

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 27.04.2017

CORAM

THE HON'BLE MR. JUSTICE T. MATHIVANAN

Criminal Revision Case Nos.702 & 703 of 2016

Against

Criminal M.P. No. 87 & 86 of 2014

in

Special CC No. 76 of 2014

(on the file of the Learned Special Judge (for Corruption Cases)
- Salem)

1. Mr. R. Soundirarasu,
Motor Vehicle Inspector, Grade - 1
Formerly O/o. the RTO, Namakkal,
Now working as MVI at Ulundurpet. ... Petitioner
(Crl. RC No.702 of 2016) A1

2. Tmt. S. Suguna
W/o. Mr. R. Soundirarasu,
No.38, Mullai Nagar,
Suramangalam,
Salem - 5. ... Petitioner
(Crl. R.C. No. 703 of 2016) A2

Versus

State by Deputy Superintendent Police
Vigilance and Anti Corruption ... Respondent
Salem (in both Criminal Revision Petitions)/
Complainant

Prayer:

These Criminal Revisions Petitions are filed to set aside the order dated 29.3.2016 and made in Crl. M.P. No. 87 & 86 of 2014 in Special CC No. 76 of 2014, on the file of the learned Special Judge (for Corruption Cases), Salem and to discharge the petitioners from the clutches of the charges level against them.

Appearance

for petitioners: ... Mr. A. Natarajan, Learned Senior Counsel
Assisted by Mr. B. Sivaraman,

for Respondents :... Mr. E. Raja, Learned Addl. Public
Prosecutor V & AC

Invoking the provisions of Sections 397 & 401 of Cr. P. C. these memorandum of Criminal Revisions have been filed by the petitioners challenging the correctness of the orders dated 29.3.2016 and made in Criminal M.P. Nos. 87 & 86 of 2014 in Special C.C. No. 76 of 2014 on the file of the learned Special Judge(for Corruption Cases), Salem.

2. The petitioners are husband and wife. They have been facing the charges under Sections 13 (2) r/w 13 (1) (e) of P.C. Act r/w Section 109 of IPC in Spl. C.C. No. 76 of 2014 pending trial on the file of the learned Special Judge (for Corruption Cases). They have been arrayed as A1 & A2 in this case.

3. On the ground of non availability of Prima facie case as against the petitioners, they have chosen to file the petitions in Crl. M.P. Nos. 87 & 86 of 2014 respectively u/s. 239 of Cr. P. C. for discharging them from the charges levelled against them. Those petitions were contested by the respondent by filing their counter statements and after hearing both sides the learned Special Judge has proceeded to dismiss both the petitions on 29.3.2016 on the ground that the materials produced by the Investigating Officer along with the final report prima facie disclose the existence of all the essential ingredients to constitute the offences under Sections 13 (2) r/w.13 (1) (e) of Prevention of Corruption Act, 1988 and r/w. Sec. 109 of IPC. Since the offences alleged against the petitioners are grave in nature they could not be left scot free without facing trial and without affording an opportunity to the prosecution to establish the case during trial by adducing evidences.

4. Having been aggrieved by the impugned orders A1 & A2 being husband and wife stand before this court with these memorandum of Criminal Revision.

5. That on 7.5.2008, LW 32 Mr. A. Periyasamy, Deputy Superintendent of Police, V & AC, Special Cell, Salem had filed a final report against the Petitioners/ A1 & A2 under Section 13 (2) r/w.13 (1) (e) of Prevention of Corruption Act, 1988 and r/w. Section 109 of IPC before the learned Special Judge (Chief Judicial Magistrate), Salem in the case in Crime No.9/AC/2005/SL/SU under Section 13(2) r/w.13 (1) (e) of Prevention of Corruption Act, 1988 r/w Section 109 of IPC. The learned Special Judge (CJM) had taken cognizance of the offences and taken the final report on his file as Special C.C.No.36 of 2008.

6. The Petitioner Mr. R. Soundirarasu was working as Motor Vehicle's Inspector (Grade-1) at Namakkal during the period from 1.1.2002 to 31.3.2004 and as such he is a public servant as defined under Sec. 2 (c) of PC Act, 1988. The petitioner Tmt. Suguna being the wife of A1 is a private individual.

