BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATE OF RESERVE: 26.04.2017
DATE OF ORDER : 14.08.2018
CORAM:
THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED
Crl.RC(MD)No.513 of 2016

1.B.Selvam
2.Sargunavathy
3.S.Velmurugan : Petitioners /Petitioners / A1 to A3

Vs.

State rep by
The Inspector of Police,
Vigilance and Anticorruption Wing,
Trichy
(Cr.No.7 of 2018) : Respondent/Respondent/Complainant

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, 1973, against the order passed in Crl.M.P.No.416 of 2014 in Special Case No.12 of 2014, dated 21.06.2016, by the learned Special Judge for Special Court for trial of Prevention of Corruption Act Cases, Trichy, in dismissing the discharge application filed by the petitioners.

For Petitioners :Mr.Veera Kathiravan,Senior Counsel
For Mr.C.Jeganathan

For Respondent :Mr.P.Kandasamy
Govt.Advocate (crl.side)

****

O R D E R

This Criminal Revision has been filed against the order passed in Crl.M.P.No.416 of 2014, in Special Case No.12 of 2014, dated 21.06.2016, by the learned Special Judge for Special Court for trial of Prevention of Corruption Act Cases, Trichy, in dismissing the discharge application filed by the petitioners.

2. The Revision Petitioners herein are arrayed as A1, A2 and A3 respectively in Special Case No.12 of 2014, on the file of Special Court for trial of Prevention of Corruption Act Cases, Tiruchirappalli. The Revision Petitioners challenged the order of dismissal on their discharge application passed in Cr.M.P.No.416 of 2014 dated 21.06.2016, by the Court below in this Revision.

3. Admittedly, the 1st Petitioner / A1 is a public servant within the definition of Section 2(c) of the Prevention of Corruption Act, 1988. The 2nd Petitioner / A2 is the wife of first accused, married in the year 1984. The 3rd petitioner / A3 is the

brother of A2 / brother-in-law of A1. The first accused is the resident of New Colony, Old Door No.27C / 3C, New No.4, New Colony, VNP Street, Puthur, Tiruchi. The 1st Petitioner was appointed as Work Inspector in the year 1983 and thereafter, he was promoted to subsequent posts and finally served as an Assistant Executive Engineer, Golden Rock Zone, Tiruchirappalli Corporation, during the check period from 01.04.1996 to 31.03.2002.

4. On the basis of the reliable source of information, the respondent Police registered a criminal case in Crime No.7 of 2008, for the offences punishable under Sections 13(2) r/w. 13(1)(e) of the Prevention of Corruption Act, 1988, against the first accused, based on the materials collected in the preliminary enquiry. After completing the investigation the respondent laid the charge sheet against the Revision Petitioners / A1 to A3, for the offences punishable under Section 13(2) r/w. 13(1)(e) of P.C. Act, 1988 against A1, for the offences punishable under Section 109 IPC., r/w. Section 13(2) r/w. 13(1)(e) of P.C. Act, 1988, against A2 & A3 respectively. The charge sheet was filed on 24.07.2013 and was taken on as Special Case No.12 of 2014, on the file of Special Court for trial of P.C.Act cases, Tiruchirappalli, against A1 to A3, for the charges stated supra.

5. On appearance of A1 to A3, after receipt of summons, the accused persons filed an application in Crl.M.P.No.416 of 2014, in Special Case No.12 of 2014, for their discharge, under Section 227 of Cr.P.C. The trial Judge considered the rival submissions made by either side and perused the final report along with the documents and statements produced by the prosecution and dismissed the said discharge petition. Aggrieved by the order of dismissal, A1 to A3 have preferred the present Criminal Revision before this Court.

6. The case of the prosecution is that during the check period from 01.04.1996 to 31.03.2002 Accused No.1 was found in possession of pecuniary sources and properties in his name; in the name of his wife / A2, who did not derive any independent source of income at any period of time; in the name of his brother-in-law / A3, who also did not derive any independent source of income at any point of time and in the name of his mother-in-law / S.Thilagavathi (deceased) to the extent of Rs.31,27,363/-. which are disproportionate to his known source of income for which he could not satisfactorily account as worked out in statement Nos.I to VII and thereby, A1 had committed the offence of criminal misconduct by public servant during the said check period at Trichi, punishable under Sections 13(2(r/w. 13(1)(e) of the P.C. Act, 1988 and in the course of the same transaction, during the said period, the 2nd accused intentionally aided and thereby, abetted the first accused in the commission of the said offence of criminal misconduct, to acquire properties viz., four house plots and a four wheeler in her name and one plot in the name of her minor daughter and to construct houses thereon in the two plots and hold the same (shown in Sl.Nos.5, 6, 7, 8, 12, 14, 15 and 16 of Statement No.II) on behalf

