Reserved on : 07.06.2017
Delivered on : 13.06.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Crl.R.C. No.64 of 2017
and
Crl.MP.No.673 of 2017

K.Rajendran .. Revision Petitioner/A-1

vs.

State rep.by
Additional Superintendent of Police
Vigilance and Anti Corruption
Vellore, .. Respondent/Respondent

Revision Case filed under Section 397 (1) r/w 401 of Cr.P.C against the order dated 30.06.2016 passed in Crl.M.P.No.564 in S.C.No.1 of 2014 and thereby dismissing the petition filed by the Revision petitioner under Section 227 of Cr.P.C.

For petitioner : Mr. S.Sairaman for
Mr.V.Lakshminarayanan

For Respondent : Mr.E.Raja
Additional Public Prosecutor

O R D E R

Revision Case is directed against the order of dismissal dated 30.06.2016 passed in Crl.M.P.No.564 of 2014 in S.C.No.1 of 2014 by the learned Special Judge / Chief Judicial Magistrate, Vellore for Prevention of Corruption Act, Chennai.

2. The facts leading to the filing of the present revision is as follows:

While the petitioner was working as Secretary, Primary Agricultural Co-Operative Society, Girisamudram, Vaniyambadi Taluk, he acquired substantial portion of assets in the name of his wife. A detailed enquiry was conducted by the respondent as against the petitioner in respect of disproportionate wealth acquired by the accused during the period emanates from 01.3.2000 to 01.8.2008. After investigation, a Charge sheet has been laid as against the petitioner and other accused for the offences under Sections 13 (2) read with 13 (1) (e) of Prevention of Corruption Act 1988 read with 109 IPC. When the matter was taken cognizance by the learned Special Judge for Prevention of Corruption Act, in S.C.Nos. 1 of 2014, the petitioner herein and other accused have filed petitions u/s.227 of Cr.P.C. to discharge them from the aforesaid charges. After contest, the said petitions were dismissed by the learned Special Judge. Aggrieved over the same, the petitioner/1st accused has come up with the captioned Petition.

3. The learned counsel for the Revision petitioner vehemently contended that the petitioner is not a public servant as contemplated under Section 2(c) of the Prevention of Corruption Act 1988 as the Society, in which he was working, was not funded by the State Government and the Members of the Society raised their own funds and that all monetary transaction was within their members. Even though the contention of the respondent that the petitioner is a Government Servant is taken as true, the prosecution is vitiated as the respondent has failed to obtain order of sanction from the Government, as contemplated under Section 197 (1) Cr.PC. to prosecute the petitioner. Hence, it is submitted by the learned counsel that the charges levelled against the petitioner are baseless and not maintainable in law. Therefore, it is the submission of the learned counsel that the learned Special Judge, without appreciating all these facts, has simply dismissed the application filed by the petitioner for discharge, which is not sustainable. Thus, the learned counsel prays for allowing the captioned petition.

4. The learned Additional Public Prosecutor vehemently opposed the captioned petition contending that as per Section 2 (c) (ix) of the Prevention of Corruption Act, the Secretary of the Co-operative Society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government, is also a public servant and hence the prosecution against the petitioner under Prevention of Corruption Act is maintainable. It is also the contention of the learned Additional Public Prosecutor that since the petitioner is not in service either at the time of filing the final report or at the time of taking cognizance of the offence by the Trial Court, the prior sanction as contemplated under Section 197 (1) of Cr.P.C. is not necessary. According to the learned Additional Public Prosecutor strong suspicion is available as against the accused. Therefore, it is the submission of the learned Additional Public Prosecutor that,

at this stage, roving enquiry is not feasible. It is submitted by the learned Additional Public Prosecutor that the learned Special Judge, after appreciating the entire materials produced by the prosecution, has rightly dismissed the application filed by the petitioner for discharge and hence, the same does not warrant interference of this Court. Therefore, the learned Additional Public Prosecutor prays that the petition has to be dismissed.