7. According to the prosecution the petitioner Mr. R. Soundirarasu had no ancestral property excepting a terraced house in karuppur. It is also alleged that he had no other source of income excepting the monthly salary.

8. The petitioner Tmt. Suguna is a commerce graduate and was a partner in a S.K. Matt Industries along with one R. Kumar. The above said business partnership was closed on 31.3.2003.

9. Totally, 14 items have been shown in the statement No.1 i.e., Assets and Pecuniary sources that stood to the credit out A1 and his family members at the beginning of the check period viz.,

1.1.2002. Accordingly the immovable and movables were valued at Rs.3,46,006/-. At the end of the check period i.e. as on 31.3.2004, as shown in statement No.2 the assets and pecuniary sources which stood to the credit of A1 and his family members were valued at Rs.31,69,498/- (totally 21 items have been shown in statement No.2). During the check period i.e., from 1.1.2002 to 31.3.2004 the income derived by A1 and his family was calculated at Rs.9,97,888/- (as per statement No.3). As shown in statement No.4, the expenditure during the check period has been shown as Rs.6,16,376.50 (as shown in statement No.4). Statement No.5 indicates that at the end of the check period i.e., as on 31.3.2004, the value of the assets acquired by A1 and his family members is Rs.21.23,492/- (Statement No.II (Rs.31,69,498) - Statement No.1 (Rs.3,46,006) = Rs.28,23,492). As per statement No.6 the likely savings of A1 & his family members during the check period was Rs.3,81,512/- (statement No.III (Rs.9,97,888) - Statement No.IV (Rs.6,16,376) = Rs.3,81,512/-). The prosecution says that as per statement No.VII the value of disproportionate assets acquired by A1 and his family members has been calculated at Rs.24,41,980/-. The percentage of disproportionate assets has been arrived at 244.71%. It is also alleged that the petitioner Soundirarasu had acquired properties in his name as well as in the name of Tmt. Suguna to the extent of Rs.24,41,980 which is disproportionate to their known source of income of Rs.9,97,888/-.

10 . In so far as this case is concerned, the prosecuting agency has determined the check period from 1.1.2002 to 31.3.2004.

11. No doubt the 1st accused Mr. Soundirarasu is an income tax assessee.

12. Mr. A. Natarajan, Learned Senior Counsel has projected his arguments mainly on the following 2 grounds:-

Income of Tmt. Suguna (A2) who is none other than the wife of the 1st accused Mr. Soundirarasu could not be clubbed along with the income of her husband when she is particularly having independent source of income and pays income tax.

The investigating Officer, before obtaining order of sanction to launch prosecution against the 1st accused, has to call for an explanation from the 1st accused. In this case no explanation was called for from the 2nd accused Tmt. Suguna.

Ground No.1

13. Statement No.1 is the assets and pecuniary resources that stood to the credit of A1 and his family members. The check period, as per the prosecution has been determined from 1.1.2002 to 31.3.2004. In statement No.1, 14 items have been shown. Item No.1 stands in the name of the 2nd accused Tmt. Suguna, measuring 787 sq.ft. comprised in survey No.11/1266. It is shown that she has got half share by way of a settlement from her father T. Duraisamy as per document No.137/2001 dated 30.1.2001 and the value has been shown as Rs.9,500/-. Item No.2 is the house site which is said to have been purchased by 1st accused in the name of his wife Suguna (A2). Item No.3 golden jewellerys weighing 45 sovereigns purchased by A1 prior to entering into in his services.

