IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 08.12.2016
Judgment Pronounced on : 14.11.2018

CORAM:

THE HON'BLE MR.JUSTICE S.BASKARN

Crl.O.P.Nos.15221 and 15222 of 2009

Crl.O.P.No.15221 of 2009

Smt.Velumani ..Petitioner/2nd accused

Vs

State by
Inspector of Police,
Vigilance and Anti Corruption,
Coimbatore. ..Respondent/complainant
(Crime No.4 of 2003)

Crl.O.P.No.15222 of 2009

S.Jeevanantham ..Petitioner/1st accused

Vs

State by
Inspector of Police,
Vigilance and Anti Corruption,
Coimbatore. ..Respondent/complainant
(Crime No.4 of 2003)

Petitions filed under Section 482 of the Criminal Procedure Code to call for the records in Special C.C.No.1 of 2007 pending on the file of the Special Judge cum Chief Judicial Magistrate, Coimbatore and quash the charges framed against the petitioners under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act,1988, dated 19.08.2008.

For Petitioner : Mr.Abudu Kumar Rajaratnam

For Respondent : Mr.E.Raja
Additional Public Prosecutor

COMMON ORDER

These petitions have been filed to quash the charges framed against the petitioners under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act,1988, dated 19.08.2008.

2.The petitioner Jeevanantham is the first accused and his wife who is the another petitioner is the second accused in C.C.No.1 of 2007 pending on the file of Special Judge/Chief Judicial Magistrate, Coimbatore. It is alleged by the prosecution that the petitioner Jeevanantham was working in the Registration Department and by misusing his official position while working as a public servant has acquired properties and pecuniary resources illegally to the tune of Rs.1,16,79,874/-disproportionate to his known source of income during the check period from 01.01.1997 to 30.04.2002. The first accused was enlisted into the Government Service as Junior Assistant on 31.08.1977 and he hails from a middle class family at Palani. The petitioner Jeevanandham was working as the Sub-Registrar of Sulur from 4.6.1997 till 30.4.2002. On that time his basic pay was Rs.7,300/- in the time scale of Rs.6500-200-10500/-. As such, he was a 'B' group Officer. His father Solaimalai Mudali was a document writer and he was residing with Jeevanantham during the check period and expired on 09.02.2001. The petitioner married one Tmt.Velumani on 10.11.1995 and she is only a house wife. The accused officer has two kids. This could show the background of the accused and that of his wife Tmt.Velumani hailing from middle class family with no financial backing to fall back on their own but for the official position occupied by the accused officer. It is alleged that the accused office could not have acquired these assets out of his known legitimate and lawful sources of income, which is his salary only. During the house search, Bank of India Sulur Branch Pass Book pertaining to Ramachandran s/o Kandasamy (A/c No.5107), S.Banumathi W/o Ramachandran, (A/c No.5108), Tr.Senthil Kumar s/o Subramaniam, (A/c 5109), Tmt.Rukmani W/o Subramaniam, (A/c No.5110), Tr.S.Sundar S/o Subramaniam, (A/c No.5111), Tmt.Malarvizhi W/o Sundar, (A/c No.5112) were seized along with other documents from the residence of T.Govindraj, D.No.37/22 A1, 4th street, Municipal colony, Erode, brother-in-law of the accused Jeevanantham. The said Govindraj stated that all these documents were handed over by the petitioner/accused for safe custody and that on request of Jeevanantham, he kept the same in his house. The account holders concerned were examined. They stated that they signed in the documents for opening of the bank account only on the request of the first accused/Jeevanantham, that they do not know anything about the deposits and transaction made in the said accounts, that they signed in all the cheque leafs of the cheque books and handed over to the first accused Jeevanantham on the date of the opening of the bank account itself and that the amounts deposited in their accounts belong to the accused. Hence, the credits found at the end of the check period in the said accounts were taken by the prosecution as the assets of the accused. Further, Income Tax raid was conducted in the house of the petitioner/first accused Jeevanantham, on a search warrant initially obtained in the name of the petitioner/first accused by the Income Tax Authorities on 22.05.2002 and 28.05.2002. Further, the second accused/Velumani in her sworn statement had accepted certain assets as her own and filed income tax returns for the same. Hence, the petitioner/first accused claim that there is no prima facie nexus between the petitioner/second accused and himself so as to bring the entire assets in the hands of the petitioner/first accused, as though the same was earned by the petitioner/first accused. He object the claim of the petitioner/first accused and he would like to state that, the allegation in this case is fixed for the check period 01.01.1997 to 30.04.2002, but the Income tax proceedings have started only on 22.05.2002, i.e., after the end of the check period. Hence, the proceedings of the Income tax, their explanation given to the Income tax authorities are only their after thought and that had nothing to do with this case. It is clear from the items of immovable and movable assets identified as acquired by the first accused/Petitioner in the name of his wife as listed under para 2(i) to (xxvii) that there is an overwhelming acquisition and accumulation of assets by the accused, in the name of his wife Tmt.Velumani to an extent of Rs.46,51,558/- acquired during the check period. Tmt.Velumani and Thiru.Solaimalai have no sufficient wherewithal, the assets in their names haven been taken as the assets of accused and their assets at the beginning of the check period i.e., on 01.01.1997 was only 1,98,065/-. But, at the end of the check period i.e., as on 30.04.2002, the petitioner/first accused is found to have acquired and was in possession of properties and pecuniary resources in his name and in the name of his wife Tmt.Velumani(A-2), in the name of his daughter Sangamithra and other to a total value of Rs.1,20,82,107/-. After the scrutinizing the income and expenditure of the first accused/petitioner, the net asset value of disproportionate asset was calculated as Rs.1,16,79,874/-. On that basis, the prosecution has filed the charge sheet against the accused and after appearance, the petitioners came forward with these petitions for discharge from the charges. After hearing both sides, the learned Special Judge Cum Chief Judicial Magistrate, Coimbatore dismissed the discharge petitions. Aggrieved upon that the petitioners came forward with these two criminal original petitions.

