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

Crl.O.P.No.5304 of 2015

Tmt.B.Mangaiyarkarasi .. Petitioner/Accused No.2

Versus

The State rep.by
The Inspector of Police,
Vigilance and Anti Corruption,
Salem Detachment, Salem. .. Respondent/Complainant

Criminal Original Petition No.5304 of 2015 is filed under Section482 of Cr.P.C., to call for the records relating to Spl.C.C.No.46 of 2014 on the file of the learned Special Judge (Special Court for Trial of cases under Prevention of Corruption Act), Salem and quash the proceedings in so far as the petitioner (A2) is concerned.

For Petitioner .. Mr.V.S.Venkatesh

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

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ORDER

The petitioner Tmt. Mangaiyarkarasi is wife of Mr. S.Babu, Motor Vehicle Inspector Grade I, Kumbakonam. The respondent police has registered first information report on 06.08.2006 against S.Babu, his wife Mangaiyarkarasi and his brother Senthil for alleged possession of assets in the form of farm houses, house sites, agricultural lands and investments in transport vehicles and tanker lorries worth more than the known sources of their income. On investigation it was found that, S.Babu (A-1) being a public servant have assets in his name and his wife (A-2) and daughters ( A-3 and A-4) name to a tune of Rs 62,50,530.06 which he has amassed 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 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 the public servant for offence under sections 13(1)(e) r/w 13(2) of Prevention of corruption Act 1988 and the private individuals for aiding and assisting the public servant to acquire wealth using their names, hence punishable under section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 r/w section 109 IPC.

2. The petitioner herein who is arrayed as A-2 has filed petition under section 239 Cr.P.C. to discharge, which was dismissed by the trial court on 04.12.2004 assigning reasons. Thereafter the trial court has framed charges and the matter is taken up for trial. It is submitted by the counsels representing the parties before this court that as on date of hearing this petition, 51 witnesses out of 80 witnesses already examined by the prosecution.

3. This petition to quash is filed on the ground that the petitioner though wife of the public servant A-1, have income of her own through assets stood in her name and her ancestral name. Her income is assessed to tax and she has paid the income tax. She was not given opportunity to explain her sources of income to purchase the assets. Only A-1 was asked to give his explanation for the assets and his explanation was not considered by the investigation agency. 90% of the assests which are shown as assets of A-1 stands in the name of A-2, who as a separate entity having independent income through properties acquired from agricultural income, rental income and money lending business. Inspite of explaining the sources of income through the explanation of A-1, the income tax returns filed in the name of the petitioner-Mangaiyarkarasi have not been considered by the prosecution and it is not part of the documents relied on by the prosecution. Hence, the trial court while dismissing the discharge petition has not considered the income tax returns which will prove the sources of income. Therefore, The petitioner / 2nd accused, on the same grounds raised in the discharge petition, but paraphrasing differently has preferred petition under 482 Cr.P.C to quash the final report.

4. The order of the trial court dated 04.12.2004 while dismissing the discharge petition has considered all the records relied on by the prosecution and also considered the plea of the petitioner regarding the income tax returns relied on by her. After considering all the materials the trial court has held

that,

"24.In the present case the total value of the movable and immovable properties standing in the name of the petitioner during the check period has been computed by the investigation officer at Rs.60,58,017/- and the details of properties standing in the name of the petitioner is set out in detail in Annexure II. The petitioner has not produced any documents except the Income-Tax returns to establish the source of income to acquire those properties. Since the petitioner is the wife of the 1st accused, a Public Servant and since the petitioner has not produced any materials to trace her source of income to purchase the properties, the Investigation Officer has formed an opinion that the petitioner is a benami of the 1st accused, which cannot be found fault at this stage.

It is pertinent here to point out that the husband of the petitioner, the 1st accused, being a Public Servant should have intimated the acquisition of properties by his wife, the petitioner herein, as required by the Tamil Nadu Government Servant Conduct Rules. But the petitioner's husband has not done so. In such a scenario the nature of the properties held by the petitioner can be decided only during trial on a proper appreciation of evidence let in by the prosecution.

25. Hence considering the close relationship between the petitioner and the 1st accused and lack of evidence to establish the source of income of the petitioner to purchase the properties standing in her name, this court decides that the petitioner cannot sustain a claim for discharge contending that there is no materials on record to establish that she is the benami of the 1st accused.

26. Conclusion:-

The final report and documents produced along with the final report considered by this court. The materials produced by the Investigating Officer along with his final report prima facie disclose the existence of all the

> ingredients constituting the offence U/s 13(2) r/w 13(1)(e) of the Prevention of Corruption Act read with Sec. 109 of the Indian Penal Code alleged to have been committed by the petitioner. The materials placed before the court disclose gave suspicion against the petitioner of having committed the alleged offence and the same has not been dispelled by the petitioner by affording proper explanation. Since through the materials placed by the prosecution a prima facie case has been made out against the petitioner this court decides that there is no merit in the application and that the petitioner is not entitled for an order of discharge.”

5. On reading the judgement of the trial court, this court find the grounds raised for quash is already considered and rejected by trial court. The reasons assigned for turning down the plea is faultless and in accordance to law.

6. Regarding the income tax return, it is pointed out by the counsel for the respondent, that the income tax return is not the proof of lawful source. Further in this case the petitioner / accused has filed her return only after getting scent of criminal prosecution. For the financial year 2002-2003, income tax return was filed only on 18.03.2005 disclosing huge agricultural income from land which were purchased during the check period. The non disclosure of the source to purchase those lands when explanation sought from her husband itself primafacie evidence that the petitioner was a benami to the public servant aiding him to accumulate his illgotten wealth abusing his official position as Motor vehicle inspector.

7. The Hon'ble Supreme Court in State of Tamilnadu -vs- Suresh Rajan and others has observed that, “the property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to disasterous consequences. It will give opportunity to the corrupt public servants to amass property in the name of known persons pay income tax on their behalf and then be out from the mischief of law.”

8. Eversince Commissioner of Income Tax, Patiala -vs- Piara Singh ( 1980 Suppl SCC 166) till the recent judgment in the reported in 2017 (7) SCC 263 (State of Karnataka -vs- Selvi Jayalalitha), It is the consistent view of the Supreme Court that, income tax proceedings or order passed therein has less probative efficacy in so far as to determination of the lawfulness of the source of income. The reason for such

conclusion is obvious and same is demonstrated in Suresh Rajan case cited supra.

9. Therefore, this court is of the opinion that noting more is required to be said. if said, it may influence the mind of the trial court while deciding the case finally, prejudicial to the parties. In any event, parties are at liberty to canvass all these points during the trial.

10. In the result, petition dismissed. Consequentially, all the connected miscellaneous petitions 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 Inspector of Police, Vigilance and Anti Corruption, Salem Detachment, Salem.

3.The Special Public Prosecutor, High Court, Madras.

+1cc to Mr.V.S.VENKATESH Advocate, S.R.No. 75823



JUDGMENT IN
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