

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.08.2017

PRONOUNCED ON : 29.08.2017

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

**Writ Petition Nos.8294 & 8295 of 2017 and**  
**W.M.P.Nos.9084 & 9085 of 2017**

S.Narayanan ... Petitioner in W.P.No.8294/2017  
A.D.Senthureswaran ... Petitioner in W.P.No.8295/2017

Vs

The Deputy Director of CBI  
SPE/CBI/ACB/Chennai  
33/14, College Road,  
Thousand Lights West,  
Thousand Lights,  
Chennai – 600 008

... Respondent in both W.Ps

**Prayer in W.P.No.8294/2017:-** Writ Petition filed under Article 226 of the Constitution of India calling for the records in impugned Police Report No.VKR/1/2001 dated 14.03.2001 related with C.C.No.9 of 2001 pending before the learned Principal Special Court for CBI Cases at Chennai and quash the same, related charges framed and further proceedings against the petitioner.

**Prayer in W.P.No.8295/2017:-** Writ Petition filed under Article 226 of the Constitution of India calling for the records in impugned Police Report No.VKR/1/2001 dated 14.03.2001 related with C.C.No.9 of 2001 pending before the learned Principal Special Court for CBI Cases at Chennai and quash the charges framed and further proceedings

against the petitioner subsequently direct the respondent to withdraw the Police Report No.VKR/1/2001 dated 14.03.2001 related with C.C.No.9 of 2001.

For Petitioner in  
both W.Ps : Mr.K.Suresh Babu

For Respondent  
in both W.Ps : Mr.K.Srinivasan,  
Special Public Prosecutor (CBI cases)

**COMMON ORDER**

These two writ petitions have been filed by Mr.S.Narayanan (A.3) and Mr.A.D.Sethureswaran (A.2) respectively pending before the learned Principal Special Judge for CBI Cases at Chennai. Seeking to call for the records related to C.C.No.9/2001 and quash the same, on the ground that the Income Tax Department conducted raid at the premises of one Mr.A.N.Dyaneswaran (A.1) in C.C.No.9/2001 on 19.01.1999 and seized several incriminating documents including fixed deposit documents worth about 33,87,000/- in the name of Mr.S.Narayanan (A.3) (writ petitioner in W.P.No.8294 of 2017) and Mr.A.D.Sethureswaran (A.2) (writ petitioner in W.P.No.8295 of 2017).

2.Based on the discovery of documents and seizure of properties from the residence and office premises of Mr.A.N.Dyaneswaran (A.1), block Assessment was made by the Income Tax Department for the

period from 01.04.1985 to 20.01.1996. In furtherance of the action of the Income Tax Department, the Central Bureau of Investigation has registered a regular case against Mr.A.N.Dyaneswaran (A.1) in Crime No.43A/96 on 18.07.1996 for the offence punishable under Section 13(2) r/w 13(1) (e) of the Prevention of Corruption Act, 1988. The investigation concluded on filing final report by the Central Bureau of Investigation on 14.03.2001 wherein, Mr.A.N.Dyaneswaran was arrayed as A.1 and his son, Mr.A.D.Sethureswaran (writ petitioner in W.P.No.8295 of 2017) was arrayed as A.2 and one Mr.S.Narayanan (writ petitioner in W.P.No.8294 of 2017) was arrayed as A.3. Charges were framed against A.1 for offence under Sections 13(2) r/w 13(1) (e) of the Prevention of Corruption Act, 1988 and against A.2 & A.3 for offence under Sections 109 I.P.C., 13(2) r/w 13(1)(e) of Prevention of Corruption Act.

3.The case of the prosecution is that since the explanations offered by the petitioners regarding the source of income for the alleged fixed deposit receipts in their names are not acceptable, they have been prosecuted for abetting A1 to a mass disproportionate assets and lend their name to invest the ill gotten money.

4.The contention of the petitioners is that, while the petitioners have declared their income to the Income Tax Authorities, for the relevant years and had availed the Kar Vivad Samadhan Scheme (KVS) Scheme 1998 on 30.11.1999, the criminal prosecution, against them cannot be proceeded with in view of the immunity provided under the said Scheme. The specific contention of the petitioners is that, the basis of the criminal prosecution is the block assessment made by the Income Tax Department against Mr.A.N.Dyaneswaran (A.1), in which, the fixed deposits receipts stood in the name of the writ petitioners were also included. Whereas, after the declaration made by the writ petitioners under KVS Scheme, the deposits shown in the block assessment of Mr.A.N.Dyaneswaran (A.1) has to be excluded and once, it is excluded, the question of abetting Mr.A.N.Dyaneswaran (A.1) for acquiring assets disproportionate to the known source will not survive. Hence, the criminal prosecution as against the petitioners (A.3 & A.2) has to be quashed.