3.The learned counsel appearing for the petitioners would submit that the respondent has intentionally clubbed the source of income of the 2^{nd} accused along with the income of the first accused Jeevanantham only for the purpose of boosting the source of income of the first accused and to make out a case of disproportionate of assets for the best reasons known to them. The respondent deliberately failed to give any opportunity to the 2^{nd} accused while the first accused has very clearly stated in his explanation that the respondent has clubbed the properties and pecuniary resources belonging to his wife, the 2^{nd} accused and his father Mr.Solaimalai Mudaliar. The basic essential requirement in the investigative process is to find out the genuineness of the case, it has been held that it is mandatory on the part of the investigating agency to offer an opportunity to the accused to satisfactorily explain his source of income and if the accused fails to satisfactorily explain his source of income only then an offence under the Prevention of Corruption Act is made out, otherwise the investigation would be held to be incomplete and perse illegal. Admittedly, on perusal of I.T. Returns and assessment of the Income Tax Department of the 2nd accused, it is very clear that the respondent wantonly failed to consider the same and has illegally clubbed all the acquired properties and pecuniary resource belonging to the second accused with that of the first accused with intention to make out a false case against him. The respondent raided the first accused house and seized all the documents pertaining to the assets of the first accused and his wife second accused and registered FIR on 23.01.2003. While the respondent seized all the documents pertaining to the assets of the petitioner/first accused and his wife 2nd accused up to 23.01.2003, shockingly the respondent calculated the check period of disproportionate acquisition of assets from 1.1.1997 to 30.4.2002 suppressing the fact that the 2nd accused paid tax including surcharges to the income tax department to the tune of Rupees 35 lakhs on 25.11.2002 for the returns filed by him on 22.08.2002. The above act of the respondent itself clearly reveal that the respondent is acting with malafide intention to charge the first accused falsely in the above case. The learned Special Judge while dismissing the discharge petition filed by the accused failed to take note of the documents produced before the court and it only the learned Special Judge had taken into consideration the contents of documents properly, he would have concluded that no case was made out against the petitioner/accused herein. The Learned Special Judge misconceived himself that the court had no power to look into the unblemished documents produced before the court other than that of the charge sheet filed by the respondent and if only the Learned Special Judge looked into the documents which were produced as per the orders of the Court, the petitioner would have been discharged from the above false case and the continuance of illegal prosecution against the petitioner would have come to an end. The petitioner/first accused hails from a family with good financial back ground and has unblemished records for more than 26 year in his department. The first accused was awarded certificates of merits for his immaculate service by his department. The respondent has not taken in to the account the source of income of the first accused/petitioner's father late Solaimalai Mudali who was a document writer for more than 40 years and the source of income of the first petitioner/petitioner's wife who earned properties and pecuniary resources through financial business as well as Agricultural income, Tuition Fees etc. and it only the prosecution done so and the accused/petitioners would not have been harassed by the continuance of false criminal proceedings.

