BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.09.2017
Pronounced on : 22.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.(MD) No.304 of 2014
and
M.P(MD)No.1 of 2014

1.Anitha Radhakrishnan
2.R.Jeyagandhi
3.R.Shanmuganathan
4.R.Sivananthan
5.R.Anandha Padmanabhan
6.R.Anandha Ramakrishnan
7.R.Anandha Maheswaran ... Petitioners/Petitioners/A1 to A7

Vs.

State of Tamil Nadu rep by
Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Thoothukudi
(Crime No.4 of 2006) ... Respondent/Respondent/Complainant

Petition filed under Sections 397 read with 401 Cr.P.C, to call for the records in Crl.M.P.No.1477 of 2013 in Special Case No.8 of 2008 dated 11.11.2013 passed by the learned Chief Judicial Magistrate cum Special Court, Tuticorin and set aside the same.

For Petitioners : Mr.M.Ajmal Khan,
Senior Counsel for
M/s.Ajmal Associates

For Respondent : Mr.Rajarathinam
State Public Prosecutor
assisted by Mr.C.Ramesh,
Additional Public Prosecutor.

ORDER

The facts leading to filing of this petition in brief are as follows:-

The petitioners are accused in Special Case No.8 of 2008 on the file of the Chief Judicial Magistrate and Special Judge, Tuticorin. All the petitioners stood charged for an offence under Section 13(2) read with 13 (1)(e) of the Prevention of Corruption

Act, 1988 (hereinafter referred to as 'the Act') and under Section 109 IPC read with 13 (2) read with Section 13(1)(e) of the Act. The above criminal case has been instituted against the petitioners on the ground that the first petitioner/A-1 herein was a Member of Tamil Nadu Legislative Assembly during the period from 14.05.2001 to 12.05.2006 he was elected from Tiruchendur Assembly constituency and he was also functioning as the Minister for Animal and Husbandry Department and also for Housing and Urban Development Department. The second petitioner is the wife of the first petitioner. The third and fourth petitioners are the brothers of the first petitioner. The petitioners 5 to 7 are the sons of the first petitioner. On the basis of the information that the first petitioner was in possession of pecuniary assets including properties disproportionate to the known sources of his income, a case has been registered in Crime No.4 of 2006 by the first respondent against the first petitioner under Section 13(2) read with Section 13 (1)(e) of the Act and under Section 109 IPC read with 13 (2) read with Section 13(1)(e) of the Act. During investigation, it was found that the pecuniary sources of properties acquired and possessed by him in his name and in the name of other petitioners during the check period (i.e) 14.05.2001 to 31.03.2006 is proportionate to his known sources of income, a final report has been filed stating that all the petitioners were found in possession of pecuniary sources and properties disproportionate to their known sources of income to the extent of Rs.4,90,29,040.91 as on 31.03.2006. Hence, all the petitioners were charged for the offence mentioned above.

2.Thereafter, the petitioners herein filed a petition before this Court seeking direction for further investigation on the ground that no opportunity was given to them to account for the alleged disproportionate assets in Criminal Original Petition No.6146 of 2009 and this Court, by an order dated 28.10.2009 ordered further investigation and directed the respondent therein to give opportunity to the petitioners. Pursuant to the same, a further investigation was conducted and the first respondent police has filed second final report on 13.12.2010 stating that the investigation did not disclose the offence under Section 13 (2) read with 13 (1)(e) of the Prevention of Corruption Act and filed a report to drop further action. Thereafter, based on the report filed by the first respondent, dated 30.09.2010, the State Government passed an order dated 12.11.2010 to drop further action against the petitioners. Based on the same, the Special Public Prosecutor cum Deputy Legal Adviser filed a petition under Section 321 Cr.P.C for withdrawal of the prosecution on 14.12.2010 stating that in the further investigation conducted by the Deputy Superintendent of Police, the disproportionate assets of the petitioners comes to Rs.1,08,80,867.11 and the percentage of disproportionate assets is only 16.09 % and the Investigating Officer has come to the conclusion that no offence is substantiated against the petitioners and recommended for dropping action against all the accused and the Government is also accepted the same and passed an order to drop further action against all the accused and the Special Public

Prosecutor cum Deputy Legal Adviser satisfied that it is a fit case for withdrawal from prosecution. When the above petition was pending before the trial Court, there was a change of Government and on 17.08.2011, the Special Public Prosecutor, filed a memo for withdrawing the petition filed under Section 321 Cr.P.C earlier the trial Court recorded the memo and closed the petition as withdrawn. In the meantime, the petitioners filed petitions to discharge them from the charges. The Court below dismissed the said applications. Challenging the order of dismissal, the present Criminal Revision Case has been filed.

