

Reserved on : 12.06.2017
Delivered on : 23.06.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

Crl.RC.Nos. 159, 379, 426, 456, 499 & 514 of 2017
and M.P.Nos.3512, 4049 and 4050 of 2017

K.P.P.Panneerchelvam,
S/o R.S. Petha Goundar

... Revision Petitioner in
Crl.R.C. No 159 of 2017
Petitioner/ 4th Accused

R. Govindarajan
S. Kalaikarasu
P.M. Ahmed Abdul Kadher
P. Rajendran
J.Loudunathan

..Petitioner in Crl.R.C.379/17
..Petitioner in Crl.R.C.426/17
..Petitioner in Crl.R.C.456/17
..Petitioner in Crl.R.C.499/17
..Petitioner in Crl.R.C.514/17

Vs

The State rep. by
The Inspector of Police,
Vigilance & Anti Corruption,
Chennai City Detachment,
Chennai - 600 028,
(Cr.No.4/AC/2016/CC111)

... Respondent/Respondent
in all Crl.RCs Complainant

Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C to set aside the order passed by the learned Special Judge, Special Court for the Cases under Prevention of Corruption Act, Chennai in Crl.M.P.No.1198 of 2016 order dated 30.12.2016 ,347 of 2016 order dated 30.12.2016,1195 of 2016 order dated 04.01.2017, 1759 of 2016 order dated 04.01.2017, 1196 of 2016 order dated 04.01.2017, 1197 of 2016 order dated 04.01.2017 in Special Case No.21 of 2015.

For Petitioner : Ms. Selvi George in Crl.R.C.159/17
Mr. Manoj Sreevatsan in Crl.R.C.379/17
Mr.P. Anbarsan in Crl.R.C.426,499,514/17
Mr.R. Mohan Velu in Crl.R.C.456/17

For Respondent : Mr.E.Raja
Addl. Public Prosecutor

C O M M O N O R D E R

Aggrieved against the order of the Special Court for cases under Prevention of Corruption Act, Chennai, in C.M.P.No.1198 of 2016 in Special Case No.21 of 2011 dated 30.12.2016, the Revision Petitioner has preferred this Revision Petition.

2. The brief facts leading to file this revision petition is as follows:

2.(a) A1 to A7 conspired together to dispose of three plots No.134E, 229 and 397 belonging to Raja Annamalaipuram Co-operative Society registered under the Tamil Nadu Societies Act under the guise of creating funds to maintain the society, knowing fully well that the society had sufficient funds, the formed a pricing committee in the year 2008, fixed Rs.3,700/- per sq.ft. and sold the same at the rate of 3,700/- per sq.ft. instead of Market value Rs.4,150/- per sq.ft. without following the procedure and without obtaining the market value of the property from the District Revenue Officer to M/s.Lamech Engineering Private Ltd., represented by A5 and caused loss to the society to the tune of Rs.48,40,000/- and gained pecuniary advantage for themselves. Based on the Vigilance report submitted pursuant to the confidential enquiry by the Directorate of Vigilance and Anti Corruption and as per the order of the Government with regard to the allegations of irregularities and corruption, the investigation made out a case against all accused and filed charge sheet u/s 120-B, 409 and S.13(2) r/w 13(1) & (c) and (d) of Prevention of Corruption Act, 1988.

2.(b) The accused have entered into a criminal conspiracy under the guise of creating funds to maintain the society by concealing the fact that the society was having sufficient funds. Accused 1 to 4 formed Pricing Committee, conspired together and without making proper enquiry about the market value of the plots have fixed the market value as Rs.3,700/- per sq.ft. exempted the condition that the market value must be obtained from the District Revenue Officer and consent should be obtained at General Body Meeting. 1st Accused uploaded the tender documents in Tamil Nadu website with the help of National Informatics Centre on 18.9.2009. But they did not conduct the 'e' tender through online which is mandatory as per the Society Act. The tender documents uploaded in the website were removed in order to avoid others from attending the tender.