of the first accused. Further, during the said period, the 3rd accused intentionally aided and thereby, abetted the Accused No.1, in the commission of the said offence of criminal misconduct, to acquire the properties viz., house plots and also a two wheeler (Sl.Nos.9, 11 and 13 respectively of Statement No.II) in his name and hold the same on behalf of the first accused and thereby, A2 and A3 had committed the offences punishable under Section 109 of IPC., r/w Section 13(2) r/w. 13(1)(e) of P.C. Act, 1988 respectively.

7. The learned Senior Counsel appearing for the Revision Petitioners would contend that the respondent has completely violated the guidelines issued in DVAC Manual; that the respondent did not sent copies of property statement in proforma 21 to 27 contained in the Vigilance Manual to the first petitioner / Head of the Department and so there is no occasion for them to call for particulars from the first petitioner; that nowhere it stipulates or there is any *prima facie* evidence in the final report to invoke Section 13(1)(e) of P.C. Act, 1988, against A1 and imder Section 107 of IPC., against A2 and A3; that the respondent has not properly considered the estimates offered by the petitioners; that the respondent did not take into account of A1's long period of tenure, as Government Servant; that all the correspondence and letters written by the witnesses addressed to the investigation officer and the document Nos.19 to 29, 42, 43 respectively are hit by Section 162 of Cr.P.C., and are inadmissible in evidence and hence, the initiation of criminal proceedings against the petitioners, on the basis of such documents, is not permissible.

8. He would further contend that the respondent has miserably failed to take into account the family expenses incurred during the check period and some gold properties gifted to the 2nd petitioner during the marriage and gift of a sum of Rs.15,00,000/- to the 2nd petitioner, by her maternal uncle viz., R.S.Somanathan, who received it by way of retirement of partnership of PSNA Engineering College, Dindigul, for construction of houses in Item Nos. 15 and 16 of statement No.II was not taken into consideration; that while calculating the income and expenditure actually incurred by the first petitioner, reasonable procedures is not at all followed by the respondent and that the income tax receipt of A2 & A3, who are the tax payers, were not at all taken into consideration by the respondent.

9. The learned Government Advocate (Crl.side) appearing for the respondent would contend that A2 &A3 and their mother (deceased) did not derive any independent source of income at any point of time and they were dependent of A1. During the check period, they hold the properties on behalf of A1, by abetting A1 to acquire such disproportionate assets, by rendering intentional aid to the first accused. The ingredients required for the abetment, for the offence under P.C.Act, are simply by way of instigation to the principal offender in any conspiracy or any simple intentional aid.

10. He would further contend that on conclusion of

investigation as adequate evidence came forth to establish the culpability of the petitioners 2 &3, they were cited as A2 and A3 and there is no legal bar to inclusion of the name of the accused in the charge sheet, though their names did not find a place in the FIR. The DVAC Manual is only an administrative guidelines and hence, the registration report has no relevance to and is not a legal requirement for a final report and that no rule or law requires the investigating officer to submits such proforma to the Court either along with the final report or at any stage; that the proforma 22 to 27 of the DVAC Manual relating to the furnishing of details of properties and the act of submitting the property statement in proforma 22 to 27 and the act of getting the same or to be done by the first accused and his Head of Department respectively and in the instant case, the property statements were obtained from the first accused and the same have been considered and cited as prosecution document No.15, in the list of documents.

11. Adding further, he would contend that mere filing of Income Tax Return with the Income Tax Authorities cannot be declared that the amount mentioned therein as legal and whether such income was actually incurred or not by the petitioners A2 & A3 can be probed only by way of investigation defined under Section 2(h) of Cr.P.C., and all the lawful and intimated income derived was properly considered and taken into account by the respondent during the course of income and the alleged receipt of Rs.10,00,000/- from the said Somanathan and is held as false and an after thought, and this has to be probed and decided only at the stage of trial, by appreciation of proper evidence. The evaluation of the house was made by the competent authorities of Public Works Department, on the basis of rational and methodological calculation and then the actual value was arrived and benami transaction, as contended by the petitioners, is not an element required to attract the offence of abetment punishable under Section 109 IPC., in the commission of the offence punishable under Section 13(2) r/w. 13(1)(e) of P.C. Act, 1988 and the rental income derived by the second accused was also considered and was included in the statement No.III and hence, there is no omission of income.

