BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGEMENTS RESERVED ON : 15.12.2016

PRONOUNCED ON : 12.04.2017

CORAM :

THE HONOURABLE MR. JUSTICE B.GOKULDAS

Crl.A.(MD).Nos.203 and 204 of 2014

State Bank of India
represented by its Branch Manager
Arasaradi Branch,
Somasundaram Colony,
Madurai. .. Appellant in both the appeals

Vs.

N.Shyamala .. 1st respondent in Crl.A.203 of 2014

K.Thakshinamurthy .. 1st respondent in Crl.A.204 of 2014

2. State rep. by the Inspector of Police,
SPE / CBI / ACB,
Chennai - 6 ... 2nd Respondent in both the appeals.

PRAYER : Both the Appeals are filed under Section 454(1) Criminal Procedure Code, to set aside the order of confiscation alone passed by the learned Principal Special Judge for CBI Cases, Madurai passed in CC.No.1 of 2001 by the Judgment dated 28.09.2007 and declare that the appellant is entitled for the properties.

For Appellant : Mr.M.Karunanithi, in both the appeals

For respondent : Mr.S.Jayakumar,
SPl.PP for CBI Cases for R2.
No appearance for R1.

J U D G M E N T

Both the Criminal appeals are directed to set aside the judgment made in CC.No.1 of 2001 dated 28.09.2007 on the file of the Principal Special Judge for CBI Cases, Madurai.

2. The brief facts of the case are as follows :-

The accused 1 and 2 are husband and wife. The first accused joined in the service of State Bank of India on 22.06.1981 at Sivakasi Branch as Clerk-Typist. During July 1992, he was transferred to Madurai Kamarajar University and got promoted as JMG-II with effect from 01.11.1993 and he was transferred to Madurai City branch from June 1994. Thereafter, he was transferred to SBI, Arasaradi Branch, Madurai from July 1996 and was placed under suspension on 14.10.1998 by the Management of State Bank of India. The Second accused is the wife of the first accused, she is an housewife and she has no independent source of income.

3. The prosecution has fixed the check period between 01.01.1992 to 13.05.1999. At the beginning of the check period the assets owned by both the accused was Rs.11,762/-. The income earned by the accused during the check period has been arrived based on oral and documentary evidence collected during the investigation and total income from all known sources is worked out to Rs.12,83,693/-. The expenditures incurred by the accused during the check period worked out to Rs.15,17,177/-. Savings during the check period was Rs.2,33,484/-. Assets acquired during the check period was Rs.83,99,241/-, the disproportionate assets acquired during the check period is Rs.86,32,725/-. Thus, the accused acquired the disproportionate assets of 672% which is more than his income during the said period. The second accused had abetted such acquisition of disproportionate assets by her husband/first accused.

4. The prosecution after obtaining sanction order under Section 19(1)(c) of Prevention of Corruption Act, 1988 from the competent authority for prosecuting the first accused. On 05.01.2001, the second respondent herein filed charge sheet against the first accused for commission of offence punishable under Section 13(2) r/w.13(1)(e) of Prevention of Corruption Act, 1988 and against the second accused for abetment punishable under Section 109 IPC r/w.13(2) r/w.13(1)(e) of the Prevention of Corruption Act.

5. In order to substantiate the charges, the prosecution examined PW1 to PW109 and marked Exs.P1 to P324 and Exs.D1 to D15 were marked on the side of the defence during cross examination of the prosecution witnesses. The first accused examined DW1 to DW10 and examined himself as DW11 and Exs.D16 to D43 were marked during the examination of the defence witnesses, during cross examination of the defence witnesses, prosecution also marked Exs.P325 to P329. The second accused has not produced any documents nor examined any witnesses.

6. The trial Court placed the incriminating evidences before the accused under Section 313 of Cr.PC and the accused denied the same in toto. The first accused stated that "No proper explanation has been obtained from me." Certain assets not belonging to the accused have been included in the charge sheet.

The ancestral assets and savings have not been taken into account. The income through agricultural source has not been taken into account by the I.O. Outstanding liability in respect of house constructions, investments and expenditure have not been considered. The income of the accused was not correctly assessed and no separate balance sheet as on 13.05.1999 is filed to be included with the above explanation.

