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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
17.01.2018	24.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P. (MD) No.20094 of 2013
and
M.P. (MD) .No.1 of 2013

M.Samsudeen,
Manager,
The Makkal Handloom Weavers Co-operative Production and Sales,
Society Limited, T.N.H.94, Arockiapuram,
Monday Market, Kanyakumari District. : Petitioner/Accused
Vs.

State, through the
Inspector of Police,
Vigilance and Anti-Corruption Wing,
Nagercoil, Crime No.9 of 2006. : Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for records relating to the proceedings in Special Case No.9 of 2012, on the file of the Chief Judicial Magistrate [Special Court], Kanyakumari District at Nagercoil and quash the same.

For Petitioner : Mr.K.P.Narayanakumar
For Respondent : Mr.C.Mayil Vahana Rajendran
Additional Public Prosecutor

ORDER

On 08.01.2018, this Court passed the following order:-

"This petitioner was working as Manager in Arockiapuram People Handloom Weavers Co-operative Production and Sales Society Limited and that he has assets more than the known source of income valued at Rs.12,01,327.85 as per Annexure -VII. Therefore, a charge sheet has been filed in Special Case No.9 of 2012 before the learned Chief Judicial Magistrate (Special Court), Kanyakumari District at Nagercoil against the petitioner for an offence under Section 13(2) r/w 13(1) (e) of the Prevention of Corruption Act, challenging

<https://hcservices.ecm.his.gov.in/hcservices/> the petitioner is before this Court.



2. The learned counsel for the petitioner raised three substantial points:

(a) that the petitioner, admittedly, was the Manager of a Co-operative Society and a paid servant and, therefore, he will not be a public servant within the meaning of Section 2(c) of the Prevention of Corruption Act;

(b) that the prosecution have noted in Annexure-I that the petitioner is the owner of an old house in Vadaseri Village bearing Door No.18-4-138. The police have also recorded the statement of one Subbammal and Rajam, who have stated that they were employed as Weavers in the Weaving Unit belonging to the petitioner. When the police have recorded such statements, it is obvious that the petitioner is having income from the Weaving Unit. According to the learned counsel for the petitioner, this income from Weaving Unit has not been taken into consideration as one of the known sources of income. Reliance has been placed on the judgment of the Division Bench of Orissa High Court in Janaki Ballav Patnaik v. State of Orissa reported in 1995 Cri.L.J.1110;

(c) The learned counsel for the petitioner submitted that for fastening the criminal liability under Section 13(1)(e), the prosecution must prove that the petitioner had abused his official position for accumulation of wealth. In the opinion of this Court, Section 13(1)(e) is a stand alone offence and it is not dependent upon the ingredients of the other provisions of Section 13(1) of the Prevention of Corruption Act. If a Government servant has assets more than the known source of income, that by itself is an offence under Section 13(1)(e) and, therefore, the third ground of the learned counsel for the petitioner stands rejected.

3. The learned Additional Public Prosecutor seeks time to answer the first two grounds.

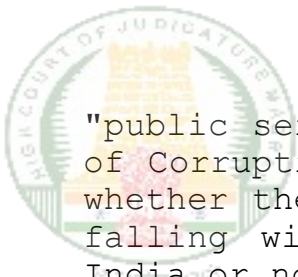
4. Post 'for orders' on 17.01.2018.

2. In support of the first contention, the learned counsel for the petitioner placed strong reliance on the following Judgments:-

- K.Marappan Vs. The Deputy Registrar of Co-operative Societies, [2006 (4) CTC 689] and
- S.S.Rana Vs. Registrar, Co-op Societies, [2006 (11) SCC 634].

3. Mr.K.P.Narayanakumar, learned counsel for the petitioner, read several passages from the said Judgments to show that a Co-operative Society is not a State falling within the meaning of Article 12 of the Constitution of India and therefore, the Manager of a Co-operative Society cannot be a public servant.

4. There is a fundamental fallacy in the submission of Mr.K.P.Narayanakumar, learned counsel, because the expression



"public servant" has been defined in Section 2(a) of the Prevention of Corruption Act, 1988 and therefore, one need not have to explore whether the organization, in which the person is working is a State falling within the meaning of Article 12 of the Constitution of India or not.

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5. Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor, relied upon the Judgment of the Supreme Court in Government of Andhra Pradesh Vs. P.Venku Reddy, [2002 (7) SCC 631], wherein the Supreme Court has stated that the General Manager of Andhra Pradesh District Co-operative Central Bank Limited, is a public servant. Referring to Paragraph No.13 of the Judgment of P.Venku Reddy, [supra], Mr.K.P.Narayana Kumar, learned counsel, submitted that in that case, the Co-operative Society was controlled or aided by the Government and therefore, the Supreme Court had stated so, but whereas, in the case at hand, the Co-operative Society is purely a Weaving Society and is not aided, funded or controlled by the Government.

6. In the opinion of this Court, this is a disputed question of fact, which cannot be gone into in a quash application under Section 482 of the Code of Criminal Procedure, because evidence has to be adduced in the Trial to show the organizational and financial structure of the Arockiapuram Society in which the petitioner was working.

7. Very recently, in CBI Vs. State of Madhya Pradesh [2017 CrI.L.J.735], the Assistant Manager of National Co-operative Consumers Federation of India Limited, Jabalpur, was discharged by the Trial Court on the ground that he was not a public servant, since the Co-operative Society is not a State falling within the meaning of Article 12 of the Constitution of India. The Supreme Court reversed the findings, by relying upon P.Venku Reddy, [supra]

8. As regards the contention of 2(b) raised by the petitioner, [supra], it is seen that the Investigating Officer has included the rental income from 21 portions in the house property belonging to the petitioner. This has been shown as item No.4 in schedule III. Mr.K.P.Narayanakumar, learned counsel, contended that the Investigating Officer had not taken into consideration the income from the weaving unit.

9. Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor, submitted that before filing the charge sheet, a show cause notice was issued to the petitioner, for which he had given a reply, wherein he has stated that he had derived income of Rs.1,42,700/- from the Weaving Unit, which explanation has been rejected by the Investigating Officer. Therefore, it cannot be stated that the Investigating Officer was not alive to the contention of the petitioner about his alleged income from the weaving unit. The disproportionate asset, as per the charge sheet is Rs.12,01,327.85 and even if a sum of Rs.1,42,700/- is subtracted



from Rs.12,01,327.85, the disproportionate asset will be Rs.10,58,627.85, which is 71.05%. There appears to be sufficient force in this submission made by the learned Additional Public Prosecutor.

10. In such view of the matter, this Court is of the view that this is not a fit case to quash the prosecution, as there are prima facie materials to frame charges against the accused.

11. In the result, the Criminal Original Petition is dismissed. Whatever observed herein is only for dealing with this quash application and the Trial Court shall proceed with the trial of the case, after the charges are framed, without, in any manner, being influenced by what is stated above. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(w)

/True Copy/

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate [Special Court],
Kanyakumari District at Nagercoil.

2 The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Nagercoil,

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

+1CC to Mr.K.P.Narayanakumar, Advocate, SR.No. 44065

ORDER MADE IN
Crl.O.P.(MD)No.20094 of 2013
Dated:-
24.01.2018

NB

AM/SV MMS/SAR 1/08.02.2018/4P/5C