12. I have perused the materials on record and documents produced by the petitioner. Heard and considered the rival submissions made on either side.

13. At the stage of framing of charge, the Court can consider any ingredients collected during the investigation and produced before it along with the final report by the prosecution. The Court need not look into the documents sought to be produced by the accused or delve into the matter for the purpose of appreciation of the evidence. At the stage of framing the charge, the Court will not weigh the evidence and it would only have to see as to whether a *prima facie* case has been made out. The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused would arise only after all the evidence is brought on

record at the trial. Statements of 41 witnesses and 52 documents were produced along with the Final Report / charge sheet by the respondent / prosecution.

14. The following decisions are relied on by the learned Government Advocate (Crl.side) to support the above contentions

(i) The Judgment of Apex Court in ***State Rep.by Anti-corruption Bureau Vs. Suriya Prakash*** reported in ***(1999 SCC (Crl.) 373).***

(ii) The Judgment of Apex Court in ***State of Madhya Pradesh Vs. Mohanlal Soni*** reported in ***(2000 (6) SCC 339): (2001) MLJ(Crl.) 60.***

(iii) The Judgment of the Apex Court in ***State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others*** reported in ***(2004 Crl.L.J.598).***

(iv) The Judgment of Apex Court in ***Hem Chand Vs. State of Jharkhand*** reported in ***(2008 (5) SCC 113).***

15. The learned counsel appearing for the revision petitioners mainly contends that A3 is the regular income tax assessee since 1994-95, before the check period and likewise the 2nd accused was also a income tax assessee since 1997-98 and this aspect are not taking into consideration by the respondent. In support of his contentions, the learned Senior Counsel relied on the Judgment of the Apex Court in ***D.S.P., Chennai Vs. K.Inbasagaran*** reported in ***(AIR 2006 SC 552)***, but the fact of the said case differs from the facts of the case on heard.

16. At this stage, the learned Government Advocate (crl.side) relies the Judgment of Apex Court in ***State of Tamil Nadu by Inspector of Police, Vigilance and Anti-corruption Vs. N.Suresh Rajan and Others***, reported in ***2014(1) MLJ (Crl.) 315 (SC),*** to meet out the contentions of the petitioners regarding the Income Tax Return of A2 and A3, wherein in paragraph No.22, it has been held as follows:-

> "Income Tax and Paid Income Tax cannot be relied upon to discharge the accused person particularly in view of 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. It will give opportunity to be 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".
>
> "Further, defect in investigation itself cannot be a ground for discharge"

17. ***Criminal Revision Case(MD) No.64 of 2015***, between ***Ravikumar Vs. state Rep.by DSP, V&AC, Madurai***, in which the above case was relied.

18. The Income Tax Authorities are not vested with the power to make investigation, as defined under Section 2(h) of Cr.P.C., which entirely different from the enquiry under the provisions of the Income Tax Act. They considered only the details of income furnished. The prime job of the income tax authority is to detect the income to levey the income tax and to prevent evasion of tax by the tax evaders. Source of income as contended by the 2^{nd} and 3^{rd} petitioners is not proved by way of documents before the investigating officer.

19. Accepting the contention of the learned Government Advocate (Crl.side) and considering the aforesaid Judgments relied on by the learned Government Advocate (crl.side) and also considering the facts and circumstances of the case, this Court is not inclined to discharge the revision petitioners A1 to A3 from the charges, at this stage, and the revision petitioners are directed to face the trial after framing charges by the trial Court.

20. In the result, the Criminal Revision stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Special Judge for Special Court for
   trial of Prevention of Corruption Act Cases,
   Trichy,

2. The Inspector of Police,
   Vigilance and Anticorruption Wing,
   Trichy.

3. The Record Clerk,(2 copies)
   Criminal Section,
   Madurai Bench of Madras High Court,
   Madurai.

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

+1cc to M/s.Veera Associates, Sr.No.78910

MPK

VB/RSK/SAR1/24.08.2018/7P/7C

Crl.RC(MD)No.513 of 2016
14.08.2018