2.(c) The accused violated Bylaws 28 and 29 of Raja Annamalai Purai Co-operative Housing Society, Section 32 of Tamil Nadu Co-operative Societies Act 1983, Rules 46 and 49 of the Tamil Nadu Co-operative Societies Rules 1988 and Circular of Co-operative Registrar (Housing) dated 25.2.2008, 10.3.2008 and 4.6.2008. The 3rd accused avoided 'e' tender in violation of clause 20 of Tamil Nadu Tender Transparency Act in tender rules

2000 has conducted tender on 1.10.2009 at the office of the said society and facilitated A5 to A7 to participate in the tender. A5 to A7 have not submitted any tender documents and A6 and A7 have submitted only offer rate in the tender participation letters on 1.10.2009. The tender covers were opened on the same day at about 11.30 hours, A6 and A7 attended the tenders and quoted Rs.3,725/- and Rs.3,715/- per sq.ft. respectively and facilitated that plots should be sold to A5 for gaining wrongfully, who had quoted the highest amount of Rs.3,750/-, awarded tender. A5 to A7 quoted a very minimum difference amount of Rs.10/- to Rs.25/-per sq.ft. The market value of the said property during the period 2007-2008 was Rs.4,150/- as per the Government report. But the prevailing market value during the said period was nearly Rs.12,000/- per sq.ft. If the sale has been effected for that amount, the society would have fetched more than Rs.9 crores and the Government would have considerable income by way of registration. Even if the rate as per the Government report was considered as Rs.4,150/- per sq.ft., the society sustained a loss to the tune of Rs.48,40,000/-.

2.(d) on filing the charge sheet by the prosecution, the same was perused by the learned Special Court Judge for P.C.Act and taken cognizance. The petitioners filed separate petitions u/s 239 of Cr.P.C. for discharging them from the case. After hearing both sides, the learned special Judge for P.C.Act, Chennai, has dismissed the petitions by separate orders. Aggrieved over the orders of the learned Special Judge for P.C. Act, the accused are before this Court by way of these Revision Petitions. Though the petitioners have filed separate petitions and the same are arising out of a single case in CC.No.21/2015, this common order is pronounced.

3. The learned counsel for the petitioners would contend that the petitioners are innocent and the allegations levelled against them are vexatious and there is no iota of material to show that the petitioners have conspired to do the illegal act. He would further contend that no pricing committee was formed afresh as alleged in the final report to dispose of the three plots and the said pricing committee was already in existence and submitted its report for the approval for fixing upset price at Rs.3,700/-. He submits that based on the recommendations of the committee constituted for the purpose of obtaining market value of the land as basic price with the condition that the Special Officer has to strictly follow the tender procedures, guidelines of Registrar (Housing) and Government orders. The learned counsel for the petitioners further submits that the guideline value of the land was obtained from the Sub-Registrar of Registration department and market value was fixed by the committee headed by the Deputy Registrar (Housing). The learned counsel for the petitioners also submitted that Tender Transparency Act was duly followed for publication in news paper including "e" tender advertised through National Informatics Centre, Government of India,

Chennai.

4. The learned counsel for the petitioners further states that the market value of the land at that point of time was not fixed at Rs.4,150/- per sq.ft., and the land taken by the prosecution for arriving at the market value was used for both residential and commercial purpose. Hence the said value cannot be taken into consideration for arriving at the value. The learned counsel contended that the DRO has given two different market value and was not definite about the market value. The market value obtained by prosecution at a later point of time during investigation. He further submits that the District Revenue Officer Certificate was subsequently obtained by the housing department only to make out a case against these petitioners. The learned counsel also submits that the prosecution has not caused any wrongful loss to the society and has not gained anything wrongful. It is his further contention that there is no material to show the involvement of the accused in the said offence alleged by the prosecution. He argued that the document produced by the prosecution shows that there is no prima facie material to frame charges against these petitioners. Hence, he submitted that the order of the court below liable to be set aside and the petitioners have to be discharged from all charges.

5. The learned Additional Public Prosecutor submitted that as per the statement of the Bank Manager and the audit account of the society, prima facie shows that there was sufficient funds in the society. The petitioners, inspite of sufficient funds in the society account had taken steps to sell 3 plots without following the procedures alleging that there were no sufficient funds. He further submitted that as per the Tamil Nadu Transparency in Tender Rules 2000, if the value of the tender is above 10 lakhs, 'e' tender has to be published. In this case the petitioners though uploaded the tender, on the same day removed it, in order to avoid others from participating in the tender. The learned Additional Public Prosecutor submitted that the Enquiry Officer stated that the lands were sold at a lesser price and loss was caused to the society. He further submitted that A1 to A4 were entrusted with the property and had dominion over the property and sold the same at a lesser value and they have not followed the procedures for tender with a view to sell the lands at a lesser price to 5th accused.

6. The learned Additional Public Prosecutor contended that the rates quoted by A6 and A7 with a meager difference of Rs.15 to 25, prima facie shows that they have facilitated A1 to A4 to sell the plots to 5th accused. He further contended that A6 and A7 had merely given a rate in their letterheads on 1.10.2009 and the tender was opened on the same day at 11.30 hours. Apart from the price quotes in the letterhead they have not submitted any other document. The same would clearly show that they have

participated in the tender only with a view to facilitate the sale of lands to the 5th accused alone. The learned Additional Public Prosecutor further submitted that it is a settled law, conspiracy can be inferred from the subsequent conduct of the accused and there cannot be direct evidence and it has to be inferred from the conduct of the accused and hence, the same cannot be decided at this stage. The learned Public Prosecutor submitted that there are more than prima facie materials available in this case to frame charges against the petitioners. Hence he prayed for dismissal of the petitions.