14. Statement No.2 contains the assets and peculiarly resources that stood to the credit of A1 and his family members at the end of check period i.e., as on 31.3.2004. Totally 21 items have been shown in this statement. It is to be noted that the check period starts from 1.1.2002. The 1st item of statement No.II is a house site which is shown as items No.1 in Statement No.I. This house was constructed during the year 2001-2002. This is a tiled house gifted by the father of the 2nd accused as per document No.137/2001 dated 30.1.2001. Item No.2 is a house site measuring 3000 sq.ft. It appears to have been purchased as per document No.1527/2001 dated 17.5.2001. Since, the check period starts from 1.1.2002, how this item could be included in statement No.II, as it was purchased prior to the check period. In so far as item No.3, in Statement No.2 is concerned no specific period is mentioned. However, it is described as Golden Jewellerys, weighing about 45 sovereigns at the value of Rs.85,000/-. It seems to have been purchased on several occasions prior to his entering into service. Similarly, item Nos.5 to 11 were purchased in the name of 2nd accused prior to the check period. Item No.14 a tiled house stands in the name of 2nd accused. Item No.18 mobile phone at the value of Rs.2,000/- stands in the name of 2nd accused. Item

No.19 is the cash balance of Rs.1,476/- maintained by A2 in her SB a/c No.1981 in the bank of UBI, Salem. Item No.20 is also a cash balance Rs.7,140/- which is maintained by the accused in SB A/c. No.1430 at UBI, Salem. Item No.21 is the Capital Account maintained in S.K. Matt Industries as on 31.3.2004 at Rs.8,29,028/-.

15. In this connection Mr. A. Natarajan, Learned Senior Counsel has argued that the 2nd accused Tmt. Suguna started her business in the name of S.K. Matts Industries from the year 1993, through which she had sufficiently established the source of income at began to pay income tax and subsequently it was continued as proprietary concern from 31.3.2003.

16. At page No.32 of typed set of papers two items of landed properties have been shown:

(a) Land measuring 3000 sq.ft. comprised in S.F.No.186/1 situated

at Sellapillai Kutti Village, Omalur Taluk, Salem District;

(b) Land measuring 0.67.1/2 cents comprised in Survey No.12/1Q

situated at M.Chettipatti, Omalur Taluk, Salem District.

With regard to item (A), he has stated that his wife Tmt. Suguna was having partnership business in the name of M/s.S.K.Mat Industries at M.Chettipatti since 1993. Subsequently she had disposed of the partnership settlement to other partner and became proprietor of the concern. From 01.04.2004 she has been having independent sources from the firm and became an income tax assessee.

In so far as item (B) is concerned, he has stated that his mother Krishnammal had inherited this land and subsequently settled this property in favour of her three sons and thereby he had received 1/3rd share

17. The learned Senior Counsel while advancing his arguments has drawn the attention of this court to the explanation given by the 1st accused to the letter issued by the investigating officer(at page no.32 of typed set of papers).

18. In this connection, he has stated that his wife Tmt. Suguna (A2) was having a partnership concern by name Mrs. S.K. Matt Industries at M. Chettipatti since 1993. Subsequently she disposed of the partnership settlement to other partner and became its proprietor from 1.4.2004. And that she was having independent sources from the concern and she had become an income tax assessee and out of her own sources she had purchased

property. The property shown as 2nd item at page.32 of typed set of papers is said to have been inherited by the mother of A1 and subsequently she had settled the property to her 3 sons including the 1st petitioner. Out of this item he had received 1/3 share.

19. As already observed the investigating officer had not called for any explanation from the 2nd accused Tmt.Suguna. In this connection, M. A. Natarajan, Learned Sr. Counsel has made reference to the decision of this court and made in S. Kumar Vs. State represented by Inspector of Police (SPE/CBI/ACB, Chennai-6) decided on 13.7.2011, In paragraph No.18 this court has made reference to Devine Retreat Centra Vs. State of Kerala (2008) 3SCC 542. In this case the Apex Court has held that no judicial order can ever be passed by any court without providing a reasonable opportunity of being heard to the person likely to be affected by such order and particularly when such order results drastic consequences of affecting ones own reputation.

20. In so far this case is concerned it may be stated that, when the prosecuting agency has come forward with a specific occasion, that the petitioners have amassed wealth which is disproportionate to their known source of income, it is incumbent on the part of the prosecution, to prove the indictment with clinching and impeccable evidence beyond all reasonable doubts, because the allegations made against the petitioners would definitely affect their private rights and their self respect as well and therefore the prosecution must have through scrutinization on the compliant to find out whether any prima facie cases is made out.

