THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVSION CASE No.1557 of 2017

ORDER:

This criminal revision case, under Section 27 of the Prevention of Corruption Act, 1988, (hereinafter, 'the P.C.Act') read with Sections 397 & 401 of the Code of Criminal Procedure, 1973, (hereinafter, 'the Code'), is filed by the petitioner-A4 assailing the orders, dated 22.05.2017, of the learned II Additional Special Judge for CBI Cases, Visakhapatnam, passed in Crl.MP.No.708 of 2015 in CC.No.43 of 2010.

1.1 By the said order, the learned Special Judge dismissed the afore-said Miscellaneous Petition filed by the petitioner-A4 under Section 239 of the Code seeking her discharge.

2. I have heard the submissions of *Sri M.V. Durga Prasad,* learned counsel for the petitioner-A4, and of *Sri K. Surender,* learned Special Public Prosecutor for CBI representing the respondent. I have perused the material record.

3. The case of the petitioner in support of her request for discharge, in brief, is as follows:

A.1 & A2 are her father and mother. A3 is her brother. The case was registered against A1 to A3 initially for the offences punishable under Section 13(1)(e) of the P.C. Act read with Section 109 of IPC. After investigation, this petitioner was arraigned as A4. In the charge sheet, it is alleged that this petitioner abetted her father in committing the offence punishable under Section 13(1)(e) of the P.C. Act and thereby she committed an offence punishable under Section 109 of IPC. Shorn of un-necessary details, the case of the prosecution, which is relevant for the purpose of the petition of this petitioner, is this: - 'During 1979 to 2009, her father-A1 worked at various places as Cotton Purchase Officer in Cotton Corporation of India. However, in the statement given by A1 to his Department during the check period from

01.10.1996 to 31.03.2001, he declared that A2 to A4 are his dependants and also claimed LTCs from the Department. Further, income tax returns were also filed by A2 to A4 during the check period. Income tax department conducted raids and seized incriminating material during searches. In the subsequent investigation, the CBI found that during the check period A1 amassed wealth disproportionate to his known sources of income and acquired properties worth Rs.1,49,97,303/- either in his name or in the names of members of his family; whereas, the income of the accused during the check period is Rs.65,26,835/- and they incurred an expenditure of Rs.13,37,373/- and thereby A1 possessed Rs.84,92,845/- worth of assets disproportionate to his known sources of income. During the check period A2 was a house wife/home maker and A3 & A4 were students and they were pursuing their educations.' After filing of the charge sheet, cognizance was taken. The charge against the petitioner is for the offence punishable under Section 109 of IPC and thus she was shown as an abettor. The allegations levelled against her in the charge sheet are false. There is no material even *prima facie* to frame a charge for the said offence punishable under Section 109 IPC against the petitioner-A4. Even if the entire material placed by the prosecution in total is taken into consideration, the same does not disclose any basis or grounds and therefore, the allegations made against the petitioner-A4 are baseless and groundless and patently do not satisfy the ingredients of the provision of Section 109 of IPC. The allegations do not stand the test of scrutiny of law. No specific overt act was attributed to the petitioner warranting her prosecution. The petitioner is not even remotely connected to the offence alleged to have been committed by her father-A1. As per the 161 statements and the documents filed along with the charge sheet, the properties in item nos.11, 12 & 13 in Statement B covered under L.D.Nos.13, 14 & 64 were standing in the name of the petitioner-A4 and as per the case of the prosecution those properties were not acquired by the petitioner on her own and that the same were acquired by her father-A1 as the petitioner was a student and pursuing Intermediate, Graduation and PG courses during the check period and as she did not have any independent sources of income to secure the said properties during the relevant period. According to the further case of the prosecution, she was a minor or just attained majority at the material times. Without admitting, even if the allegations in the prosecution case are taken into consideration for a moment, yet, there is no evidence to frame a charge under Section 109 of IPC against the petitioner-A4 as the prosecution has not placed any material whatsoever to bring the case against the petitioner within the definition of 107 IPC and as there are no allegations to satisfy the ingredients of the abetment as defined in the said provision of law. As per the allegations in the charge sheet, the petitioner was an unmarried daughter and a student, during the check period. If that be the case, it cannot be even presumed that she knew the alleged criminal acts of her father and that she is capable or competent enough to conspire with her father or abet her father to commit any offence. There are no allegations that the petitioner had knowledge about the illegal sources for acquisition of the properties in her name during the check period. There is no *prima facie* material to show that she abetted her father in committing the offence punishable under Section 13(1)(e) of the P.C.Act. Except filing certain documents like sale deeds in the name of the petitioner, no other material is produced by the prosecution and there is no incriminating material showing the complicity of the petitioner-A4 or to establish the acts of instigation or abetment allegedly committed by her.

