IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment: 27.02.2017	Date of pronouncing the Judgment : 06.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

Crl.O.P.No.17087 of 2011
and M.P.No.1 of 2011
And
Crl.O.P.No.26995 of 2013
and M.P.No.1 of 2013

Crl.O.P.No.17087 of 2011:-

1. Dr. V.V. Sairam Babu
S/o. Late Sri V. Venkateswara Rao

2. Smt.V.V. Ramani
Wife of Dr. V.V. Sairam Babu
Both are residing at
No.2-B, Tharangini Apartments,
No.24, Arunachalam Road,
Saligramam, Chennai-600 093 ..Petitioners/Accused 1 & 2

Vs.

The Inspector of Police,
SPE:CBI ACB
Chennai ..Respondent/Complainant

Crl.O.P.No.26995 of 2013:-
T.M. Jeyachandran
S/o. K.M. Thumbu Reddy
Chartered Accountant
No.16, 4th East Cross Street
Shenoy Nagar
Chennai 600 030. .. Petitioners/Accused No.6

Vs.

The Inspector of Police,
SPE:CBI ACB, ChennaiChennai .. Respondent/Complainant

PRAYER in both Crl.OPs.:- The above two Petitions are filed under Section 482 Crl.P.C., praying to call for records in C.C.No.1225 of 2011 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai, and quash the same.

For Petitioners 1. Mr. P.Kumaresan in Crl.O.P.No.17087/2011

2. Mr. AR.L.Sundaresan, Senior counsel for M/s.AR.L.Ganthimathi, in Crl.O.P.No.26995/2013

For Respondents : Mr. K. Srinivasan, Special Public Prosecutor in both the O.Ps.

COMMON ORDER

Brief facts:

The Petitioners in Criminal O.P.No.17087/2011 are Accused No.1 & 2 and the Petitioner in Criminal O.P.No.26995/2013 is the Accused No.6 in C.C.No.1225/2011 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai. The Respondent filed a case against the Petitioners in both the O.Ps. along with Accused No.3 to 5 namely, V. Loganathan, Venkataraghavan and Smt.L.Indira, alleging that all the Accused conspired together and prepared forged documents to give a legal colour to the disproportionate assets acquired by the 1st Accused, and they produced the said forged and fabricated documents to the CBI, during investigation in the disproportionate assets case in R.C.M.A.1 2009 A 003. The alleged two documents are (1) the Memorandum of Mutual Co-operation said to have been executed on 01-08-2002 between the 2nd & 3rd Accused for carrying on Hotel business at Vadapalani, Chennai, for which, Sri V. Loganathan (A-3) is alleged to have advanced Rs.55,00,000/- in different occasions from August 2002 to July 2005 to the 2nd Accused and the said document was witnessed by 4th & 5th Accused. (2) Another document is the one labelled As: To Whomsoever It May Concerned certificate dated 22-08-2009 signed by both A2 & A3, as if, A-3 gave Rs.55,00,000/- to 2nd Accused in six installments during the period from Aug. 2002 to July 2005.

2. Originally, the Respondent had registered a case vide R.C.No.62(A)/2008 against 1st Accused, Port Health Officer, Port Health Organisation, Chennai Sea Port, u/s 7 of Prevention of Corruption Act, 1988 and immediately after the trap, searches were conducted in the residence and office premises as well as in Bank lockers at various banks in Chennai and other places and seized liquid cash of Rs.96,27,900/- and certificates towards investments in banks and share market etc., which shows that A-1 was in possession of movable and immovable assets to the tune of Rs.2,51,21,056/-, during the check period between 01-01-1999 and 10-01-2009 and so a case was registered in R.C.No.3A/2009 u/s

109 IPC and Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 against A-1, A-2 on 20-01-2009.

3. In the disproportionate assets case, A-1 & A-2 was given an opportunity to explain their property statement. In the circumstances, the above said two documents were submitted to the CBI. The Prosecution has come forward with another case (i.e.) the present case that A-1 to A-6 u/s 120-B r/w 465, 467, 468 & 471 IPC, which is taken on file by the Additional Chief Metropolitan Magistrate, Egmore, Chennai, in C.C.No.1225 of 2011, apart from another separate case filed against the Accused Nos.A1 to A-5 u/s 109 IPC and 13(2) r/w 13 (1)(e) of P.C. Act, 1988.

4. The Trial Court after framing charges has commenced trial and the same is in part heard stage. At this stage, the Petitioners have come forward with these two O.Ps, to quash the proceedings.