21. In S. Kumar Vs. State cited supra at Paragraph No.51 this court has held that :

"in the 2nd decision viz., Punjabrao Vs. State of Maharastra, AIR 2002 SC 486 it is held that we have examined the judgment of the learned special judge as well as that of the High Court. It is too well settled that in a case were the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability."

22. Mr. A Natarajn, in so far as the 2nd accused is concerned (Tmt. Suguna), has submitted that apart from her partnership business under the name and style of Mrs. S.K. Mat

Industries at Chettipatti with effect from 23.10.1993, she had also been doing money lending business in the places where she had resided from the year 1990 and earned good interest on the loans lend. She had also been paying income tax from 1990 onwards and her IT returns were scrutinized by the appropriate authorities. He would further argue that as shown from the pages 187 to 248, she had been regularly fitted her income tax returns even beyond the end of the check period. This court has also verified the tax returns filed by the 2nd accused which is shown from pages 187 to 248. The Investigating Officer while collecting necessary details from both the income tax authority as well as the 1st accused, had failed to consider them in proper perspective which do establish that the 2nd accused had acquired properties . But mechanically the investigating officer in the final report had stated that she had no source of income and her father also did not posses any means to acquire property. It is to be noted that the 2nd and 3rd items shown in statement no.4 relate to the 2nd accused exclusively i.e., purchased from the loan amounts and since they were acquired by her, they have to be deleted.

23. It may also be noted here that while in assessing the assets of the 1st accused, the assets standing in the name of his wife (A2) and their son have to be eschewed from the statements 1 & 2. Similarly, all items in statements 3 & 4 mentioned against the names of the persons detailed above have to be omitted.

24. This court have perused the order of the Learned Special Judge dated 29.3.2016 passed in both the petitions in Crl. M.P. Nos.86 & 87 of 2014 in Spl. C. C. No.76 of 2014. The Trial Court ought to have seen the ingredients of Sections 13(2) r/w. 13(1) (e) of Prevention of Corruption Act and section 109 of IPC. The evidences tagged along with the final report are also not in consonance with the accusation made in the final report. The petitioners had sufficiently established the source of income through the individual income tax returns as well as through the partnership firm. M/s. S.K. Mat Industry and thereafter had become the proprietor of the concern from 31.03.2003. The trial court has miserably failed to consider the explanation as well as further explanation offered by the 1st accused. It is significant to note here that the 1st item in statement I was not only settled in favour of the 2nd accused Mrs. Suguna but also settled in favour of her younger sister namely Kalaichelvi. Subsequently the said property was developed by the 2nd accused Tmt. Suguna after availing loan from LIC on 28.1.2001 in loan A/c no.1312761.

25. The prosecution has merely clubbed the assets the 2nd accused (wife) with that of the 1st accused (husband) more particularly when she had an independent source of income.

26. On the other hand Mr. E. Raja, Learned Addl. Public Prosecutor, (V & AC) has submitted that the total disproportionate assets stood at the end of the check period in the name of the 1st accused as well as the 2nd accused was worked out at Rs.24,41,980/- and the % of disproportionate assets was calculated at 244.71%. According to Mr. E. Raja, Final opportunity was given to A1 for giving his explanation in regard to the disproportionate assets that stood to the credit of the 1st accused and his family members. He has also submitted that his reply was duly considered by the Investigating Officer with reference to the available records. He has also submitted that the Investigating Officer having not satisfied with all the explanations offered by the 1st accused being the public servant, had rightly filed the final report against both the petitioners as per the decision of the apex court made in P. Nallammal and another Vs. State (1999) 6 SCC 559(SC). In this case it is held that the clubbing of assets and properties and pecuniary income of A2 with that of A1 was proper and was in consonance with the law. The Additional Public Prosecutor has also drawn the attention of this court to clause (e) of Sec. 13 (1) of Prevention of Corruption Act, 1988 which reads as under:

"Clause (e):

23. If he or any person on his behalf, is in possession or has, at any time during the period of his office, being in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation to clause (e) reads as under:

"For the purposes of this section, known sources of income means income received from any lawful source and such receipts has been intimated in accordance with provisions of any law, Rules or Orders for the time being applicable to a public servant."