3-A. The other petitioner/second accused Velumani contended that she was having own source of income from her financial business, Agricultural and also by taking tuition classes. She also summoned documents from the Income Tax Department and inspite of producing the same, the lower Court failed to consider without properly and dismissed the discharge petition filed by her. As such, the petitioner contends that the charge against her is to be quashed. As no materials exists to make out any criminal offence against her. Thus, the petitioner seeks to entertain her petition and to quash the criminal proceedings initiated against her. In any event the ingredients of offence under section 13(2) r/w 13(1) (e) of prevention of Corruption Act 1988 is not made out against the petitioners/accused and the charge sheet filed against the petitioners/accused is liable to be quashed.

4.On the other hand opposing the same, the learned Additional Public Prosecutor would submit that during the course of investigation, it came to light that the assets possessed by the petitioner was disproportionately accumulated during his period of service in the Government of Tamil Nadu as a Sub Registrar, Sulur in Coimbatore District. The amount of salary received during the check period has been ascertained and verified and to that extent witnesses have been examined and documents also collected. The properties accumulated by the petitioners/accused herein is more that the known source of income of the first accused/petitioner herein and he failure to produce sufficient documents to prove his known source of income. As on date, the investigation is completed about the total amount of disproportionate assets possessed by the accused herein. The income, expenditure, Assets and Liabilities of the petitioner/first accused herein, his wife and children were taken into account and no genuine claim of the petitioners/accused herein or any of his dependants for that matter was ignored or lost sight off. Now the case is awaiting trial. The genuineness of the plea of petitioner can be ascertained only during trial. Already an opportunity was given to the petitioners to give source of income for the possession of disproportionate assets, but the explanation given by the petitioners is not genuine and therefore the respondent proceeded with further action. The petitioners/accused are putting forward before this Court, the same contention which is negatived by the Trial Court already. Hence, the respondent seeks dismissal of both the petitions.

5.Perused the records and heard both side contention. On perusal, it is apparent that the only contention raised on the side of the first accused is that his wife income was clubbed with his income and the ex-aggregate income of the petitioner is shown as disproportionate. The same is denied by the prosecution. Now let us see the citations referred on both sides.

6.On the side of the petitioner, the learned counsel relied on a ruling reported in 1992 (4) SCC 45 in M.KRISHNA REDDY Vs. STATE DEPUTY SUPERINTENDENT OF POLICE, HYDERABAD, wherein it is held as follows:-

> "7.To substantiate a charge under Section 3(1)(c) of the Act, the prosecution must prove the following ingredients, namely, (1) the prosecution must establish that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which were found in his possession (3) it must be proved as to what were his known sources of income, i.e. known to the prosecution and (4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once the above ingredients are satisfactorily established, the offence of criminal misconduct under Section 5(1)(e) is complete, unless the accused is able to account for such resources or property. In other words, only after the prosecution has proved the required ingredients, the burden of satisfactorily accounting for the possession of such resources or property shifts to the accused.