5. The learned Counsel for the Petitioners contends that the conditions precedent for offences u/s 467, 468 & 471 is forgery and a person is said to have made false documents, only if (i) he made or executed a document claiming to be someone else or authorized by someone else or (ii) he altered or tampered a document or (iii) he obtained a document by practicing deception or from a person not in control of his sense. However, it is contended that the present case does not fall under any one of above mentioned categories because the execution of the two documents viz. Memorandum of Understanding and letter has been admitted by both Parties. Thus execution of both document will not amount to creation of forged document and no offence under the provisions u/s 464, 467 & 471 of IPC is made out against the Petitioners. Hence, the Petitioners sought to allow the Petition and quash the charges laid against them.

6. Whereas the Counsel for the Petitioner in Crl.O.P.No.26995 of 2013 would contend that the two documents under one of which, A-3 is supposed to have acknowledged having been paid cash to the tune of Rs.55,00,000/- between Aug.2002 & July 2005, A-2, nor the Petitioner, who is A-6 was a Signatory to the document captioned as Memorandum for Mutual Co-operation between A-3 and A-2 said to have been attested by A-4 and A-5, which is said to have been submitted by A-1 to CBI, in support of his defense during investigation of his disproportionate assets case. So, there is absolutely no material for any conspiracy between the Petitioner and the other Accused and the services rendered by the Petitioner were only restricted to preparation of the accounts of the Accused persons in the disproportionate assets case on the basis of information furnished by the Accused persons and the correctness or

otherwise of the information cannot be made the responsibility of the Petitioner. Hence the Petitioners seeks to entertain the Petitions.

7. Whereas the learned Special Public Prosecutor refuting the same, contended that registration of case against A-1 in R.C.No.62(A) of 2008 u/s 7 of P.C.Act and after conducting trap Proceedings and searches a liquid cash of Rs.96,27,900/- and Certificates towards investments in banks and share market and possession of movable and immovable assets to the tune of Rs.2,51,21,056/- were acquired between the period 01-01-1999 and 10-01-2009, which are the prima facie case of disproportionate asset to his known sources of income and so, case u/s 109 IPC and Section 13(2) r/w 13(1)(e) of P.C. Act, against A-1 & A-2 was filed and during the course of the investigation when the A-1 & A-2 were given an opportunity to explain/submit their property statement at that time, all the Accused (i.e.) A-1 to A-6 conspired together in order to project the defense for the alleged sources of income of Rs.55,00,000/- by A-2 to A-3 towards the disproportionate assets acquired by A-1 in his name and A-2 had produced the above said Memorandum of Mutual Co-operation and Letter, which was witnessed by A-4 & A-5. The above said document was prepared in the Office Computer of A-6 and since the Printer of A-6 office source fault, the document was sent by email to the witness LW1 Vasanthakumar and the preparation of the same was also stated by Selvakumar LW2. These documents were sent to forensic laboratory and opinion of Scientific Officer was also obtained in that aspect. LW11 to LW13 have given the statement. The above said aspect would go to show that the said document (i.e.) Memorandum of Mutual Co-operation, was created only after the registration of the case, in the Office computer of the 6th Accused with malafide intention to defeat the prosecution and the document was purported to be a valuable security with an intention to cheat and to use the same as genuine. It is further submitted that Prosecution has also examined many witnesses before Trial court and at this stage, no question of quashing the C.C. pending on the file of Additional Chief Metropolitan Magistrate would arise. Hence, the Respondent seeks that these petitions may be dismissed.

8. Considering the rival submissions of both side and available materials on record will clearly show that after registration of case u/s. P.C. Act, 1988 and when opportunities were given to A-1 & A-2, the above said documents, Memorandum of Mutual Co-operation said to have been executed on 01-08-2002, signed by A-2 & A-3 and the accompanying letter dated 22-08-2009 signed by A-3, were produced before the CBI can be revealed from the statements of LW1 & LW2 of whom LW1 is another Auditor to whom the Memorandum of Mutual Co-operation letter was sent through email by A-6 and preparation of document in the computer

of A-6 is spoken to by LW2 who was a trainee under A-6. So, from the Statements of LW1 & 2 and the expert opinion stated by the Prosecution prima facie show that the Memorandum of Mutual Co-operation document was created with ante date in order to escape from the clutches of law under the Prevention of Corruption Act, 1988 and u/s 109 IPC. At this stage, it cannot be said that no prima facie case is made out as it is alleged conspiracy and production of ante dated documents and the ante dated documents comes under the purview of forged and false document, if it is used as genuine for the purpose of material in nature. Further, the Prosecution has examined the LW1 & LW2 as PW.77 & PW75 respectively. Thus, the Prosecution has already examined number of witnesses in the case and the same is in part heard stage before the trial court.