4. Per contra, the case of the respondent, in brief, is as follows:

The material allegations in the petition of the petitioner are incorrect. The investigation revealed that the involvement of the petitioner is coherent as per the registered documents in L.D.Nos.13, 14 & 64 in addition to the properties possessed by her vide item nos.14,15,16, 17 & 18 in the statement B enclosed to the charge sheet. The said properties, that is, L.D.Nos.13,14 & 64 were purchased on 04.1.1997, 19.06.1999 and 08.11.1996 respectively. As per records, the date of birth of the petitioner-A4 is 30.03.1977. She attained majority on 30.03.1995. On the date of purchase of the above said properties, the petitioner has attained the age of majority. As per the declaration given by her father-A1 to his department, she was a dependent on her father. He did not state in property declaration given to his department, regarding the purchase of the said properties in the name of his daughter-petitioner-A4. In regard to the properties in L.D.No.64, the petitioner-A4 claimed in her explanation that she purchased it out of the birthday gifts received by her from her relatives. The said explanation was given after the I.T authorities conducted a raid. This shows that she is aware of the transactions. The material collected during the course of investigation and the incidental circumstances make it obvious that the petitioner abetted the offence committed by her father-A1, that is, acquisition of moveable and immovable properties in her name by her father. There is a *prima facie* case against her as stated in the charge sheet and hence, her petition is liable to be dismissed.

5. On merits and by the orders impugned in this revision, the learned Special Judge dismissed the petition. Therefore, the petitioner is before this Court.

6. Learned counsel for the petitioner while reiterating the pleaded case of the petitioner and while stating that the learned Special Judge failed to appreciate the facts in proper perspective and the legal position correctly had further contended as follows: 'The allegations mentioned in the charge sheet and the material filed in support thereof even if taken on their face value, the same do not afford sufficient ground or material to frame a charge against the petitioner warranting her trial for the offence punishable under Section 109 IPC. The learned Special Judge failed to exercise the jurisdiction vested in him

and the statutory duty, which is enjoined upon him. The learned Special Judge picked up one sentence in the charge sheet without considering all the material comprehensively as required under facts and in law. He failed to examine all the contentions submitted at the bar and in the written arguments. Learned Judge did not examine the issue in the teeth of the income tax returns and the assessment orders, which are the only material, filed and relied upon by the prosecution in support of the allegations in the charge sheet. The allegation that the petitioner was a student is contrary to the prosecution's own material collected during the course of investigation and filed with the charge sheet. The alleged claim of the father is not relevant nor is sufficient to charge the petitioner with the offence punishable under Section 109 IPC. The learned Special Judge ought to have seen that the petitioner was not initially arrayed as an accused in the first information report and that she was later implicated on the alleged further material obtained subsequently, though no such material showing her complicity was gathered during the further course of investigation. The learned Special Judge ought to have considered that the filing of income tax returns by the petitioner was four years prior to the raids conducted in the year 2006 and that the said material discloses specifically her sources of income and hence, there is no basis for the allegations in the charge sheet. The learned Special Judge failed to see that the documents filed falsify the allegations in the charge sheet and also the imputations made against the petitioner-A4. The learned Special Judge committed a serious illegality in dismissing the petition and in recording a finding that the petitioner-A4, who is the daughter of A1, is a student and that it gives an implied meaning that she is a dependant on her father and that she was under the care and custody of her father. Further, the learned Special Judge failed to take note of the prosecution case itself and its admission that she earned income and returned. In the light of the facts and circumstances pointed out by the petitioner-A4, there is no material for drawing a presumption that was drawn by the learned

Special Judge. Neither the charge sheet nor the material filed along with the charge sheet and the incidental circumstances reveal a *prima face* case or a strong suspicion and hence, the petitioner-A4 is entitled to be discharged from the case.'

7. Per contra, the learned Special Public Prosecutor while reiterating the case of the respondent and supporting the orders of the Special Court would contend as follows:

