IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.A.Nos.882 & 884 of 2000

P.Prabhavathy ... Appellant/Accused No.2 in Crl.A.882/2000
P.Mala ... Appellant/Accused No.3 in Crl.A.884/2000

Vs

State by
Inspector of Police,
D.V. & A.C. Southern Range,
Trichy. ... Respondent/Complainant in both C.A.s

Common Prayer: Criminal Appeals filed under Section 454 of the Criminal Procedure Code, against the Judgment dated 11.08.2000 passed in Spl.C.C.No.3 of 1998 on the file of XII Additional / II Special Judge, Chennai Sessions Divisions at Chennai.

(In both the Crl.A.s)
For Appellants : Mr.S.Jayakumar,
Appellant in Crl.A.No.882/2000

Mr.S.Shanmugaperumal
Appellant in Crl.A.884/2000

For Respondent : M/s.M.Prabhavathi Ganesh Ram
Additional Public Prosecutor

JUDGMENT

These criminal appeals were preferred by the appellants/accused A2 and A3 against the confiscation of the properties owned by the appellants dated 11.08.2000 passed in Spl.C.C.No.3 of 1998 by the learned XII Additional II Special Judge, Chennai Sessions Divisions at Chennai, wherein the learned trial Court convicted and sentenced the ***First accused** for the offences under section 13(1) (e) r/w 13(2) of Prevention of Corruption Act 1988 to undergo imprisonment for three years and to pay a fine of Rs.1,00,000/- in default to undergo simple imprisonment for three months and sentenced for the offences under section 109 of IPC and section 13(1) (e) r/w 13(2) of prevention of Corruption Act 1988 to undergo imprisonment for one year and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for one month.

2.The appellant/accused A2 and A3 have preferred criminal appeals against the order of confiscation passed by this Court dated 12.4.2001 before the Hon'ble Supreme Court of India in Crl.A.Nos.849 and 850 of 2001 respectively and while allowing the criminal appeals, the Hon'ble Apex Court has made the following observation:

> "We set aside order of the High Court ordering confiscation of the property as reflected in Annexure II to Exhibit P.292 belonging to the appellants. We allow these appeals to the extent indicated above. Therefore the matter is remitted to the High Court for fresh consideration in accordance with law inrespect of the confiscation of the property as reflected in Annexure II to Exhibit P.292 belonging to the appellants."

As per the directions of the Hon'ble Supreme Court these criminal appeals were heard and common order is pronounced.

3.Brief case of the appellants/accused is that:

The prosecution case is that K.Ponnusamy the 1st accused was elected as member of Legislative assembly from the Marungapuri Constituency in June 1991. He belongs to A.I.A.D.M.K. party. He assumed the office of Deputy Speaker in the Legislative assembly on 03.07.1991. From 17.05.1993 to 09.05.1996 he was discharging his duties as a public servant viz, Minister for Education in the Government of Tamil Nadu. Prior to entering politics, he was employed as a Lecturer in the Government arts Colleges. PW16 reveals that 1st accused had borrowed a sum of Rs.5,000/- on 10.05.1985 by executing a pro-note in favour of him and failed to repay the same in spite of repeated demands and notices dated 18.4.1986 and 18.3.1988. PW 16 filed a suit on 13.3.1988 and obtained a decree. Execution proceedings have been initiated and the arrears of salary due to 1st accused was attached and the sum of Rs.10,422.52 was realized during April 1991. The evidence of PW 17 and Ex.P95 issued by Bank of India reveals that 1st accused had obtained crop loan of Rs.13,000/- on 11.5.1973 and he could not repay the same. Suit was filed on 20.1.1984 and the same was decreed on 13.12.1984, admittedly the debt was cleared by the 1st accused after he became the Minister for Education by paying a sum of Rs.45,750.77. This was the financial position of 1st accused till he became the Minster for Education. The Investigation Officer had taken up the period from 18.5.1993 to 9.5.1996 during which period A1 was functioning as Minister for Education as check period for fixing the quantum of assets disproportionate to his known sources of income, 2nd appellant/accused is the wife of 1st accused, 3rd appellant/accused is their daughter. A3 was studying in a college at the time the assets were acquired in her name. A4 is the cousin of 1st accused i.e. brother's son of A1. A5 is the brother of A1. A6 is a chartered Accountant who submitted the Income Tax Returns and wealth tax returns of A2 to A5 to the income tax authorities. It is the case of the prosecution that A1 acquired pecuniary resources during the check period disproportionate to his known sources of income not only in his name but also in the names of A2 to A5.

4.The prosecution case is that the Deputy Superintendent of Police, Southern Range, Vigilance and Anti corruption, Chennai filed a police report under section 173(2) of Cr.P.C. alleging that the 1st accused while discharging his duties as a Public servant i.e. Minister for Education Government of Tamil Nadu during the period from 18.05.1993 to 09.05.1996 acquired properties in his name and also in the name of his close relations A2 to A5 worth Rs.77,49,337.77 which are disproportionate to his known sources of Income and that A6 arranged for purchase of Foreign currencies to the extent of Rs.56,30,000/- to A2 to A5 by utilizing the unaccounted money of A1 and that the 1st accused appears to have committed an offence under section 13(2) r/w 13(1)(e) of Prevention of Corruption of Act, 1988 and that A2 to A6 appear to have committed an offence under section 109 of IPC and Section 13(2) r/w 13(1)(e) of Prevention of Corruption of Act 1988.

5.The trial Court framed charges under section 13(2) r/w 13 (1) (e) of Prevention of Corruption of Act 1988 against the 1st accused and under Section 109 IPC and Section 13(2) r/w 13(1) (e) of Prevention of Corruption of Act 1988 against the accused 2 to 6.

