

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.239 of 2019

Mathumathi W/o.Durga Prasad

Petitioner/A2

Vs

State by Superintendent of Police
CBI, Anti-Corruption Branch,
Chennai.

Respondent/ complainant

Prayer:- This Criminal Revision Petition is filed, under Sections 397 read with 401 of Cr.PC, to revise the order of dismissal, dated, 28.11.2018, made in Crl.MP.No.4915 of 2018 in CC.No.6 of 2018, corrected as per the Memo in SR.289 of 2019, dated on 23.01.2019, on the file XIV Additional Special Judge for CBI Cases, Chennai and discharge the Petitioner, revising the order of the Trial Court.

For Petitioner : Mr.Infant Dinesh

For Respondent : Mr.K.Srinivasan, SPP-CBI

ORDER

- 1.This Criminal Revision Petition is filed against the order of dismissal of the discharge petition filed under Section 239 of Cr.PC, by the Petitioner in Crl.MP.No.4915 of 2018, in CC.No.6 of 2018, dated, 28.11.2018, on the file of the XIV Additional Special Judge for CBI Cases, Chennai.
2. The facts leading to filing of this Criminal Revision Petition are as follows:-

- a) One S.Durga Prasad/A1 worked as a Public Servant, as defined under Section 2(c) of the Prevention of Corruption Act, 1988, in various capacities in the Employees Provident Fund Organisation (EPFO), Government of India, during the period from 01.01.2010 to 17.1.2016, which was taken as the check period. In the trap proceedings in Crime No.RC.2/A/2016, he was arrested and suspended.
- b) The charge sheet in CC.No.6 of 2018 before the Trial Court was filed for the offences under Sections 13(2) read Section 13(1)(e) of the Prevention of Corruption Act, 1988 and Sections 109 of IPC read with 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988, against six accused persons, namely S.Durga Prasad/A1, his wife, the Petitioner herein/A2, his son Shyam Prasad/A3, his father in law, Malaikani/A4, his mother in law, Mallika/A5 and his sister Anna/A6, alleging that the

main accused/A1 had acquired assets, in question, abetted by A2 to A6, disproportionate to the known sources of the income of A1 and that as on 17.01.2016, A1 was found in possession of assets/pecuniary resources in his name and in the names of his family Members, A2 to A6, to an extent of Rs.4,28,50,092/-, against their known sources of income of Rs.1,37,21,040/-, for which he could not satisfactory account.

- c) It is further alleged that the said abettors, namely, A2 to A6 did not have adequate income to account for the quantum of assets, which have been found to be disproportionate. The Petitioner herein/A2 is working as a Graduate Teacher in the Government Higher Secondary School, Moovarasampet, Madipakkam, Chennai.
- d) The details of all the assets/ investments amounting to Rs.42,05,684/- in the name of A1 to A6 are shown in the statement-A, for the said check period. The details of all the assets/ investments amounting to Rs.1,27,00,984/- in the name of A1 to A6 are shown in the Statement-B, which includes house plots, bank balance as on 17.01.2016, etc. The details of income of the accused persons during the check period are given in the Statement-C. The details of the expenditure incurred during the check period are given in the Statement-D.
- e) The main source of income of A1 and A2 during the check period were the salary and allowances, interest on bank accounts, rental income etc. The total income during the check period is calculated as Rs.1,37,21,040/-, the break-up details of which are shown in Statement-C. The percentage of of disproportionate assets held by A1 to A6 was computed as 312%. The above acts would attract the offences as stated above. In so far as the Petitioner herein/A2 is concerned, she was charge sheeted for the offences under Sections 109 of IPC read with 13(2) read with 13(1) (e) of the Prevention of Corruption Act, 1988.
- f) Before the Trial Court, the Petitioner/A2 has filed CrI.MP.No.4915 of 2018, under Section 239 of Cr.PC to discharge her from the alleged offences, contending that without any proximity of abettor or any materials, the Petitioner/A2 was arrayed as an abettor and that the charges were levelled against the Petitioner/A2, with mala fide discrepancies and hence, the same is legally not sustainable.
- g) The Respondent has filed a counter in the said discharge petition, contending that the Petitioner/A2 could not give any satisfactory explanation and account for having possessed of assets disproportionate to her known sources of income and that the allegations attributed against the Petitioner/A2 were clearly established through the examination of the witnesses and documents and hence, the discharge petition was to be dismissed.
- h) The Trial Court, after hearing the parties and after perusal of the final report, documents and the statements of the witnesses, has come to the conclusion that there

was no reason to believe that the charges levelled against the Petitioner/A2 was groundless and that the Respondent had made out a prima facie case to proceed with case against the Petitioner/A2 and that there was no valid reason for discharge and accordingly, by the impugned order, dismissed the discharge petition. Hence, this Criminal Revision Petition has been filed, seeking to set aside the impugned order or dismissal of the discharge petition filed by the Petitioner.

3.This court heard the submissions of the learned counsel on either side.

