BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.01.2018

DELIVERED ON: 25.01.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. (MD) No.322 of 2015 & M.P. (MD) No.1 of 2015

R. Tamilarasi : Petitioner

vs.

The State represented by
the Deputy Superintendent of Police
Vigilance & Anti Corruption Wing
Madurai : Respondent

Criminal Revision Case filed under Section 397 read with Section 401 Cr.P.C., seeking to call for the records pertaining to the order dated 26.05.2015 passed in Crl.M.P. No.30 of 2015 in Special Case No.3 of 2013 on the file of the Special Court for trial of Prevention of Corruption Act Cases, Madurai and set aside the same.

For petitioner : Mr. Veera. Kathiravan
Sr. Counsel
for Mr. C. Jeganathan

For respondent : Mr. C. Mayilvahana Rajendran
Additional Public Prosecutor

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ORDER

This Criminal Revision Case has been preferred seeking to call for the records pertaining to the order dated 26.05.2015 passed in Crl.M.P. No.30 of 2015 in Special Case No.3 of 2013 on the file of the Special Court for trial of Prevention of Corruption Act Cases, Madurai and set aside the same.

2 The undisputed facts leading to the institution of this case are succinctly stated hereunder:

2.1 The petitioner was elected as an M.L.A. from Samayanallur (Reserved) Assembly Constituency in the 2006 general elections to the State of Tamil Nadu and thereafter, she held the office of the Minister for Adi Dravidar Welfare Department from 13.05.2006 to 13.05.2011. Thereafter, she contested from Manamadurai (Reserved)

Assembly Constituency in the general elections 2011 and lost.

2.2 While so, the Department of Vigilance and Anti-Corruption registered a case in Cr.No. 2 of 2012 against the petitioner and her husband for offences under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 (for brevity "the P.C. Act") and after completing the investigation, have filed a final report in Special Case No.3 of 2013 before the Special Court for Prevention of Corruption Act Cases, Madurai, for the offences under Section 13(2) read with 13(1)(e) of the P.C. Act and Section 109 IPC against Tamilarasi (A1/petitioner herein) and her husband M. Ravikumar (A2). The petitioner filed a discharge petition in Crl.M.P. No.30 of 2015 in Special Case No. 3 of 2013 under Section 239 Cr.P.C., which has been dismissed by the Trial Court on 26.05.2015, challenging which, the petitioner has filed the present revision petition.

3 Heard Mr. Veera. Kathiravan, learned Senior Counsel representing Mr. C. Jeganathan, learned counsel on record for the petitioner and Mr. C. Mayilvahana Rajendran, learned Additional Public Prosecutor appearing for the respondent.

4 Mr. Veera. Kathiravan, learned Senior Counsel appearing for the petitioner submitted that:

i there are no *prima facie* materials to frame charges against the petitioner, inasmuch as the calculations of assets and income shown in the charge sheet are erroneous; for instance, in Statement no.I, the gold jewellery has been shown as 160 gms. valued at Rs.1 lakh, whereas, in Statement No.II, the gold jewellery has been shown as 530 gms., valued at Rs.10,28,200/-; the prosecution had taken the value of the gold jewellery at Rs.1,940/- per gram uniformly even for the quantity of 160 gms. of gold that was available with the petitioner at the beginning of the check period cited in Statement No.I.

ii in Item No.16 of Statement No.II, a sum of Rs.15 lakhs has been shown as the amount available on hand at the end of the check period and that this amount was available with her for her election expenses, that having been given by party workers and others and therefore, it should be excluded.

iii in Statement No.III, the monthly rents derived from the house belonging to the petitioner's husband Ravikumar (A2) in Paramakudi has not been taken into consideration, but, only the advance amounts have been taken into consideration; had the rental amounts been taken into account, the statement relating to income would have been on the higher side;

iv in Item No.5 of Statement No.IV, rental amount paid by the petitioner's husband Ravikumar (A2) to Gunaseelan, the owner of Tata Sumo vehicle, has been shown as Rs.5,85,000/-, whereas, Gunaseelan, in his police statement, has stated that he had sold the vehicle only for Rs.1,50,000/-; in other words, the sale consideration is not Rs.2,90,000/-, but, it is only Rs.1,50,000/- and therefore, a sum of Rs.1,40,000/- has been added in excess;

v the petitioner has paid income tax for the income received by her and therefore, there cannot be any prosecution on the allegation that she was holding assets disproportionate to her known sources of income; and

vi the FIR was registered on 09.02.2012 and on the same day, authorisation has been given under Section 17 of the P.C.Act to the Inspector of Police, to conduct investigation and therefore, the final report is vitiated and as a sequel, the petitioner should be discharged.