With reference to the explanation to clause (e), this court would like to point out that the known sources of income according to the explanation is, income received from any lawful source and such receipts has been duly intimated in accordance with the provision of any law, rules or orders which may be applicable to a public servant.

On coming to the instant case on hand both the petitioners (A1 & A2) have disclosed their income to the income tax

authority by way of IT returns which is the appropriate authority to intimate their lawful source.”

The prosecution in order to substantiate the allegation of criminal misconduct as completed under Section 13(1) & 13(2) of Prevention of Corruption Act have to satisfy the following four ingredients:

1. That the accused is a public servant.
2. The nature and extent of the pecuniary resources of the property found in his possession.
3. The known sources of the income.
4. Such sources or property found in his possession are disproportionate to his known sources.

27. Once the ingredients of the offence of criminal misconduct under Section 13(1) and 13(2) of the Prevention of Corruption Act are established the offence of criminal misconduct is complete, unless the accused is able to account for such resources of property. The burden then shifts to the accused to satisfactorily account for his possession of disproportionate assets. It is also to be noted that the accused is not to bound prove his innocence beyond all reasonable doubt. All that he has to do is to bring out a preponderance of probability. This preposition has been laid down by the Apex Court in State of Maharashtra Vs. Wasudeo AIR 1981 SC 1186 : 1981 (3) SCC 199.

28. The learned Additional Public Prosecutor, after citing N. Suresh Rajan as well as K. Ponmudi's cases, has submitted that clubbing of assets of individuals with that of the public servant is proper and that the question of ownership of property can be determined only during trial. The Learned Special Public Prosecutor has also made reference to the following decision:

K. Veerasamy Vs. Union of India, 1991 SCC (CrL.) 734 (SC). The Apex Court in this decision has held that after collection of all materials the Investigating Officer must give an opportunity to the accused and call upon him to account for the excess of assets over the known source of income and then decide whether accounting is satisfactory or not. But in the given case on hand no explanation was called for from the 2nd accused.

29. Mr. A. Natarajan in support on his contention has also placed reliance upon the following decisions:

1. A.P. Pillai Vs. the State represented by the Inspector of Police, (2013 (3) MWN (CrL.) 62.)
2. K. Thavasi and another Vs. State by Deputy Superintendent of Police (V & AC), Madurai (2014 (3) MWN (CrL.) 70).
3. DSP, Chennai Vs. K. Jnbasagan, (2006 (1) SCC 420).

30. In A.P. Pillai's case cited 1st supra, this court has held that non-compliance of pre requisite condition by the Investigating Officer calling for explanation of accused, is improper and it would go to show that the investigating officer had filed the final report with mala fide intention.

31. In K. Thavasi's case cited 2nd supra, this court has also held that the non consideration of statements filed before income tax department has caused prejudice and therefore this court has held that the trial court has not taken into consideration of the various statements filed by the accused before the income tax department on the ground that the same were submitted subsequent to the investigation. This court has also held that on a scrutiny of the evidence of PW69, it has come out in evidence that the accused have filed statements long before the registration of the first information report on 31.10.1996 and in fact PW14 has admitted that the accused appeared in the office on 13.12.1995 itself and filed the statements as evidenced by Ex. P29 etc.

32. In DSP, Chennai cited 3rd supra the apex court as held that " the accused on his part satisfactorily establishing that the money and assets recovered belong to his wife which she amassed from the business run by her separately. It is also held that in the absence of any evidence that the assets belonged to the accused, he cannot be held liable under PC Act for such assets. This has been decided by the division bench of apex court as early as in the year 2006 itself.

33. In his explanation to the final opportunity given by the prosecuting agency to offer his explanation the 1st accused has made reference to the provisions of The Tamil Nadu Government Servant Conduct Rules 1973 as amended up to September 2006, Rules 7 (1 (a)) repeat from the book.