9. Pointing it out, the learned Special Public Prosecutor appearing for the respondent/CBI contended that as the matter is in part-heard stage, the plea of the petitioners should not be entertained. In support of his contention, the learned counsel relied on the judgment reported in 2007 1 L.W.Crl.493 [A.Govindarajan and 6 others Vs. The Inspector General of Police, W-5, All Women Police Station, Chennai-600 040], wherein it is held as follows:-

> "6. The Hon'ble Supreme Court of India has held in Amar Chand Vs. Shanti Bose reported in AIR 1973 SC 799 = 1974 S.O.(Crl.) 40 S.N. that, "Where the accused moved the High Court at the time when the trial was almost coming to a close and what remained to be done was the examination of two prosecution and one Court witnesses and the High Court quashed the charge and the entire proceedings on the grounds that the complainant suppressed material facts and that the evidence on record did not establish the alleged offence, the order was liable to be set aside. The proper course at that stage to be adopted by the High Court was to allow the proceedings to go on and to come to its logical conclusion, one way or the other, and decline to interfere with those proceedings. The questions whether there was suppression and whether the evidence established the alleged offence were matters to be considered by the trial Court after an appraisal of the entire evidence."

7. It is also held by the Apex Court in yet another decision in State of Delhi Vs. Gyan Devi reported in 2000 SC(Crl) 1486 that,

> "The High Court has erred in its approach to the case as if it was evaluating the medical evidence for the purpose of determining the question whether the charge under Section 304/34 l.P.C. framed against the accused respondents 1 and 2 was likely to succeed or

> not. This question was to be considered by the Trial Judge after recording the entire evidence in the case. It was not for the High Court to pre-judge the case at the stage when only a few witnesses (doctors) had been examined by the prosecution and that too under the direction of the High Court in the revision petition filed by the accused. The High Court has not observed that the prosecution had closed the evidence from its side. There is also no discussion or observation in the impugned order that the facts and circumstances of the case make it an exceptional case in which immediate interference of the High Court by invoking its inherent jurisdiction under Section 482 Cr. P. C. is warranted in the interest of justice. On consideration of the matter we have no hesitation to hold that the order under challenge is vitiated on account of erroneous approach of the High Court and it is clearly unsustainable. "

10. Therefore, in view of the settled principle of law laid down by the Apex Court, as per the decisions cited supra, this court cannot exercise the power under Section 482 of Cr.P.C., to quash the proceedings at this stage, viz., after the examination of five witnesses and further all the points raised by the learned counsel for the petitioners has to be raised only at the conclusion of the evidence before the learned Trial Judge. It is open to the petitioners to raise all the points at that time.

11. Thus it is clear from the Ruling relied upon by the Prosecution, that as the trial has already commenced and number of witnesses are already examined, it will not be appropriate to entertain the petition seeking relief under Section 482 Cr.P.C., to quash the proceedings pending on the file of trial court. Further, as rightly pointed out by the learned Special Public Prosecutor, the issues raised by the petitioners has to be raised and considered only during the course of trial in the Trial court and not before this court at this stage.

12. As such, on careful perusal of the materials placed before this court, especially, the final report filed by the respondent along with the list of oral and documentary evidence annexed therewith under Section 171 Cr.P.C., it is clear that prima facie case is made out and sufficient incriminating materials are available against the petitioners to proceed further.

13. In the light of the above said discussion and considering the entire facts and circumstances of the case, it is apparent that prima facie materials exist to proceed with the trial of the case and as such, the plea of the petitioners cannot be entertained. The Point is answered accordingly.

14. In the result, the Criminal Original Petitions are dismissed. The learned Trial Judge/Additional Chief Metropolitan Magistrate, Egmore, Chennai, is directed to expedite the trial in C.C.No.1225 of 2011 and dispose of the case as early as possible.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Additional Chief Metropolitan Magistrate,
Egmore, Chennai.

2.The Public Prosecutor Office, High Court, Madras.

3. The Inspector of Police, SPE, CBI, ACB, Chennai.

Crl.O.P.No.17087 of 2011
And
Crl.O.P.No.26995 of 2013

SJ(CO)
EU(18/12/2018)