7. The trial Court after analysing the entire materials on record and after hearing the arguments of both sides and considering the gravity of the offence involved, convicted both the accused and sentenced as follows :-

"The first accused is convicted and sentenced to undergo RI for 7 years and to pay a fine of Rs.20,00,000/- i/d to undergo RI for 1 year for the offence punishable u/s.13(2) r/w.13(1)(e) of PC Act, 1988.

The second respondent is convicted and sentenced to undergo RI for 3 years and to pay a fine of Rs.3,00,000/- i/d to undergo RI for 6 months for the offence punishable u/s.109 IPC r/w.13(2) r/w.13(1)(e) of PC Act, 1988.

The following consequential orders are also passed :-

a. The immovable properties standing in the names of the accused 1 and 2 and K.T.Moorthy which are the subject matter of Crl.MP.No.636 of 2001 and more particularly described in the schedule to the said petition and as item Nos.1 to 35 in Statement B of the Charge Sheet and which had been marked as Exs.P38 to P.72 herein are confiscated to the State in accordance with provisions of the Criminal Law (Amendment) Ordinance, 1944 as discussed supra.

b. The items of gold jewellery mentioned in Ex.P260 mahazar and now in Locker No.46, SBI, Arasaradi Branch and the key for which is in the custody of the Branch Manager, SBI, Arasaradi Branch are confiscated to the State u/s.452(1) CrPC.

c. The Credit balance in all bank accounts, of any nature, savings bank accounts, current accounts and all other types of accounts in the names of the accused 1 and 2 in SBI, Arasaradi Branch are confiscated to the State u/s.452 (1) Cr.PC.

d. All National Savings Certificates, Indira Vikas Patras which had been marked as exhibits before this Court are confiscated to the State u/s.452(1) Cr.PC."

Aggrieved against the judgment passed by the Principal Special Judge, CBI Cases, Madurai in CC.No.1 of 2001 dated 28.09.2007, the appellant/State Bank of India preferred both the appeals.

8. The learned counsel for the appellant in both the appeals stated that the appeals are preferred against the judgment of confiscation, no notice has been issued to the appellant's before passing the order of confiscation. The confiscated properties belongs to the appellant/Bank, the trial Court ought not to have confiscated the property to the State. The first accused acquired the properties more fully described in the charge sheet out of the

swindled funds from the appellant/Bank, which is disproportionate to the known source of income.

9. The appellant/Bank has initiated civil suit in OS.No.257 of 2004 before the Fast Track Court No.III, Madurai for recovery of money to the tune of Rs.2,67,32,692.27 from the accused herein and one V.K.Venkateesh arraying them as Defendants 1 to 3. The Civil Court decreed the suit on 30.06.2009 in favour of the appellant/Bank.

10. The accused 1 and 2 herein are found guilty in five cases, including the present case, conviction and sentence was also recorded. As against the said conviction and sentence, criminal appeal were filed, all the criminal appeals were dismissed, the criminal appeal in Crl.A.(MD).No.544 of 2007, which is pending disposal, holding that the charges levelled against the accused 1 and 2 were duly proved. The accused 1 and 2 preferred Special Leave Petition in SLP (Criminal).No.10559 of 2013 before the Hon'ble Supreme Court, the said SLP was dismissed on 07.03.2014.

11. It is useful to extract, Section 13(1)(e) of Prevention of Corruption Act, 1988, which reads as follows :-

"**Section 13 - Criminal misconduct by a public servant :-**

(1) A public servant is said to commit the offence of criminal misconduct.

(e)if he or any person on his behalf, is in possession or has at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account of pecuniary resources or property disproportionate to his known sources of income."

12. The learned counsel for the appellant/Bank relied on the judgment of the Hon'ble Supreme Court reported in **AIR 1969 SC 401 - State Bank of India v. Rajendra Kumar Singh and others**, wherein the Hon'ble Supreme Court in paragraphs 4 and 5 of its judgment it is held as follows :-

"4. ..... In our opinion, there is no warrant or justification for the argument advanced on behalf of the respondents. It is true that the statue does not expressly require a notice to be issued, or a hearing to be given to the parties adversely affected. But though the statue is silent and does not expressly require issue of any notice there is in the eye of law a necessary implication that the parties adversely affected should be heard before the Court makes an order for return of the seized property.