The petitioner was a major by the time some of the properties were acquired in her name and she had also filed IT returns. Therefore she is having knowledge of the transactions. As per the material record her father has shown in his statement to the Department that the petitioner is a dependant upon him. After the income tax raid, the petitioner also claimed that she acquired the property from the birthday gifts received by her from her relatives. Therefore, the said fact also makes it obvious that she is aware of the transactions. The petitioner also filed income tax returns and returned her income from various sources. Mere filing of the income tax returns is not sufficient to discharge the petitioner-A4 particularly in view of the case of the prosecution that she has no separate income to amass the wealth, viz., properties. The further case of the prosecution is that the property was acquired by her father with the ill gotten money. Therefore, mere filing of income tax returns cannot be a ground to hold that the properties belong to her. As rightly held by the learned Special Judge the material placed before the Court disclosed a *prima facie* case and a strong suspicion against the petitioner-A4 for framing a charge under Section 109 IPC. At the time of considering a request for discharge or framing a charge, the Court is concerned not with the number of the allegations but the Court has to focus on the material available on record and form an opinion whether there is a *prima facie* case that the accused has committed an offence which if put to trail would prove his/her guilt. And, there is no need to form an opinion that the accused is certainly guilty of committing an offence. The contention that the ingredients of the definition of Section 107 IPC are not attracted to the case on hand is not correct. The petitioner-A4 is having knowledge of all the transactions; and, she having filed income tax returns intentionally aided her father in acquiring assets in her name and in amassing disproportionate assets. Allowing acquiring disproportionate assets in one's name would definitely amount to facilitating the possession of disproportionate assets by the accused officer and consequently it amounts to abetment.

8. I have given detailed and thoughtful consideration to the facts and submissions.

9. Before proceeding further, it is apt to refer to the legal position obtaining. Section 239 Cr.P.C reads as under: - "When accused shall be discharged: If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing." Section 227 Cr.P.C., reads as under: - 'Discharge: - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.' Thus, a charge can be framed against an accused in a case where the prosecution has placed on record sufficient evidence to show a *prima facie* case against him/her under a particular provision of law. In case the prosecution fails in its primary duty to show a *prima facie* case to proceed against the accused i.e., when the Court comes to the conclusion that there is no sufficient ground to proceed against the

accused, he/she shall be discharged forthwith under Section 227 Cr.P.C. It is a well settled principle of Criminal Jurisprudence that a Court would not require the prosecution to prove its case beyond any shadow of doubt at the time of framing of the charge as it is required to do so only at the time of conclusion of its case in order to bring home the guilt of the accused. At the stage of framing of charge, the prosecution is under an obligation to place only that much of material against the accused which may be sufficient enough in the circumstances of a given case to draw a presumption that the accused has committed an offence. Further, in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others [1990 Cri L.J. 1869], the Supreme Court held as follows: "From the above discussion it seems well settled that at the Section 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients Constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case." In Union of India v. Prafulla Kumar Samal and another [1979CriLJ154], the Supreme Court held as follows: "The Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under Section 227 the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

10. Now it is profitable to refer to the decisions relied upon by both the sides.

Vishal N. Kalsaria v. Bank of India and others[1], is relied upon by the petitioner in support of the well settled theory of precedents. In this decision it is held that a decision is only an authority for what it actually decides and what is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. It is apt to note that in this decision, it was also held as follows:

> Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein.
> Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law.

State v. D.J. Prabhakar Anand and another[2] is relied upon by the respondent to show that the evidence collected during the course of investigation sufficiently satisfies the ingredients of the offence of abetment.

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[1] (2016) \3 SCC 762
[2] 2005(2) ALD (Crl) 660 AP

In this cited case, the judgment of the Supreme Court in P. Nallammal v. State [AIR 1999 SC 2556] was referred to and paragraph no.22 of the judgment of the Supreme Court, which reads as follows, was extracted:

> "Shri Shanti Bhushan cited certain illustrations which, according to us, would amplify the cases of abetments fitting with each of the three clauses in Section 107 of the Penal Code vis-a-vis Section 13(1)(e) of the P.C. Act.
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> The first illustration cited is this : If A, a close relative of the public servant tells him of how other public servants have become more wealthy by receiving bribes and A persuades the public servant to do the same in order to become rich and the public servant acts accordingly. If it is a proved position there cannot be any doubt that A has abetted the offence by instigation.
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> Next Illustration is this : Four persons including the public servant decide to raise a bulk amount through bribery and the remaining persons prompt the public servant to keep such money in their names. If this is a proved position then all the said persons are guilty of abetment through conspiracy.
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> The last illustration is this : If a public servant tells A, a close friend of him, that he has acquired considerable wealth through bribery but he cannot keep them as he has no known source of income to account, he requests A to keep the said wealth in A's name, and A obliges the public servant in doing so. If it is a proved position A is guilty of abetment falling under the "Thirdly" clause of Section 107 of the Penal Code."