3.I have heard Mr.M.Ajmal Khan, learned Senior Counsel appearing for the petitioners and Mr.Rajarathinam, State Public Prosecutor for the respondent.

4.Learned Senior Counsel appearing for the petitioners would contend that even though the first investigation conducted by the respondent reveals disproportionate income at 133%, the further investigation conducted based on the orders passed by this Court reveals only to the extent of 16.09%, based on that the respondent have decided to drop the proceedings and therefore, the Special Public Prosecutor filed an application to withdraw the prosecution. At this stage, when there was change of Government, reinvestigation was conducted and based on the same, with a mala fide intention and without considering available materials on record, the respondent has come to the conclusion that the disproportionate asset is to the tune of Rs.2,07,96,384.04 which works out to 34.98%. The respondent has no power to conduct reinvestigation and based on the reinvestigation, charges cannot be framed. Apart from that, the petitioners 2 to 7 have separate income and they are all income-tax assessees and have filed returns. In the above circumstances, all the separate income of the petitioners 2 to 7 cannot be considered as disproportionate asset of the first petitioner. Apart from that even though the income derived from sand quarry was accepted during the first and second investigation but in the reinvestigation conducted by the respondent, it was not accepted and it was shown as disproportionate assets of the first petitioner. In the above circumstances, based on the third investigation, charges cannot be framed and absolutely, there is no prima facie case made out against the petitioners to proceed with.

5.Per contra, learned Public Prosecutor would contend that the case is at the stage of framing of charge and the Court below has to see whether any prima facie case is made out to proceed against the petitioners from the materials produced by the prosecution. In the present case, there is ample material available to make out a prima facie case against the petitioners and therefore, the trial Court taking into consideration of all the facts, has come to the conclusion that there is a prima facie case made out against the accused, and dismissed the petition. Apart from that at the time of framing of charge, the Court need not conduct any roving enquiry and the Court below after careful consideration of the entire materials on record applied its mind and thereby dismissed the petitions. Therefore, there is no necessity warranting this Court to set aside the well-merited and well-reasoned order passed by the trial Court.

6.I have considered the rival submissions and perused the entire records carefully.

7.The first and foremost contention of the petitioners was that the third investigation conducted by the respondent totally illegal and based on that investigation, no charges could be filed. But from the perusal of the records, it could be seen that the first investigation reveals the disproportionate income at the rate of 133% to the tune of Rs.4,90,29,040.91. Thereafter, based on the order passed by this Court, a further investigation was conducted even in that investigation reveals a disproportionate income to the tune of Rs.1,08,80,867.11 which works out to 16.09% and based on that a report has been filed to drop the proceedings and the Government has also accepted the same and ordered to drop the proceedings. Thereafter, the Special Public Prosecutor filed an application under Section 321 Cr.P.C to withdraw the case from prosecution. In the meantime, there was change of Government and therefore, not being satisfied with the earlier investigation, a petition was filed before this Court seeking permission to conduct further investigation under Section 173 (8) Cr.P.C and based on the order passed by this Court, a further investigation was conducted, in which after considering the objections raised by the petitioners, the investigation found that the first petitioner has disproportionate income to the tune of Rs.2,07,96,384.04 which works out to Rs.34.98%. According to the learned Senior Counsel, the further investigation is only reinvestigation and it is illegal and based on that charges cannot be framed. Further investigation has been conducted only based on the orders of this Court which cannot be held as illegal. Apart from that all three investigations reveal that the assets are disproportionate to their known sources of income. Even in the second investigation reveals that the petitioners were in possession of disproportionate income to the tune of Rs.1,08,80,867.11 which works out to 16.09%. In the above circumstances, the contentions of the petitioners cannot be countenanced.