6.During the trial, the prosecution examined PWs-1 to 65 marked Exhibits-P1 to P297, and appellant/accused examined DW1 marked Exhibits-D1 to D164 and M.O.1.

7.After the trial, on appreciating the material available on record the learned trial Court convicted the appellants/accused for the offences under section 109 of IPC and Sections 13(2) r/w 13(1)(e) of Prevention of Corruption Act 1988.

8.Aggrieved over the same, the appellants/accused including

A1 and others preferred criminal appeal in Criminal Appeal Nos.882 and 884 of 2000. This Court was pleased to dismiss the criminal appeals and acquitted A2 to A5 through its judgment dated 12.04.2001. The appellants/accused A2 and A3 preferred special leave petition against the order dated 12.04.2001 before the Hon’ble Supreme Court of India in Crl.A.Nos.849 and 850 of 2001 respectively, and while allowing the Crl.A.Nos.849 and 850 of 2001 the Hon'ble Apex Court has made the following observation:

> “We set aside the order of the High Court ordering the confiscation of the property as reflected in Annexure-II to Ex.P.292 belonging to A2 and deceased A3, We allow these appeals to the extent indicated above. Therefore the matter is remitted to the High Court for fresh consideration in accordance with law in respect of the confiscation of the property of A2 and deceased A3 as detailed in annexure II to Ex.P.292.

9.It is stated that the learned Judge has failed to consider that the cumulative effect of the evidence of DW30, DW46 and PW57 will strengthen the case of the appellants that the total value of the building is Rs.4,05,000/- and not Rs.10,10,000/- as claimed by the prosecution and the evidence of PW21 is only exaggeration and embellishment in the said valuation.

10.It is stated that the learned Judge has failed to consider that PW57 in his random scrutiny levied additional tax for the buildings at 1A Khaka Miyan Street, Trichy.

11.It is stated that the learned Judge failed to consider that appellant claimed Rs.40,000/- as agricultural income for two assessment years as per Exs.P97 and P98 but learned judge took into account the sum of Rs.20,000/- mentioned in Ex.P97 but omitted to take into account of the sum of Rs.20,000/- mentioned in Ex.P98.

12.It is stated that the learned Judge failed to appreciate that the prosecution has shown an exaggerated amount to purchase of item No.17 in Annexure-II in the charge sheet.

13.It is stated that the learned Judge failed to consider that Ex.P1 is in admissible in evidence as the agricultural produce value was fixed by hear say evidence as admitted by PW1.

14.The learned Additional Public Prosecutor appearing for the respondent supported the findings of the trial Court and sought for dismissal of the appeal.

15.I heard Mr.S.Jayakumar, learned counsel for the appellant in Crl.A.882/2000, Mr.S.Shanmugaperumal, learned counsel for the appellant in Crl.A.884/2000 and M/s.Prabhavathi Ganesh Ram, learned Additional Public Prosecutor for the respondent in both the criminal appeals and perused the entire materials available on record.

16.In the Annexures-1 to 7 marked as Exhibits-P291 to P297, the statement of assets that stood in the name of A1 as on 08.05.1993, statement of assets of the appellants/accused A2 to A5 at the end of check period i.e., 1995 to 1996, statement of expenditure incurred by A1 and the appellant /accused during the check period, statement of value of assets acquired by the 1st accused during the check period and the savings of the A1 and others respectively.

17.In the present case, the prosecution should further prove that the assets in the name of appellant/accused A2 and A3 and others actually belong to A1 and A2 and ***A3** are only benamidars.

18.It is an admitted fact that, the appellant/accused A2 is only a house wife and had no independent source of income till she acquired properties by way of gift. It is the case of the appellants that the properties were purchased in the name of the appellants/accused A2 and A3, by utilizing the money earned by A4 through money lending business. The filing of income tax returns *** by the A2 to A4** and the acceptance of the returns can be used this ground to absolved the appellants/accused from the crime they have committed. Therefore as per the Hon'ble Apex Court direction, this Hon'ble Court reappraised the entire evidences and hold that the confiscation of the properties is illegal.

19.In these appeals, I am concerned with the direction to the extent of considering a fresh regarding the confiscation of pecuniary resources of the property as reflected to Annexure-II to Exhibit-P292 ***That stands in the name of A2 and A3**. In-as-much, as this Court acquitted the accused, the assets stand in the name of appellant/accused has to be excluded from the order of confiscation. The learned trial Court failed to give tangible and sustainable reasons regarding the confiscation of the property owned and possessed by the appellants/accused A2 and A3 (deceased).

20.In the result,

(a) both the criminal appeals are allowed;

(b) The pecuniary resources of property in Annexure-II (Ex.P292) ***that stands in the name of A2 and A3** which is confiscated to the state shall be released immediately. The jewels * that may be identified by the appellants/accused A2 and A3 (deceased) (which are lying in the bank lockers) shall be returned to them.

Sd/-
Assistant Registrar(CCC)
Dated: 04/03/2019

***Amended as per order dated: 11/03/2019 in 882 & 884/2000**
Sd/-Assistant Registrar(CS IV)
dated: 12/03/2019

//True Copy//

Sub Assistant Registrar

To

1.The XII Additional / II Special Judge,
Chennai Sessions Divisions at Chennai.

Amended as per Order already despatched

2.The Inspector of Police,
D.V. & A.C.Southern Range,
Trichy.

+4cc to Mr.S.Jayakumar, Advocate, S.R.No. 22380

Crl.A.Nos.882 & 884 of 2000

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srg 05/03/2019
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