5.As per the case of the prosecution, the fixed deposits which stood in the name of S.Narayanan (A.3) and Mr. A.D.Sethureswaran (A.2) were found in possession of Mr.A.N.Dyaneswaran (A.1).

6. After thorough investigation, the final report has been filed and the trial has commenced. Almost 90 witnesses have been examined. The prosecution is intended to examine only 20 more witnesses. At this juncture, A.1 approached this Court with similar prayer under Section 482 Cr.P.C., in CrI.O.P.No.7079 of 2010 and the same was dismissed by this Court on 26.08.2016. After the dismissal of the petition filed by A.1, the present writ petitions have been filed by A.2 and A.3 with identical prayer just to protract the criminal proceedings.

7. It is submitted by the learned Special Public Prosecutor (CBI cases) that the probative value of the income tax proceedings in the criminal prosecution, has no significance. The law on this point has been well settled in catena of judgments. He also submitted that in a recent judgment in **State of Karnataka v. Selvi J.Jayalalitha and others** reported in 2017 (6) SCC 263, the Hon'ble Supreme Court' has settled the issue for ever and it is no more *res integra*.

8. However, the learned counsel for the writ petitioners submitted that in **State of Karnataka v. Selvi J.Jayalalitha and others** (cited supra), the source of income was not accepted by the Courts but here, the source of income of these two petitioners has

been accepted as genuine and there is factual difference between the case cited and the case in hand.

9. Further, the learned counsel for the petitioners also submitted that as per the provisions of KVS Scheme, if criminal prosecution is instituted after filing the declaration, any matter settled under the Scheme is immune from prosecution.

10. The point for consideration is, **"Whether the decision of Income Tax Appellate Tribunal accepting income tax with penalty from the writ petitioners under KVS Scheme will immune the writ petitioners from the criminal prosecution initiated under the Prevention of Corruption Act ?"**

11. The purpose of Income Tax Act and the Prevention of Corruption Act are distinct and different. They play on a different domain. Any adjudication under the Income Tax Act shall have a very less bearing in the criminal prosecution initiated under the Prevention of Corruption Act. This proposition of law has been settled long back by the Hon'ble Supreme Court in **CIT Patiala vs. Piara Singh** (1980 Supp. SCC 166) wherein, the respondent was apprehended while crossing the Indo Pakistan Border and a sum of Rs.65,500/- was

recovered. He revealed at the interrogation, that he was taking the currency notes to Pakistan for purchase of gold to smuggle it into India. The currency notes were confiscated. In the income tax assessment proceedings of the respondent, the I.T.O., held that out of Rs.65,500/- an amount of Rs.60,500/- constituted income of the assessee from undisclosed sources. The plea of the respondent was that if he was regarded as engaged in the business of smuggling gold, he was entitled to deduction under Section 10(1) of the Income Tax Act of the entire amount at Rs.65,500/- as loss incurred in the business due to the confiscation thereof. His claim was upheld. It was ruled that if the activities of smuggling can be regarded as business, the currency notes carried by the assessee was meant for acquiring gold in Pakistan to be sold in India at a profit. The carrying of currency note was thus an essential part of the business and the confiscation of currency notes was a loss occasioned in pursuing the business and would be akin to an eventuality, as if the currency notes had been stolen or dropped on the way, while carrying on business. This proposition of law has been time and again reiterated by the Hon'ble Apex Court in various judgments. The recent judgment on this line is rendered in **State of Karnataka v. Selvi J.Jayalalitha and others** (cited supra).

12.The learned counsel for the petitioners submitted that the order of Income Tax Appellate Authority has been tested before the High Court and the Hon'ble Supreme Court and thus, the same has reached finality wherein, the proceedings under KVS Scheme been accepted and given a seal of approval by the Hon'ble Apex Court. Therefore, the explanation of the writ petitioners has to be accepted by the prosecution agency. The Fixed deposits which are in their names should be excluded from the block assessment made by the income tax department for Mr.A.N.Dyaneswaran (A.1). Further, as per the Scheme, after the settlement under KVS Scheme, even if there is any criminal prosecution, it gets absolved.

13.In support of the said submission, the learned counsel for the petitioners went through the order passed by the Income Tax Appellate Tribunal; the order passed by the Division Bench in the Appeal preferred against the Income Tax Appellate Authority order and the order of the Hon'ble Supreme Court. He also read over the relevant provisions under the Kar Vivad Samadhan Scheme, 1998 which provides an umbrella from prosecution for certain cases.