Another ruling relied on by the petitioner is reported in 2010 (12) SCC 254 in BABUBHAI Vs. STATE OF GUJARAT AND OTHERS, wherein it is held as follows:-

> "32.The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused."

Yet another ruling relied on by the petitioner is reported in 1985 MLJ(Crl) 151 in VEDAGIRI case, wherein it is held as follows:-

> "6.......It is thus obvious that the investigating officer should give an opportunity to the person investigated against to explain the disproportion found by him."

7.It is clear from the ruling relying in 1985 MLJ (Cri) 151, VEDAGIRI case, that the investigation officer should give an opportunity to the person investigated by him against to explain the disproportion found by him. In this case, the first accused was given an opportunity and he has also filed his explanation. So, the above said ruling is not applicable to the facts of this case.

8.In the another Apex Court verdict reported in 2010(12) SCC 254, it is held that it is duty of the investigating officer to conduct investigation avoiding any kind of mischief and harassment to any of the accused. This ruling is also not applicable to the facts of the case on hand since opportunity was given to the accused and explanation called for and filed by the accused. In the next ruling of the Apex Court reported in 1992 (4) SCC 45 relied on by the prosecution, the Apex Court discussed about the ingredients of the charge under Section 5(1)(e) of Prevention of Corruption Act. It is further held that the preliminary burden lies upon the prosecution and if the same is satisfied then only the burden shifts to the accused. This citation is also not applicable to the case in hand since after proving the onus, the prosecution laid the charge sheet and shifted the burden to the accused. Thus, this ruling is also not applicable to the facts of this case.

9.Per contra, on the side of the prosecution, the learned Additional Public Prosecutor has relied upon the ruling reported in 1993 SCC (Cri) 1133 in P.NALLAMMAL AND ANOTHER Vs. STATE, REP. BY INSPECTOR OF POLICE, wherein it is held as follows:-

> "10.......If a non- public servant is also a member of the criminal conspiracy for a public servant to commit any offence under the P.C. Act, or if such non-public servant has abetted any of the offences which the public servant commits, such non-public servant is also liable to be tried along with the public servant before the court of a Special Judge having jurisdiction in the matter."

Likewise in the ruling reported in 2001 SCC (Cri) 1209 in K.PONNUSWAMY Vs. STATE OF TAMILNADU, BY INSPECTOR OF POLICE,DIRECTORATE OF VIGILANCE AND ANTI CORRUPTION, SOUTH RANGE, TRICHY, wherein it is held as follows:-

> "28.....The prosecution having established by legal evidence that the monies were transferred by Accused 1 to Accused Nos. 2 and 3 through Accused No. 4 and that these were monies of Accused No. 1 in the hands of Accused Nos. 2 and 3, it was for the Appellant to satisfactorily account for the gifts. He could have done so by showing that even before the check period Accused No. 4 had made gifts of

> substantial amounts. It has not been claimed by Accused 2 and/or 3 and/or 4 that before the check period also Accused No. 4 had made any such gifts. It is also not their case that after the check period gifts were made. Thus the Trial Court and the High Court were right in not believing the case of gifts supposedly made out of a sudden brust of love and affection. Both the Trial Court and the High Court were right in convicting Appellant. As we are told that the State is going to file an appeal against the acquittal of Accused Nos. 2 and 3 we are not making any comments thereon.