The Rule as amended by G.O.Ms. No.409 P & AR, dated 24.1.1992 reads as follows:

"(1) (a) No Government servant, shall except after notice to the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift, exchange or otherwise either in his own name or in the name of any member of his family.

Such a notice will be necessary even where any immovable property is acquired by any member of the family of the Government servant out of the resources of the Government servant:

(provided that the previous sanction of the prescribed authority shall not be necessary for the acquisition of immovable property in respect of house-site assigned by the Government in favour of the Government servant)

(Explanation-A Government servant is not required to give notice to the prescribed authority or seek prior permission from the prescribed authority for acquisition or disposal of immovable properties by the members of his family under clause (a), if the immovable property in question is not acquired from the resources of the Government servant concerned)."

He has requested the Investigating Officer to consider this provision before taking the properties and other resources into his account.

34. In so far as Statement I is concerned, he has stated that except item Nos,01,02,08,10,12 and 14 which are exclusively the investments of his wife out of her own resources, there is no change in other items mentioned in Statement I.

35. In so far as Statement II is concerned, he has stated that the house was constructed at the cost of Rs.4,15,344/- by his wife Tmt. S.Suguna from her independent resources derived from S.K.Mat Industries and other income and LIC Finance Housing Loan. Item No.2 was purchased by his wife out of her independent income derived from S.K.Mat Industries. In so far as item No.3 is concerned, it was purchased by his father-in-law Thiru. T.Duraisamy with his own resources and later gifted by way of dhana settlement to his son Thiru. S.S.Saran Kumar on 16.02.2004. He has further stated that this property i.e. item No.13 under Statement II should have been taken as a gift and the value thereof should not have been included in Statement I. Further, he would state that with regard to item Nos.04,05,07 and 09, the value of gifts have not been taken into account. Item No.14, according to the first accused, was inherited by his wife Tmt. S.Sugana by virtue of Dhana settlement. Item No.15 was purchased by his mother-in-law Tmt. D.Shantha out of her own funds in the name of his son and that neither he nor his wife had invested any money in this transaction. Item Nos.17,18 and 21 were purchased by his wife Tmt. S.Suguna out of her own resources derived from S.K.Mat Industries.

36. In this connection with Statement-III, he has stated that in so far as item No.5 is concerned, while taking the 50 per cent income of his wife, from the Industries, instead of showing the total income as Rs.63,896/- the independent income of his wife Tmt. S.Suguna for the check period has not been taken into account. During the check period, the income of his wife other than the income derived from SK Industries would be Rs.5,90,342/- (Rs.1,04,450 + 2,44,930 + 2,50,962)

and these facts have been reflected in the income tax returns filed by SK Mat Industries and independent returns filed by his wife during the relevant period.

37. In respect of Statement IV, with reference to item No.2 he has stated that the expenditure towards repayment of LIC housing loan to the extent of Rs.1,19,934.30 p. has been shown towards his expenditure which is not correct, as the loan was availed and repaid by his wife Tmt.S.Suguna out of her own resources and that he did not invest any money from his earnings.

38. Similarly, the expenditure being Rs.1,80,000/- shown under item No.3 should not have been shown in his account, in view of the fact that the loan was obtained by his wife independently and repaid so far with interest by her, out of her own resources.

Item No.5 Telephone charges of Rs.26,854/- was paid by his wife out of her own resources. Therefore, this may be deleted from his account.

In respect of item No.10, he submits that the house tax was paid by his wife out of her own resources. Hence, he requests that this may be also be deleted.

The transaction shown in item No.09 was also that of his wife from her own resources. Therefore, the loss should not have been shown in his account.

As far as item No.11 is concerned subscription towards Sri Ram Chits was made by his wife out of her own resources. Therefore, it should not have been shown in his account.

As far as item No.12 the house tax for the house at Ganapathy is concerned it was paid by his wife out of her own resources. Therefore, it has to be deleted from his account.

Item No.14, the income tax paid by his wife out of her own resources has been shown in his account. It may be deleted from his account.

39. As shown in his explanation, Statement I i.e. value of assets that stood to his credit as well as to the credit of his family members at the beginning of the check period is

Rs.1,31,254/-.

the value of the assets that stood to his credit as well as to the credit of his family members at the end of the check period is:

Rs.1,37,430/-.