5. ..... In any event, we are satisfied that the High Court was in error in directing the return of the currency notes to respondents 1 and 2. The reason is is that the property in coins and currency notes passes by mere delivery and it is the clearest exception to the rule *Nemo dat quod non habet*. This exception only applied if the transferee of the coin or currency notes takes

in good faith for value and without notice of a defect in the title of the transferor. ......"
The citation relied on by the learned counsel for the appellant is squarely applicable to the facts of the present case on hand and this Court has no quarrel with the decision of the Hon'ble Supreme Court.

13. The learned Special Public Prosecutor (CBI) appearing for the second respondent in both the appeals restricted his arguments, that he is fairly conceding the prayer sought for by the appellant/Bank.

14. On perusal of the available records, the confiscation is not sustainable for the simple reasons that no notice was given to the appellant/Bank before passing the order of confiscation. The trial Court confiscated the movable and immovable properties to the State in accordance with the provisions of the Criminal Law (Amendment) Ordinance, 1944. The prosecution has established a crystal clear case against the accused 1 and 2, the first accused being the employee of the appellant/Bank, while functioning as Public Servant in the capacity of Officer of SBI, Tiruppur Manager and Branch Manager of various branches at Madurai during the check period between 01.01.1992 and 13.05.1999, acquired the disproportionate assets out of the swindled money in his name and in the name of his wife/second accused and they had been in possession of assets to the tune of Rs.86,32,725/- at the end of the check period. There is no proper and satisfactory explanation from the accused 1 and 2 about the acquisition of disproportionate assets.

15. The trail Court has also recorded that the prosecution was not able to recover even one original sale deed from the accused and the accused have not come forward voluntarily to produce the said documents in original. Thus, it proves the acts of deception and false pleas and there is absolutely no remorse for the offence committed by both the accused. Hence, the trial Court convicted both the accused after considering the Section 16 of the Prevention of Corruption Act, 1988 and confiscated the movable and immovable properties to the State.

16. Considering the arguments advanced by the appellant/Bank and the submission made by the learned Special Public Prosecutor (CBI) appearing for the second respondent, this Court is of the view that the trial Court miserably failed to issue notice to the appellants herein before taking decision on the properties, the disproportionate assets acquired by both the accused is out of the money swindled from the appellant's/Bank. The trial Court confiscated the movable and immovable properties to the State. But the funds used for acquiring the properties belongs to the appellant/Bank, where the first accused is employed, the first accused committed breach of trust, reposed upon him by the employer/Bank.

17. This Court is not inclined to interfere with the order of conviction and sentence passed by the trial Court, but, at the same time, this Court cannot conduct roving enquiry on the properties confiscated by the trial Court. Hence, the order of the trial Court in respect to confiscation of properties in CC.No.1 of 2001 on the file of the Special Judge for CBI Cases, Madurai dated 28.09.2007 are hereby set aside, the order of the trial Court with regard to conviction and sentence imposed on the accused 1 and 2 remains unaltered and the matter is remitted back to the trial Court for fresh consideration. The trial Court is directed to conduct enquiry upon the properties confiscated in CC.No.1 of 2001 on the file of the Special Court for CBI cases, Madurai, after giving due opportunities to adduce evidence on either side, if any, including the appellant/Bank herein.

18. In the result, both the criminal appeals are disposed of. No costs.

Sd/-
Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

1. The Principal Special Judge, (CBI cases), Madurai.

2. The Special Public Prosecutor, (CBI cases), High Court, Madurai.

+3 CC TO M/S.M.SHYAMALA,ADVOCATE,SR NO.51907

+3 CC TO MR.K.THAKSHIANAMURTHY,ADVOCATE,SR NO.51908

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MAS/SV-MMS:25.04.2017:6P-9C

Pre Delivery Judgments in
Crl.A.(MD).Nos.203 and 204 of 2014
12.04.2017.