5 Per contra, the learned Additional Public Prosecutor refuted the contentions put forth by the learned Senior Counsel appearing for the petitioner.

6 Before adverting to the submissions of Mr. Veera. Kathiravan, learned Senior Counsel appearing for the petitioner, it may be necessary to place on record the law as laid down by the Supreme Court in State of Tamil Nadu vs. N. Suresh Rajan [(2014) 11 SCC 709], wherein, this Court had discharged the accused from the prosecution under Section 13(1)(e) of the P.C. Act and the Supreme Court, while reversing the order passed by this Court, has held as follows:

> "29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court

has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage." (emphasis supplied)

Thus, the Supreme Court has cautioned that a mini trial should not be conducted.

7 Be that as it may, coming to the case at hand, at the outset, it may be necessary to state here that the petitioner's husband Ravikumar (A2) filed discharge application before the Trial Court and the same was dismissed, challenging which, he preferred Crl. Rev. Case (MD) No.64 of 2015 which also came to be dismissed by this Court on 03.03.2015 by a well considered and detailed order. The allegations against Ravikumar (A2) are that he had no source of income and was living only on the income of his wife; that assets were acquired in his name during the period when the petitioner was a Minister and thus, he had abetted the petitioner in the commission of the offence. When this Court has clearly held that there are sufficient materials even as against the abettor, a different view in the case of the petitioner being the main accused, could not have been taken by the Trial Court. However, this Court went into the submissions of Mr. Veera.Kathiravan, learned Senior Counsel and meticulously perused the charge sheet and the accompanying Section 161 statements.

8 It may be necessary to state here that the petitioner had contested the 2006 Assembly election and at that time, she submitted an affidavit disclosing her assets along with her nomination papers. Similarly, when the petitioner contested the 2011 election, she submitted a statement of assets along with her nomination papers. Thus, these two statements are admissions relevant under Section 17 read with Section 21 of the Evidence Act. Before filing the charge sheet, the Investigating Officer has concededly sent a show cause notice dated 29.05.2012, in which, the quantum of disproportionate assets was worked out at Rs.40,26,789/-, in response to which, the petitioner has given her explanation in writing on the same day, viz., 29.05.2012 and after considering the same, the Investigating Officer has filed the charge sheet, wherein, the quantum of pecuniary resources disproportionate to the known sources of the petitioner and her husband has been arrived at Rs.34,36,789/-, which is, 109.05%.

9 Coming to the petitioner's contention qua gold jewellery, Item No.3 in Statement No.I was a declaration of the jewels and the value thereof shown by the petitioner when she submitted her nomination papers for contesting 2006 election from Samayanallur Assembly Constituency. Likewise, Item No.2 in Statement No.II is once again the declaration given by the petitioner when she contested the 2011 election from Manamadurai Assembly Constituency and therefore, the Investigating Officer has accepted it as it is, which cannot be faulted.

10 The petitioner's contention that the sum of Rs.15 lakhs shown as Item No.16 of Statement No.II has to be excluded on the ground that it was given as donation by party workers for contesting 2011 election cannot be countenanced for the simple reason that the petitioner has declared this amount as her asset in the declaration submitted by her to the Election Commission of India and now, it is too late for her to contend in the discharge application that the said amount was given to her as donation. Had it been given as donation by party workers as contended by the petitioner, there was no reason for her to disclose the said amount as her asset.

11 As regards the petitioner's contention relating to the rental income from the house belonging to Ravikumar (A2) at Paramakudi, the Investigating Officer has recorded the statement of one Rajapathy, own brother of the petitioner who has stated that he is living in one portion in the said house and that he is not paying any rent. However, the rental advance amounts from various tenants, including Rajapathy has been referred to in Item Nos.7 to 12 of Statement No.III. The petitioner, in her explanation, has merely stated that they had received a rent of Rs.11,66,000/- without giving any particulars as to the name of the tenants and the monthly rents paid by them. At this juncture, it may be relevant to extract the following portion from the petitioner's explanation letter, which, on the face of it, defies credulity:

> "I have also got accrued bank interest amount which was not reflected in Statement No.III and which was also not taken into account as my income. I have also received an interest free loan of Rs.4,00,000/- from my husband M.Ravikumar and his brothers Saravana Kumar and Dinesh Kumar. On 01.04.2011, they pledged a portion of their land at Amatchiapuram in Karuppatti Village in Sozhavanthanpuram by othing their land in Patta No.650 to V. Jagapathy and M. Subramaniam for Rs.4,00,000/-. The extent of the land is 3 acres and 5 cents and the said sum was given to me as interest free loan and it should be shown in my Statement No.III as income. This amount is not shown in my election nomination papers since it was subsequent to 21.03.2011.
>
> During the check period, I have received loan without interest (hand loan) from my relations and friends to the tune of about Rs.21,00,000/-. This should be shown as income in my Statement No.III. My husband has also received a sum of Rs.2,20,000/- as house advance of rent at Paramakudi Town, 3/12-845, Rojaveethi, Bharathinagar West, Mugavai Timber Dippo Road for the six portions of the house from the respective tenants at the rate of Rs.50,000/- from four persons and Rs.10,000/- from two persons totalling Rs.2,20,000/- during the check period. My husband has purchased this property out of his own sources of income and also derived house rent from these

houses. This has not been reflected in Statement No.III at all."

When it is the case of the prosecution that the petitioner's husband Ravikumar (A2) had no source of income and was only dependent upon his wife, for which, copious materials have been gathered, the petitioner has taken a stand that she had availed interest-free loan of Rs.4 lakhs from her husband and his brothers without even giving the dates. As stated above, even the name of the tenants have not been furnished. That apart, Rajapathy has stated that no rent receipts were issued to the tenants. Hence, the Investigating Officer has only the oral statements relating to the quantum of monthly rent. Therefore, in the absence of credible materials like rent receipts, the alleged non-inclusion of the monthly rent, if any, cannot be said to be fatal in the facts and circumstances of the present case.

12 Coming to the petitioner's contention that the Tata Sumo vehicle was purchased only for Rs.1,50,000/- from Gunaseelan, it is manifest that the petitioner herself has stated in her election affidavit that she had purchased the same for Rs.2,90,000/-. The sum of Rs.5,85,000/- shown in Item No.5 of Statement No.IV is the amount that was paid prior to the purchase by Ravikumar (A2) to Gunaseelan, owner of the vehicle, from October 2006 to December 2009. Hence, this Court does not find any serious infirmity on this score.

13 With regard to the contention that the petitioner had paid income tax and therefore, she should be exonerated of the charges levelled against her, the Supreme Court, in Suresh Rajan (supra), has held as under:

> "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."

14 As regards the submission that authorisation given to the Inspector of Police under Section 17 of the Evidence Act to investigate is invalid, it is pertinent to point out that the Supreme Court has categorically held in State of Madhya Pradesh vs. Shri Ram Singh, etc. [2000 (1) Supreme 589] that even if there has been illegality, it will not vitiate the trial since the evidence

collected during investigation cannot be eschewed on the ground that the Inspector did not have the necessary authorisation. In this case, the Inspector has been given the necessary authorisation even according to the petitioner. But, it is the grievance of the petitioner that the authorisation has been given on the very same day of the registration of the FIR. This grievance, in the opinion of this Court, cannot be a valid reason to discharge the petitioner from the prosecution, especially in the teeth of such overwhelming materials against her.

In the result, this Criminal Revision Case is dismissed and the Trial Court is directed to proceed with the trial expeditiously. The fact remains that the charge sheet is of the year 2012 and the accused have managed to prolong the trial till 2018. In fact, the Supreme Court has directed the Central Government to constitute Special Courts for fast tracking cases against politicians. All Courts, including High Courts, are bound to follow the directions of the Supreme Court in letter and spirit. Hence, the accused shall cross-examine the witnesses on the day they are examined-in-chief, as directed by the Supreme Court in Vinoth Kumar vs. State of Punjab [2015(1) MLJ (Crl.) 288]. If the petitioner/accused adopts any dilatory tactics, it is open to the Trial Court to remand the accused to custody under Section 309 Cr.P.C., as held by the Supreme Court in State of Uttar Pradesh vs. Shambunath Singh [JT 2001 (4) SC 319]. Connected M.P. (MD) No.1 of 2015 is closed.

Sd/-
Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

1 The Special Judge for Prevention of Corruption Act Cases
Madurai

2 The Deputy Superintendent of Police
Vigilance & Anti Corruption Wing
Madurai

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

+1cc to M/s.VEERA ASSOCIATES,Advocate,SR. 44379

Crl.R.C. (MD) No.322 of 2015
25.01.2018

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