Yet another ruling relied on by the prosecution reported in 2008 (4) SUPREME 568 IN STATE OF ORISSA Vs. DEBENDRA NATH PATHI, it is held that at the stage of framing of charge, material as produced by the prosecution alone is to be considered and not the one produced by the accused. The prosecution also relied upon another ruling reported in 1993 CRL.L.J.859 in UNION OF INDIA AND ANOTHER Vs. W.N.CHADHA, wherein it is held as follows:-

> "90.Under the Scheme of Chapter XII of the Code of Criminal Procedure, there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused person while the proceedings is in the stage of an investigation by a police officer."

10.As per the ruling reported in 1999 SCC (Crl) 1133, If a non- public servant is the second accused and it is alleged that he or she is a participant in the criminal conspiracy with public servant, namely, the first accused to commit any offence under the Prevention of Corruption Act, or if such non-public servant has abetted any of the offences which the public servant commits, such non-public servant is also liable to be tried along with the public servant before the special Court. Thus, the implication of the second accused herein along with the first accused for the alleged disproportionate source of income of the first accused, the second accused is also liable to be prosecuted. As per the ruling reported in 2001 SCC (Cri) 1209, the second accused herein has to satisfactorily account for the money received by her. According to the prosecution, in the present case, the second accused failed to produce the accounts in respect of her known source of her income. Thus, it is contended by the prosecution that the second accused cannot be exonerated.

11.The main contention of the petitioners is that the prosecuting agency has clubbed the income of the second accused/wife along with that of her husband/first accused and impleaded both of them falsely in this case without giving an opportunity to explain their position. The petitioners contends that clubbing of assets of both the accused together is illegal and erroneous. It is further contended that the prosecuting agency failed to give an opportunity to the accused to explain the source of income and inspite of the accused taking steps to summon the records from the Income Tax Department in respect of the second accused to prove that she was having her own source of income. The prosecution has failed to appreciate the same properly and laid charge sheet against the petitioners before the trial Court. Even though the petitioners filed the petition to discharge them from the case before the trial Court in C.C.No.1 of 2007 and the same was dismissed by the Trial Court and on the same date charge sheet was framed against them which is caused irreparable damage to the petitioners. Hence, the petitioners contended that they come forwarded with the petition to quash the charge sheet framed against them, as the same is unsustainable.

12.The main grievance of the petitioners is that inspite of producing before the prosecuting agency records to prove the source of income, the prosecution failed to consider the same. Further, the prosecution has suppressed the facts and deliberately clubbed the income of the second accused along with that of the first accused. It is per see illegal. The same contention was put forth by the petitioners before the trial Court seeking discharge and the same was dismissed by the trial Court. Now, the petitioners has come forwarded with the present petition to quash the charge framed against them.

13.In the case on hand, the check period is fixed and the prosecution has listed the annual income of the first accused at the beginning of the check period and also the value of the properties of his family members at the end of check period. The list showing the property and its value owned by the accused 1 and 2 is given separately. Even though, the petitioners/accused contended that the second accused is having a own source of income and the same is clearly established by summoning document from the Income Tax Department. It is an issue to be considered on evidence at the time of trial. At this point of time, it is to be seen whether a prima facie case exists or not. In the case on hand, the prosecution as well as the accused have filed the separate schedules consisting the details of source of income at the beginning of check period and the value of the properties in the name of the accused at the end of check period. Even though, the petitioners contends that they have produced documents to show that they having annual income and there is no disproportionate property occurred by them. It is an issue to be decided on the basis of the evidence. Further, the second accused was stated to be a house wife and as such the source of income for her and the amount received by her is to be ascertained only on the basis of evidence let in at the time of trial. As such considering the materials available on record, particularly, the schedule filed by the prosecution as well as the accused about the property available in the name of the accused, it appears that prima facie case exists against the petitioners herein. As stated earlier, even though it is contended by the petitioners that the income of both the accused is clubbed together, the prosecution has clearly filed separate schedule to show the income of both the accused. As such the contention of the petitioners is that they are prejudiced in view of the clubbing of assets of the accuses 1 and 2 is unsustainable and untenable.