Therefore, according to him, the value of assets acquired during the check period is :

Rs.6,176/-.

In so far as Statement IV is concerned, he says that the income derived by him and his family members during the check period is :
Rs.3,11,547/-

The expenditure during the check period is Rs.1,91,910/-

He has therefore stated that his likely savings during the check period is
Rs.1,19,636.80

He has therefore contended that the assets acquired by him is not disproportionate to his known source of income.

40. This Court has carefully considered the submissions made by Mr. A. Natarajan, learned Senior Counsel Assisted by Mr. B. Sivaraman, learned Counsel for Petitioners and Mr.E. Raja, learned Additional Public Prosecutor (V & AC) and the written explanation submitted by the first accused to the letter issued by the complainant.

41. Taking into consideration all the relevant facts and circumstances, this Court is of the view that the Investigating Officer had not considered the explanation submitted by the first accused and also not taken into account any assets of the petitioners/A1 and A2.

42. This Court has also perused the statements of the listed witnesses along with the impugned orders. As already discussed in the foregoing paragraphs and as decided in State of Maharashtra Vs Wasu Deo (AIR 1981 SC 1186:1981 3 SCC 199) cited supra, the nature and the extent of burden cast on the accused is well settled and the accused is not bound to prove his innocence beyond all reasonable doubt. All that he would do is to bring out a preponderance of probability. In so far as this case is concerned, the petitioners have brought out a preponderance of probability by way of establishing their case. As enunciated in Explanation to clause (e) of Sub Section (1) to Section 13, the petitioners have intimated their income received from lawful source to the income tax authorities concerned in accordance with the provisions of the Income Tax Act, which is applicable for the first accused being the public servant to intimate his known source of income and therefore,

this Court is of the view that the prosecution has miserably failed to make out a prima facie case against the petitioners/A1 and A2.

43. It is the cardinal principle that the accused is presumed to be innocent unless proved to be guilty by the prosecution and the accused is entitled to the benefit of every reasonable doubt. Thus, giving false information or failing to prove his innocence is no ground to base conviction of accused and on the contrary it offends the very basic principle of criminal jurisprudence which lays the burden on the prosecution to prove the offence against the accused.

44. In criminal cases, the guilt should be proved beyond any reasonable doubt that a reasonable man with ordinary prudence can have. There should be no doubt whether the accused is guilty or not. If there is slightest doubt, no matter how small it is, the benefit will go to the accused. In Indian legal system the provision regarding burden of proof and how it is to be discharged are grandeurly laid down in Chapter VII of the Evidence Act, 1872. The rule is that whoever alleges a fact must prove it. In a criminal trail it is the prosecution who alleges that the accused has committed the offence with requisite mens rea and so the burden lies upon the prosecution to prove the same.

45. As observed in the preceding paragraphs the accused is not bound to prove his innocence beyond all reasonable doubt. All that he has to do is, to bring out a preponderance of probability. The phrase 'preponderance of probability' appears to have been taken from *Charles R. Cooper V F.W. Slade*, (1857-59) 6 HLC 746. The observations made therein make it clear that what 'preponderance of probability' means is 'more probable and rational view of the case', not necessarily as certain as the pleadings should be. सत्यमेव जयते

46. Section 397(1) confers a sort of supervisory power. The purpose is to rectify miscarriage of justice. The main consideration was whether substantial justice was done since this Section confers the revisional jurisdiction upon both the Sessions Court as well as the High Court (Criminal). Nobody can claim it as a matter of right as it confers supervisory jurisdiction. When there is a clear illegality in the order passed by the lower Court, a revision could be entertained.

47. On coming to the provisions of Section 401 of the Code, as it is understood, the object behind this Section is to empower the High Court to exercise the powers of an Appellate

Court to prevent failure of justice in cases where the Code does not provide for appeal.

48. The power, however, is to be exercised only in exceptional cases where there has been a miscarriage of justice owing to :

- (i) a defect in the procedure or
- (ii) a manifest error on a point of law;
- (iii) excess jurisdiction,
- (iv) abuse of power, &
- (v) where the decision upon which the trial Court relied has since been reversed or overruled when the revision petition was being heard.