5. In support of his arguments, the learned Additional Public Prosecutor has placed much emphasis on the judgments reported in STATE OF MAHARASHTRA AND OTHERS V. BRIJILAL SADASUKH MODANI (2016 (1) CLT (Cri.) 433); CENTRAL BUREAU OF INVESTIGATION, BANK SECURITIES & FRAUD CELL AND ANOTHER VS. RAMESH GELLI AND OTHERS (CDJ 2016 SC 189) and STATE OF MAHARASHTRA V. BRIJILAL SADASUKH MODANI (CDJ 2016 SC 340).

6. I have heard the rival submission made by the learned counsel on either and also perused the entire materials available on record.

7. The only point that arises for consideration in the instant revision petition is as to whether the order passed by the Trial Court in dismissing the application filed by the petitioner for discharge suffers any illegality or irregularity?

8. It is well settled that the power of Revision is not automatic and only if the Court satisfies that there was irregularity or illegality in the finding of the Trial Court, such power can be exercised. The subject matter of the revision relates to the order passed by the Trial Court in discharge application. Admittedly, the prosecution has laid charge sheet as against the petitioner and other accused for the alleged disproportionate wealth acquired by the accused during the check period from 01.3.2000 to 01.8.2008. In the charge sheet, it is averred that at the end of check period, the accused were in possession of pecuniary resources and properties worth Rs.51,35,426/-. It is also averred that during the check period, the accused have acquired properties worth Rs.47,35,628/- and the known source of income of both the accused is said to be Rs.10,39,916. Thus, the excess of expenditure over income during the check period was assessed as Rs.9,79,552/-.

9. From the records, it is seen that the prosecution has already commenced the trial and that the examination of P.W.1 was completed and the case stands adjourned for examination of further witnesses. Admittedly, the Trial Court took cognizance of the offence based on the materials produced by the prosecution.

10. It is also well settled that only prima facie case alone has to be seen at the time of taking cognizance. Even strong suspicion itself is sufficient to proceed further. In other words, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. If the Court while taking cognizance of the offence has come to the conclusion that the commission of offence is the probable consequence, it would justify the framing of charge against the accused. The Court is not expected to go deep into the probative value of the materials on record.

11. It is to be noted that the accused has already filed a petition seeking to quash the proceedings in Crl.OP.No.6946 of 2008 and the same was dismissed by this Court, vide order dated 14.10.2008, by observing as follows:

> 6. .. .. .. for determination of the question as to whether the petitioner will fall under the expression "public servant" as defined in Section 2(c) of the Prevention of Corruption Act 1988 enquiring into the facts, relating to the management, control and funding of the society is necessary to be ascertained and there it will be appropriate if the trial Court considers the question if it is raised by any party. Therefore, this Court is not inclined to entertain the above Criminal Original Petition and accordingly the same fails and dismissed. Liberty is given to the parties to raise the question of maintainability of the proceedings under the Provision of the Prevention of Corruption Act, 1988 before the Trial Court. Consequently, connected MP is closed."

12. Admittedly, this is the second round of litigation. The petitioner has filed the instant petition mainly on the ground that he is not a public servant and if the respondent treated him as public servant, the sanction as contemplated under Section 197 (1) of Cr.P.C is required for prosecuting him and since the same has not been accorded, the prosecution is not maintainable.

13. It is the contention of the learned Additional Public Prosecutor that the petitioner was dismissed from service and even at the time of filing charge sheet, he was not reinstated and, therefore, sanction is not necessary to prosecute the petitioner.

14. Before further discussion, it is just and proper to refer Clause (iii) of Section 2 (c) of the Prevention of Corruption Act, 1988, which reads as follows:

> ix) any person who is the president, secretary or other office-bearer of a registered cooperative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956. .. ..”

From the above clause, it is very clear that the person, who is the President, Secretary or other Office bearer of a registered Cooperative Society, engaged in agriculture, Industry, trade or banking, receiving or having financial aid from the Central Government or State Government also comes within the definition of Public Servant.