14.It is contended by the accused/petitioners that enough opportunity was not given to the second accused and her father in law Solamalai to prove the source of income. Refuting the same, the learned Additional Public Prosecutor contended that if really the second accused and her father in law were having source of income, they could have furnished the same in the trial Court and the petition to discharge the accused filed and considered. In the case on hand, it is contended by the accused/petitioners is that steps was taken under Section 91 Cr.P.C. to get records from the Income Tax Department and the same was not considered by the trial Court at this stage. As rightly pointed out by the prosecution, it is to be verify from the records produced by the prosecution as to whether prima facie case is exists or not. The details of the document produced by the accused is to be considered only at the time of trial and not at this stage. In such circumstances, considering the materials available on record, as rightly pointed out by the prosecution, it appears to be enough materials available on record to establish the prima facie case against the accused.

15.The learned counsel for the petitioners/accused contended that during the house raid, documents relating to the assets of the first petitioner and his wife/second petitioner after the period 23.01.2003 was secured. But the prosecution fixed the check period only from 01.01.1997 to 30.04.2002. Suppressing the facts, the second accused paid tax including surcharge to the tune of Rs.35 lakhs on 25.11.2002 to the Income Tax Department. Thus, the petitioners/accused contends that the prosecution cannot pick and choose and cannot produce document which suits their claim only. As to whether really the prosecution has suppressed any document seized by them and has not placed before the Court, all the facts is to be considered and decided only at the time of trial. At this point of time, as stated earlier, the prosecution has produced enough materials to show that the prima facie case exists against the petitioner. As such the claim of the petitioners to quash the charge framed against them is unsustainable.

16.The learned counsel for the petitioners/accused contended that after summoning documents from the Income Tax Department, the trial Court failed to consider them on the ground that there is no power to do so and refused to discharge the petitioners. As stated earlier, it is true that the documents have been produced to the Income Tax Department as per the orders of the trial Court. However, the trial Court discussed and by stating that at the time of framing of charges only, the materials placed before the Court by prosecution is to be considered and are doing so, it has found enough materials to establish the prima facie case against the petitioners. As such, the said reasoning of the trial Court is appropriate.

17.The petitioner/first accused contended that he had unblemished service records of 25 years in his department and his father Solamalai Mudhaliar was a document writer for more than 40 years and they having sufficient source of income is are all issues to be considered on the basis of evidence at the time of trial. As such, it is clear that there is no ground made out by the petitioners to quash the charges framed against them. As enough materials is available to show that the prima facie case exists against them. Thus, the plea of the petitioners to quash the proceedings lacks merits and the same cannot be entertained.

18.As per the Apex Court verdict reported in 2004 (8) SUPREME COURT 568, at the stage of framing charges, materials produced by the prosecution alone is to be considered and not the documents produced by the accused. So relying on the above said ruling, the trial Court has concluded correctly. If really the petitioner was having documents at the time of investigation could have produced before the investigating officer, but she has not done so. Hence, the above said grounds put forth by the petitioners are not sufficient and further more, they are having amble opportunity to put forth their defence under Section 91 and Section 173 of Cr.P.C. to produce the documents. Therefore, the grounds put forth by the petitioners are not sustainable to quash the prosecution and they are not sufficient to do so. Hence, this Court comes to the conclusion that these petitions are devoid of merits. Thus, these petitions lacks merits and the same has to fail. The point is answered accordingly.

19.In the result, these petitions are dismissed. M.P.Nos.1&2/2009 are closed

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rrg

To

1.The Special Judge Cum Chief Judicial Magistrate,
Coimbatore.

2.The Inspector of Police,
Vigilance and Anti Corruption,
Coimbatore.

3.The Public Prosecutor,
High Court,
Madras-104.

+ 1 cc to M/s. Abudu Kumar Rajaratnam, Advocate Sr.77514

Crl.O.P.Nos.15221 & 15222 of 2009

SPD(CO)
EU(06/12/2018)