49. As observed by the Supreme Court in State of M.P. Vs. S.B.Johari, (AIR 2000 SC 665: (2000) 2 SCC 57: 2000 SCC (Cr1) 311 : 2000 Cr1.L.J.944), under Section 401 of Criminal Procedure Code quashing of the charge by the High Court would be justified if even on considering the entire prosecution evidence, the offence is not made out.

50. Viewing it from any angle, this Court is of considered opinion that the prosecution has not made out any case as against the petitioners/A1 and A2 to proceed with.

51. In the result, Criminal Revision Case Nos.702 and 703 of 2016 are allowed and the impugned orders, dated 29.03.2016 and made in Cr1.M.P.Nos.87 and 86 of 2014 in Special CC.No.76 of 2014 on the file of the learned Special Judge (for Corruption Cases), Salem are set aside and the petitions in Cr1.M.P.Nos.87 and 86 of 2014 in Special CC.No.76 of 2014 are allowed. The petitioners/A1 and A2 are discharged from the clutches of the charges.

Sd/-

Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

TO:

1.The Special Judge(For Corruption Cases)
Salem.

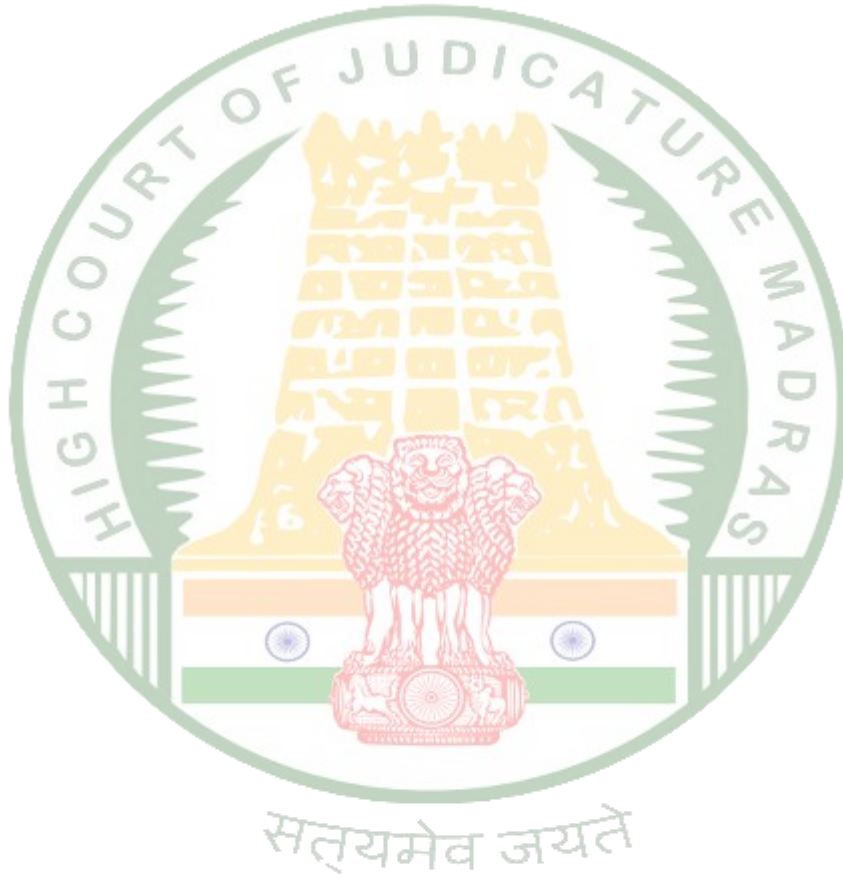
2.Teh Deputy Superintendent of Police,
Vigilance and Anti Corruption, Salem

3.The Public Prosecutor,
High Court, Madras.

+3cc to Mr. B. Sivaraman, Advocate sr.no.26278

Crl.Rev.Case Nos.702 & 703 of 2016

nr 28/12/2017



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