15. Insofar as the the instant case is concerned, the question as to whether the petitioner, who was working as Secretary of the Girisamudhram Primary Agricultural Co-operative Bank Limited, comes within the definition of the Public Servant can be ascertained only after a full fledged trial. At this stage, this Court, while exercising power under Section 397 of Cr.PC., cannot make roving enquiry to find out the above aspect.

16. Similarly, the contention of the petitioner that even if the petitioner was treated as Public Servant, the prior sanction is necessary as contemplated under Section 197 (1) Cr.PC. can be raised during trial and not by way of the instant revision.

17. In this context, it would be useful to refer the judgment in STATE OF MAHARASHTRA AND OTEHRS V. BRIJILAL SADASUKH MODANI (cited supra), wherein the Hon`ble Apex Court has held as follows:

> 4. The question for consideration is whether the accused in the present case comes within the purview of the aforementioned clauses or any other clause of Section 2(c) of the Prevention of Corruption Act, 1988. For determination of the question, enquiry into facts, relating to the management, control and funding of the society, is necessary to be ascertained."

20. As we notice, the High Court has really been swayed by the concept of Article 12 of the Constitution, the provisions contained in the 1949 Act and in a mercurial manner taking note of the fact that the multi-state society is not controlled or aided by the Government has arrived at the conclusion. In our considered opinion, even any grant or any aid at the time of establishment of the society or in any construction or in any structural concept or any aspect would be an aid. We are inclined to think so as the term `aid' has not been defined. A sprinkle of aid to the society will also bring an employee within the definition of `public servant'. The concept in entirety has to be understood in the backdrop of corruption. In Shri Ram Singh (supra), this Court had to say this :-

"Corruption in a civilised society is a disease like cancer, which if not detected in time, is sure to maliganise (sic) the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence - shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society."

21. We share the said perception, and reiterate with agony. The ingemination has to be realised with sanctity. Therefore, we are of the convinced opinion that it was entirely unnecessary on the part of the High Court to enter into elaborate deliberation to arrive at the conclusion that the respondent was not a public servant. Regard being had to the facts of the case, we think it would be apposite that it is left to be dealt with in the course of trial whether the society concerned has ever been granted any kind of aid or not.

> 22. In view of the aforesaid premises, we allow the appeal, set aside the judgment and order passed by the High Court and direct that the issue i.e. whether the respondent is a public servant or not, shall be gone into during the trial. .. ..”

18. Similarly, in CENTRAL BUREAI OF INVESTGATION, BANK SECURITIES AND FRAUD CELL AND ANOTHER v. RAMESH GELLI AND OTHERS (cited supra), the Hon`ble Apex Court reiterated the above observation.

19. From the above settled position of law and also from clause iii of Section 2 (c), of the Act, it is clear that the question whether the society, in which the petitioner was working, has received any financial aid or not is a matter of evidence before the trial Court. Similarly, the petitioner can very well agitate about the aspect of sanction before the Trial Court. Therefore, as discussed above, when the other prima facie materials is available as against the accused, the accused cannot seek discharge as a matter of right. In the instant case, the Trial Court has rightly perused the materials produced by the prosecution and had come to the conclusion that there are prima facie materials available on record to proceed further as against the accused. Hence, all the grounds raised in this petition can very well be raised by the petitioner before the Trial Court.

20. In view of the above stated position, this Court is of the view that the order of dismissal passed by the Trial Court does not suffer any irregularity or illegality. Hence, this Court is not inclined to interfere with the order passed by the Trial Court.

In the result, the Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Judge for PCAT/Chief Judicial Magistrate,
Vellore.

2.Additional Superintendent of Police,
Vigilance and Anti Corruption,
Vellore.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Lakshminarayanan, Advocate Sr.42354

Crl.R.C. No.64 of 2017

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srg 22/06/2017