14.It is to be borne in mind that under the Income tax Act, even a thief, robber, name lender (Binami) and smuggler can disclose

income and tender tax to the Department. No provision under the Income Tax Act gives the discretion to the Assessing Officer to refuse the tax tendered, on the ground that the income is an ill-gotten income or Income has been derived from illegal sources. Therefore, mere payment of Income Tax will not purify or sanctify the source of income.

15. The fixed deposits which stands in the name of the writ petitioners have been brought into their account belatedly under the KVS Scheme. Under the KVS Scheme, they have paid the tax and penalty, as per the Scheme. The protective umbrella referred by the counsel for the petitioner is Sub Clause (iii) of Clause 98 of the Kar Vivad Samadhan Scheme, which reads as under:-

“(iii) to any person in respect of whom prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Terrorists and Disruptive Activities (Prevention) Act, 1987, the Prevention of Corruption Act, 1988 or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has

been convicted of any such offence punishable under any such enactment.”

16.It is submitted by the learned counsel for the petitioners that in the F.I.R., dated 19.7.1996, the petitioners were not shown as accused. They were arrayed as accused only at a later point of time and it was made known to them only after filing of the final report on 14.03.2001. However, their proposal for KVS Scheme made much prior to filing of final report, therefore, Clause 98 of the scheme gives them the protection from prosecution.

17.Per contra, the learned Special Public Prosecutor (CBI cases) contended that Sub Clause (iii) of Clause 98 of the KVS Scheme has to be read disjunctly and not conjointly as interpreted by the learned counsel for the petitioners. Hence, he submitted that any person in respect of whom the prosecution for the offence under the provisions of Prevention of Corruption Act 1988 has been initiated, he is not entitled for any immunity just because, he has paid the tax with penalty under the Scheme. This Court concurs with the submission of the learned Special Public Prosecutor (CBI Cases), in this regard.

18.The general reading of Sub Clause (iii) of Clause 98 of the

KVS Scheme and specific reading of Clause 98 of the KVS Scheme clearly reveals the intention of the legislature. It gives protection only to persons who inadvertently failed to pay the tax but voluntarily submit themselves by disclosing taxable income and agree to pay the tax along with the penalty. The immunity mentioned in the Scheme specifically excludes the persons who are facing prosecution under the Prevention of Corruption Act. Whether the filing of declaration is prior to the institution of prosecution or subsequent to that, no umbrage can be taken under the proceeding initiated in the said Scheme. Even if the submission of the writ petitioners is taken as correct for argument sake, they cannot claim immunity because, they have admittedly filed the declaration and paid tax under the KVS Scheme only after the Income Tax Department has seized the fixed deposit receipts from the premises of A1.

19. The writ petitioners have come forward to disclose their income and paid tax with penalty as per KVS Scheme only after their investments were caught under the scanner of Income Tax Department and subsequently by the CBI. Whether the fixed deposits in the name of the petitioners included in the block assessment of Mr. A.N. Dyaneswaran (A.1) is proper or not may be a relevant factor for the Income Tax Department but, not for the CBI which

investigates the criminality of the persons concerned in accumulating the said wealth illegally.

20. Irrespective of the fact whether the income or asset acquired by a person by legal or illegitimate means, the prime object of Income Tax Department to assess the same and levy appropriate tax. The Prevention of Corruption Act, is concern with the legitimacy of the source of income. If the analogy proposed by the writ petitioners is accepted, then, any person who purchase asset by illegal means with ill gotten money will disclose the income and seek immunity from prosecution. The intention of the Prevention of Corruption Act is to curb corruption. Whereas, the intention of the Income Tax Act is to levy and collect tax on income. Payment of tax on income is immaterial when prosecution is launched on the premise that the income at the hands of the accused is a tainted income or ill gotten income. Hence, the above writ petitions are misconceived and liable to be dismissed.