7. The prima facie materials collected by the prosecution and available records as against the petitioners alone are to be considered for framing charges, which gives a strong suspicion that the accused committed the offence. What has to be seen in that stage is, whether any prima facie materials are available and not the evidence, proof beyond reasonable doubt. The probative value of the materials on record, evidence, reliability and admissibility of the documents cannot be gone into at this stage. These are all the matter of evidence and proof and relevancy before the trial court. This Court while exercising the revision jurisdiction u/s 397 of Cr.P.C., cannot make a roving enquiry as to the admissibility or relevancy of the evidence collected by the investigating officer during investigation. Only when the order of court below is suffered from illegality or irregularity, the power of revision can be exercised by this Court. The contention raised by the petitioners can be decided only after the commencement of trial. At this stage, on perusal of the records, arguments advanced by the learned counsel on both sides and the order of the learned Special Judge for P.C.Act, this court has come to the conclusion that there are sufficient prima facie materials available to proceed as against the petitioners.

8. In view of the above, the revision petitions are dismissed. Consequently, connected M.Ps. are closed.

-s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

ggs

To

1. The Inspector of Police,
Vigilance & Anti Corruption,
Chennai City Detachment,
Chennai - 600 028.

2. The Special Judge
Special Court for the cases
Under Prevention of Corruption Act
Chennai

3. The Public Prosecutor
High Court, Madras

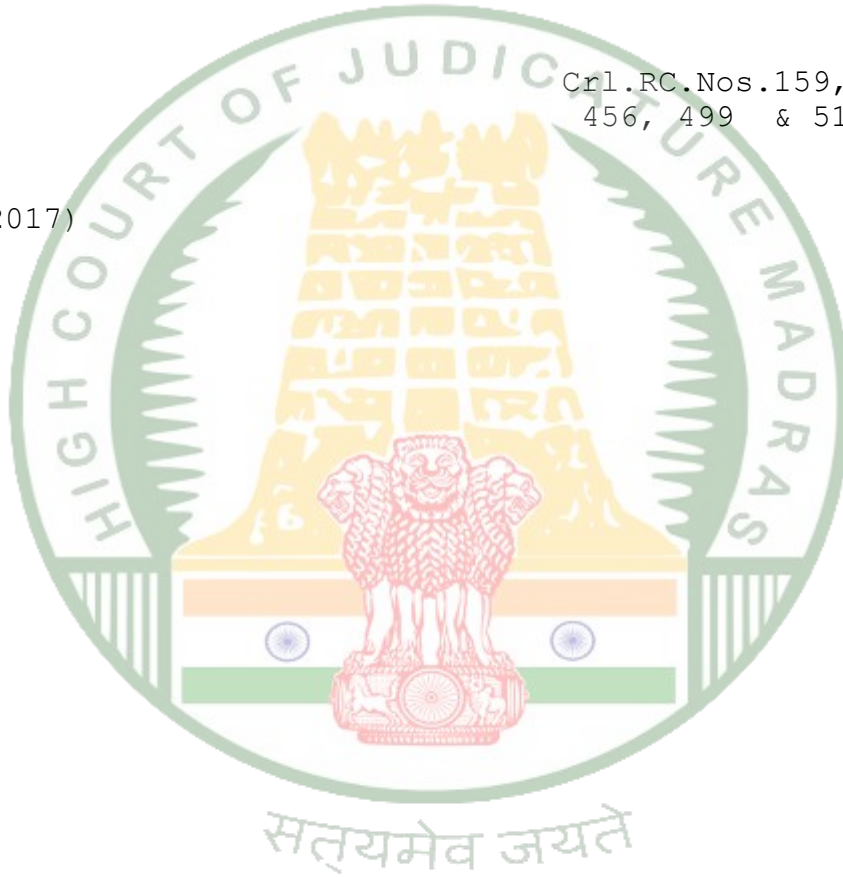
+1 CC to M/s. Selvi George, Advocate sr 44325

+1 Cc to M.s. Manoj Sreevatsan, Advocate sr 44289

+3 CCs to M/s. P. Anbarasan, Advocate sr 44220 to 44222

Crl.RC.Nos.159, 379, 426,
456, 499 & 514 of 2017

MP (CO)
sp(12/07/2017)



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