State of Tamil Nadu v. N. Suresh Rajan and others[3] is also relied upon by the respondent in support of the proposition that the mere fact that the petitioner-A4 has been assessed to income tax and paid income tax cannot be relied upon to discharge the accused person particularly in view of the allegation made by the investigating agency that there was no separate income to petitioner-A4 to amass huge properties and that she is admittedly a dependant upon her father at the relevant time. Placing reliance on this cited decision, it is contended that the mere fact that the properties are in the name of an income tax assessee cannot itself be a ground to hold that the properties actually belong to such an assessee and that accepting such proposition would lead to disastrous consequences and would provide an opportunity to corrupt public servants to amass properties in the names of relatives and known

[3] (2014) 11 SCC 709

persons, pay income tax on their behalf and then be out from the mischief of law.

11. Reverting to the facts of the instant case, it is to be first noted that the petitioner-A4 is the daughter of A1. Properties were acquired in her name. The details of properties acquired in her name were collected during the course of investigation and the copies of registered documents relating to the properties in her name are also annexed to the charge sheet by mentioning the same as LD 13, LD 14 & LD 64 in the list of documents filed with the charge sheet. The said documents are dated 04.01.1997, 19.06.1999 and 08.11.1996 respectively. The evidence collected during course of investigation also reflects the movable properties and their values which were acquired and possessed by the petitioner-A4; and, the details of the same are mentioned at item nos.14 to 17, as per the prosecution version. The date of birth of the petitioner-A4 is 30.03.1977. She became a major on 30.03.1995. Therefore, she was a major when the above said properties were acquired. The said properties were acquired within a short time of her becoming a major. After a raid was made by the income tax department, she gave an explanation that property was acquired by means of gifts received by her from her relatives on her birthdays. Prosecution contends that she has knowledge about the acquisition of the properties by her father and that she also filed IT returns having knowledge of the same. As per the case of the prosecution, her father A1 has shown in his statements to the department that his daughter, the petitioner-A4, is a dependent upon him. It is also the case of the prosecution that he did not show the acquisition of properties by his daughter in his property declarations given to his department. The petitioner at one breathe contends that she filed income tax returns and returned the income even prior to the raids conducted in the year 2006 and that she has sources of income; and, at another she contends that no material is placed by the prosecution to satisfy the ingredients of abetment as defined in Section 107 of IPC and that

even as per the allegations in the charge sheet she was a student and an unmarried daughter during the check period and that if that be the case it cannot be even presumed that she knew the alleged criminal acts of her father and that there is no material produced by the prosecution to hold or come to a *prima facie* conclusion that she is capable of conspiring with her father or in abetting her father in acquiring properties in her name with the allegedly ill gotten money. In the case on hand, the prosecution case is that A1 (AO) kept the ill gotten properties and the properties acquired with the ill gotten money in the name of petitioner-A4, who is his daughter, and that some of the properties are acquired in her name after she just attained the age of majority and that she filed returns returning the income and that A1 disclosed in his statements to the department that his daughter is a dependant upon him and also claimed LTCs for her and that he further failed to disclose in his property declarations given to the department about the acquisition of properties by his daughter. According to the prosecution, the investigation does not reveal that the petitioner-A4 is having income and sources of income to acquire any properties and that therefore there is no possibility to her to acquire the properties covered by LD.Nos.13,14 & 64.

12. Be it noted that at this stage this Court is required only to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. However, the Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Thus, the Court is concerned not with the proof of the allegations and rather it has to focus on the material and form an opinion whether there is strong suspicion that the petitioner-A4 has committed the offence alleged against her, which if put to trial could be proved. There is no need at this stage to form an opinion

that petitioner-A4 is certainly guilty of the offence alleged against her (See: State of Rajasthan v. Fatehkaran Mehdu [2017(1) ALD (Crl) 842 (SC)]). In the well considered view of this Court, considering the limited scope of jurisdiction which vests with the Court, this is a case where a final adjudication of the charge has to be made only after oral and documentary evidence is adduced in a full-fledged trial. Considering the material brought on record pursuant to the investigation and the allegations based on such material to the effect that A1 (AO), who is no other than the father of petitioner-A4, kept the property purchased through ill gotten money in her name and that the petitioner-A4 is having knowledge of the same and that she filed returns and returned the income and that she has no capacity and means to acquire the assets being a student and an unmarried daughter dependant on her father, and also the legal position that as merely the properties are in the name of petitioner-A4, who is an income tax assessee, it cannot be a ground to hold that the properties belong to her, this Court is in agreement with the findings of the learned Special Judge that there is a *prima facie* case as well as strong suspicion to frame a charge against the petitioner-A4 and proceed against her. In that view of the matter, this Court finds that this is not a fit case to discharge petitioner-A4 and that it is difficult to come to a conclusion that the allegations on the face of it, if unrebutted, would not warrant her conviction.

13. On the above analysis, this Court finds that there is no merit in the revision and that the order impugned is justified and warrants no interference.

14. In the result, the Criminal Revision Case is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

11.08.2017
Vjl