21. In the result, the Writ Petitions are dismissed. No costs.

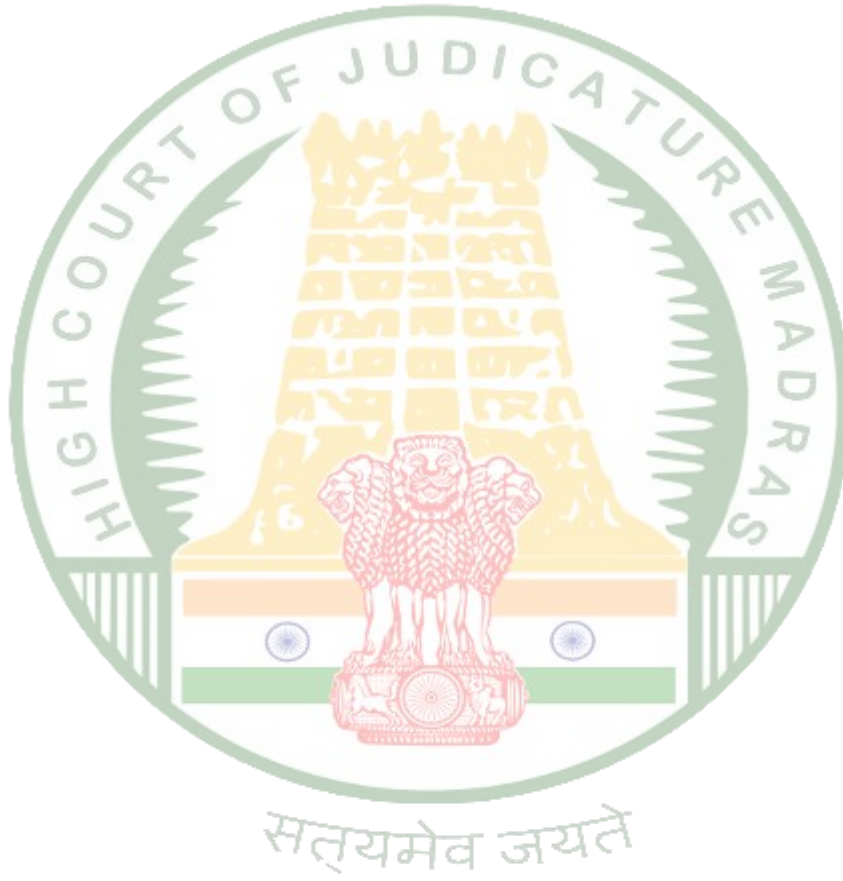
Consequently, connected miscellaneous petitions are closed.

**29.08.2017**

*jbm*

*Index: Yes*

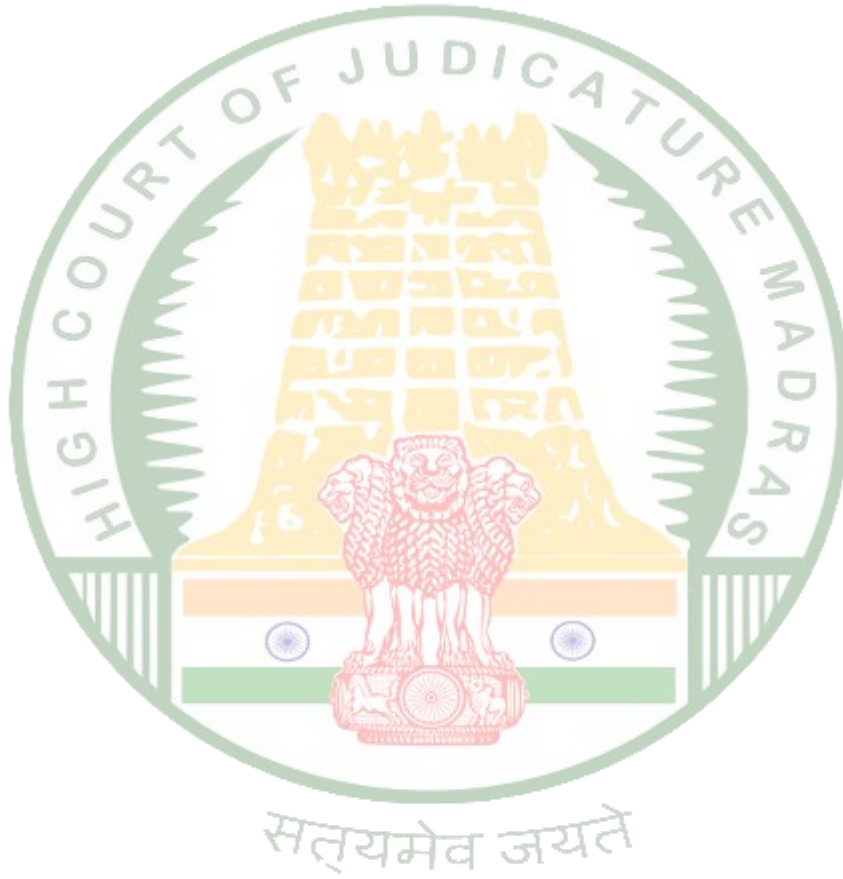
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To

The Deputy Director of CBI  
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**Dr.G.JAYACHANDRAN.J.,**

jbm



**Pre Delivery Common Order made in  
W.P.Nos.8294 & 8295 of 2017**

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