8.So far as the next contention of the learned Senior Counsel for the petitioners that the petitioners 2 to 7 have separate income and have also filed income tax returns and the income tax returns disclosed the petitioners have separate sources of income and their assets cannot be included in the assets of the first petitioner, the said contention cannot be accepted for the simple reason that merely because the petitioners 2 to 7 filed income tax returns and shown huge income, it cannot be presumed that it actually belongs to the said assessees. The Hon'ble Supreme Court in ***State of Tamil Nadu Vs.N.Suresh Rajan,*** reported in ***(2014) 11 SCC 709*** has held as follows:-

"32.3.While passing the order of discharge, the fact that the accused other than the two Ministers have been assessed to income tax and paid income tax cannot be relied upon to discharge the accused persons particularly in view of the allegation made by the prosecution that there was no separate income to amass such huge properties. 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 disastrous 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.

In view of the above dictum laid down by the Hon'ble Supreme Court, the said contention of the learned Senior Counsel for the petitioners, cannot be accepted.

9.Framing of a charge is an exercise of jurisdiction by the trial Court in terms of Section 239 of the Code of Criminal Procedure, 1973. At the stage of framing of a charge, the Court is not concerned with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilt and at the time of framing the charge, all that the Court has to see whether the material on record and the facts would be compatible with the innocence of the accused or not, whether the accused is guilty or not cannot be considered at this stage. The Hon'ble Supreme Court in number of cases consistently has held that at the time of framing charge, the Court is concerned not with the proof of allegations and the Court has to form an opinion, if it shows strong suspicion that the accused has committed an offence, which if put to trial could prove his guilt. Recently, the Hon'ble Supreme Court in ***State of Rajasthan Vs.Fatehkaran Mehdu*** reported in ***(2017) 2 SCC 40*** has held as follows:-

"........At the stage of framing of a charge, the Court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which his neither permissible nor is in consonance with the scheme of the Code of Criminal Procedure.

10.It is settled law that at the time of framing of charge, the Court is required to consider the material produced by the prosecution alone and the Court cannot look into the documents submitted by the accused. The Hon'ble Supreme Court in ***State of M.P. Vs.Rakesh Mishra*** reported in ***(2015) 13 SCC 8*** has held as follows:-.

"..... it would suffice to say that the law on this point is crystal clear that only charge sheet along with the accompanying material is to be considered at the stage of framing of charges, so as to satisfy whether a prima facie case is made out. It has to be the subjective satisfaction of the court framing charges."

In the above circumstances even if the petitioner produced any documents, it cannot be considered at this stage.

11.Apart from that the scope and jurisdiction of this Court under Section 397 Cr.P.C are very limited. Section 397 Cr.P.C., the Court can only call for and examine the records of an inferior Court for the purposes satisfying itself as to the legality and regularity of any proceedings or order made in a case. The Hon'ble Supreme Court in ***Amit Kapoor Vs.Ramesh Chander and another*** reported in ***(2012) 9 SCC 460*** has held as follows:

"12.Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well- founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.

......

......

27.2.The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3.The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge."

12.In the instant case, the Court below, after considering the materials available on record has come to the conclusion that there is a prima facie case made out against the petitioners and the materials available on record would create strong suspicion that the petitioners have committed the offence and I find no illegality or irregularity in the order passed by the Court below. Since the Calender Case is of the year 2008, the trial Court is directed to proceed with the trial and dispose of the same, within a period of six months from the date of receipt of a copy of this order.

13.For all the foregoing reasons, the Criminal Revision Case is dismissed. Consequently, M.P(MD)No.1 of 2014 is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate cum
   Special Court, Tuticorin.

2. The Deputy Superintendent of Police,
   Vigilance and Anti Corruption,
   Thoothukudi.

3. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

+ 1 CC TO M/s.AJMAL ASSOCIATES, IN SR No. 81005

SMS
TE/KP/SAR-I : 06/11/2017 : 7P/5C

Order made in
Crl.R.C.(MD) No.304 of 2014 and
M.P(MD)No.1 of 2014
22.09.2017