivalent thereto. The provisions did make applicable Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 to the proceedings for an order of attachment under the Ordinance as they did apply to the suits by the Government.

533. Section 4 contemplates ad interim attachment by the jurisdictional District Judge, in the eventualities as mentioned therein and while doing so, he is required to issue to the person whose money or other property was being attached, a notice accompanied by copies of the order, the application and affidavits and of the evidence, if recorded, asking him to show cause on a date to be specified in the notice as to why the order of attachment should not be made absolute. Clause 5 empowers the District Judge to make the ad interim order of attachment absolute, if either no objection

is filed by the person affected or not varied after necessary enquiry on a consideration of the objection if filed, and the evidence is adduced. In terms of clause 10 of the Ordinance, an order of attachment of property made shall unless it is withdrawn, continue to be in force, in a contingency where a court has taken cognizance of the alleged scheduled offence whether, before or after the time when the order was applied for, until orders are passed by the District Judge in accordance with the provisions of the Ordinance after the termination of the criminal proceedings. Clause 11 provides for appeals against the order(s) of the District Judge, in the matter of attachment before the jurisdictional High Court."

8. For easy reference clause 10 of the ordinance which is relevant for this appeal is extracted below:-

"10. Duration of attachment. An order of attachment of property under this Ordinance shall, unless it is withdrawn earlier in accordance with the provisions of this Ordinance, continue in force (a) where no Court has taken cognizance of the alleged scheduled offence at the time when the order is applied for, for one year from the date of the order under sub-section (1) of Section 4 or sub-section (2) of Section 6, as the case may be, unless cognizance of such offence is in the meantime so taken, or unless, the District Judge on application by the agent of the v [5][State Government or, as the case may be, the Central Government thinks it proper and just that the period should be extended and passes an order accordingly; or (b) where a Court has taken cognizance of the alleged scheduled offence whether before or after the time when the order was applied for until orders are passed by the District Judge in accordance with the provisions of this Ordinance after the termination of the criminal proceedings."

Thus, in clause 10 the ordinance contemplates two different eventualities. Sub clause (a) fixes the duration of attachment as one year, if cognizance of the offence is not taken. Whereas sub clause (b) deals with cases where the attachment is made after taking cognizance of the offence. In such cases, the order of attachment shall be in force till the termination of the main case.

9. In this case, the learned trial Judge has made a distinction between interim attachment and attachment absolute. There is no error in making the said distinction, but dismissing the application on the ground that by efflux of time the application has become redundant is what not in consonance with the spirit of clause 10 of the ordinance.

10. The order of interim attachment dated 10.10.2013 reads as under:-

"4. Finally, this petition is allowed and ad-interim attachment of annexure mentioned property is ordered till 5.11.2013 and notice to be given to the respondent along with copy of this ad-interim attachment order calling upon the respondents to state their objections if any and to show cause why the ad-interim attachment shall not be made absolute on 5.11.2013 and ad-interim attachment order is to be carried out into effect in the manner provided in the code of civil procedure call on 5.11.2013."

11. No doubt, the prosecution has neither carried out the order of attachment by 05.11.2013 as directed by the court in its order dated 10.10/2013, nor it sought of extension of interim order after 05.11.2013, nor the court on its own extended the interim order. However, this lapse or omission will not debar or dis-entitle the prosecution seeking absolute attachment of the property if their application deserves merit. From the record we find that after taking cognizance, the case has been transferred from Chief Judicial Magistrate court to Special Court and renumbered. Meanwhile the respondent has filed his objection and application has been kept pending for final adjudication. When the prosecution has sought for passing final order of absolute attachment in their application, the court below has dismissed the application on the ground the application has become redundant due to efflex of time quoting clause 10 (a) of the Ordinance. Since the application for attachment was filed after taking cognizance of the offence and interim order was also passed, for a llimited period, clause 10 (a) of the Ordinance is not applicable to the facts of the case. Therefore dismissing the application as redundant due to efflex of time is unsustainable. The dismissal of the application for the reasons found in the impugned order is erroneous, hence liable to be set aside.

12. In the result, the appeal is allowed. The order of the trial court is set aside and the matter is remitted back to the trial court for consideration on merits afresh. Consequently, Crl.M.P.No.10552 of 2017 is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gr.

Copy to:-

- 1.The Special Judge, (Special Court for Trial of Cases under Prevention of Corruption Act), Salem
- 2.The Superintendent of Police, CBI (ACB), Chennai-8.
- 3.The Special Public Prosecutor for CBI Cases, Chennai.
- 4.The section officer, criminal section, high court, madras.

+1cc to Mr.V.S.VENKATESH Advocate, S.R.No. 76196

JUDGMENT IN
CRL.A.NO. 519 of 2017

CP (CO)
TR(20/11/2017)

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