4.The learned counsel for the Petitioner/A2 would contend that by suppressing the real facts, the complaint was filed, bringing the properties of the Petitioner totally alien to the charges and that without any material, the Trial Court erred in stating that there are materials to show that A2 had assisted and abetted A1 and that when there is not even a single asset is found in the name of A2, the Trial Court has, in a vague manner, erred in observing that A1 purchased various assets in the name of A1 and his family Members. He would further contend that the assets in question in respect of A2 were purchased before the check period and the money substantiated within the check period were well within the purview of available sources of the income of the Petitioner/A2 and that the Trial Court has rejected the discharge petition, on mere imagination and unwarranted presumptions that the Petitioner/A2 happened to be the wife of A1, living in the same house and thereby, the Petitioner/A2 is liable to be prosecuted for the said offences. He would further submit that A6, who is the sister of A1 and who is similarly placed to that of the Petitioner, has been discharged by the Trial Court and that the Petitioner also stands on the same footing as that of A6.

5.The learned counsel for the Petitioner/A2 would further submit that there was also mathematical error which had crept in the Statement-B in mentioning the assets to the tune of Rs.1,27,00,984/- instead of Rs.81,30,591/- and that the Trial Court has miserably failed to substantiate that there are materials against the Petitioner/A2 to dismiss the discharge petition, without any valid ground. He would further contend that the complaint against the Petitioner/A2 itself is false and fabricated one and that the scope of abetment of any crime should be weeded with the proof of instigation, conspiracy or aiding, whereas the Petitioner/A2 was charged on probabilities and that there was no property or assets acquired by the Petitioner/A2 during the check period and that in the absence of material to show that A2 was holding any property or assets in her name on behalf of her husband, particularly during the check period, the question of abetment under Section 109 of IPC does not arise and that Section 20 of the Prevention of Corruption Act, 1988 regarding presumption against the Petitioner/A2 cannot

be invoked, when the Petitioner/A2 is being charged and tried for the offences under Sections 13(2) read with 13(1) (e) of the Prevention of Corruption Act, 1988 and in such grounds, the impugned order is liable to be quashed.

6. The learned counsel for the Petitioner/A2 would rely on the decisions of the Honourable Supreme Court reported in 2006 1 SCC 420 (Deputy Superintendent of Police, Chennai Vs. I. Inbasagaran), 2012 SCC Online Del 1782 (Om Prakash Sharma Vs. CBI), 2002 5 SC 86 (Subash Parbat Sonvane Vs. State of Gujarat) and 2015 SCC Online Del 13255 (Rekha Nambiar Vs. CBI)
7. The learned Additional Public Prosecutor for the Respondent would submit that Section 13(1)(e) of the Prevention of Corruption Act, 1988 is very clear that if any person, on his behalf, is in possession of pecuniary sources or properties disproportionate to the known sources of income, for which the Public Servant cannot satisfactorily account for, then the offence is attracted and that in this case, the main accused/A1, who is the husband of the Petitioner/A2, was found in possession of assets/pecuniary resources in his name and in the names of his family Members, A2 to A6, to an extent of Rs.4,28,50,092/-, against their known sources of income of Rs.1,37,21,040/-, for which he could not satisfactory account and that A2 had abetted the main accused/A1 in accumulation of such disproportionate assets, thereby attracting the offence under Section 109 of IPC. He would further submit that it is not for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at conclusion that the proceedings are to be quashed and that at this stage, it is erroneous to assess the materials and conclude that the complaint cannot be proceeded with and that it is not permissible to act as if it is a trial Court. He would rely on the decision of the Honourable Supreme Court reported in 2004 1 SCC 691 (State of MP Vs. Awadh Kishore Gupta and others) and would submit that the children of the accused have been admitted in Professional Colleges and a huge amount of cash has been paid towards fees and that the details with regard to the amounts are matters specially within the knowledge of the Petitioner within the meaning of Section 106 of the Indian Evidence Act, entitling the Petitioner to account for the same.
8. At this juncture, the learned counsel for the Petitioner would submit that though the Petitioner is a Government Servant, she is not charge sheeted for the offence under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988, for holding assets disproportionate to her known sources of income and that the charge against her is only for having abetted A1 and when there being no material to show that the Petitioner paid fees for her children and when there being no statutory presumption against the accused, the charges against the Petitioner are groundless without any valid material being on record and

the Trial Court cannot frame charges based on surmises, presumptions or assumptions.

9. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire materials available on record.
10. The main grounds raised by the learned counsel for the Petitioner/A2 are that there was no material against the Petitioner/A2 to array as an abettor under Section 109 of IPC and that there was no asset or property in her name during the check period and though there was cash transaction during the check period, she did not render any monetary support and payment for her children towards their medical education.
11. The final report has been filed against six accused persons, A1 to A2, for the offences under Sections 13(2) read Section 13(1)(e) of the Prevention of Corruption Act, 1988 and Sections 109 of IPC read with 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988.
12. The Petitioner herein is A2 and she is a Public Servant. She was charge sheeted for the offences under Sections 109 of IPC read with 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988.
13. The charge is that during the check period, i.e. from 01.01.2010 to 17.01.2016, the main accused/A1, who is the husband of the Petitioner/A2 had acquired assets and pecuniary resources in his name and in the names of his family Members, A2 to A6, to an extent of Rs.4,28,50,092/-, against their known sources of income of Rs.1,37,21,040/-, for which he could not satisfactory account for and that the Petitioner/A2 has abetted A1 for accumulation of the disproportionate assets in question, thereby attracting the offence under Section 109 of IPC and that the Petitioner/A2 has independent sources of income and that the entire amounts have not been properly accounted for.
14. The details of all the assets/ investments amounting to Rs.42,05,684/- in the name of A1 to A6 are shown in the statement-A, for the said check period. The details of all the assets/ investments amounting to Rs.1,27,00,984/- in the name of A1 to A6 are shown in the Statement-B, which includes house plots, bank balance as on 17.01.2016, etc. The details of income of the accused persons during the check period are given in the Statement-C. The details of the expenditure incurred during the check period are given in the Statement-D.
15. The main source of income of A1 and A2 during the check period were the salary and allowances, interest on bank accounts, rental income etc. The total income during the check period is calculated as Rs.1,37,21,040/-. The percentage of of disproportionate assets held by A1 to A6 was computed as 312%.
16. The check period in this case is from 01.01.2010 to 17.01.2016. The Prosecution has relied on the Statements A, B, C and D for computing the disproportionate assets in

question. The Trial Court had dismissed the discharge petition filed by the Petitioner/A2, relying on the said statements and statement of the witnesses.

17. Now, test is to be done as to whether the Prosecution has discharged the initial burden to establish whether the Petitioner/A2 had acquired the disproportionate assets in question to her known sources of income or not and whether the Petitioner/A2 can be saddled with the unaccounted money and disproportionate assets and whether the Petitioner/A2 had abetted the main accused/A1 in accumulation of disproportionate assets and consequently, whether the Trial Court has, rightly and in a proper and perspective manner, appreciated the final report, documents and the statement of the witnesses for coming to the conclusion to proceed with the case against the Petitioner/A2 or not, by dismissing the discharge petition, by the impugned order.
18. To repeat, the check period in this case is from 01.01.2010 to 17.01.2016. It is seen from the Statement-A, which was relied on by the Prosecution, that the properties and assets mentioned therein are not related to the check period. Though in the Statement-A, the assets at the beginning of the check period, have been shown, the Statement-A is not at all relevant to the check period.
19. In so far as as the Statement-B relied on by the Prosecution, which contains the details of assets/investments for Rs.1,27,00,984/-, is concerned, a cursory perusal of the same would disclose that no property is in the name of the Petitioner/A2. Further, at S.No.21 of the Statement-B, it was shown as if there was a balance of Rs.21,725/- at the end of the check period, i.e. as on 17.01.2016, in the account no.167701000014264 of the Petitioner/A2. Similarly, at S.No.40 of the Statement-B, it was shown as if there was a balance of Rs.30,000/- at the end of the check period, i.e. as on 17.01.2016, in the account no.167701000014264 of the Petitioner/A2.
20. S.No.2 of the Statement-C reflects the income and net salary received by the Petitioner/A2 from the School, in which she was working during the check period. S.No.12 of the Statement-D pertains to the expenditure and charges paid by the Petitioner/A2 to the tune of Rs.342/- incurred during the check period and S.No.14 refers to the SBI Insurance premium to the tune of Rs.3,00,000/- paid by the Petitioner/A2.
21. As regards S.Nos.6 and 7 of the Statement-D, pertaining to the payment of Rs.14,97,500/- and Rs.20,10,000/- towards educational fees for her son/A3 and daughter, there is no material enclosed along with the final report to show that the Petitioner/A2 paid the said amounts towards the educational fees for her son and daughter.
22. A conjoint reading of the Statements A, B, C and D and the statements of the witnesses does not in any manner show that the Petitioner/A2 aided or abetted her husband/A1, in accumulation of disproportionate assets and money.

23. Further, a cursory perusal of all the material documents enclosed along with the charge sheet does not disclose any evidence to show that the Petitioner/A2 had abetted the main accused/A1, who is her husband, in accumulation of the disproportionate assets in question.

24. Further, as rightly contended by the learned counsel for the Petitioner/A2, for an offence punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988, no statutory presumption is available under Section 20 of the Act, as has been held in the Delhi High Court, reported in 2012 SCC Online Del 1782 (Om Prakash Sharma Vs. CBI). In this case, the Trial Court erred in assuming such a presumption.

25. In 2015 SCC Online Del 13255 (Rekha Nambiar Vs. CBI), it was held as under:-

"54. It is settled law that before framing the charge, the court must have some material on the basis of which it can come to the conclusion that there is a prima facie case against the accused. Before framing a charge, the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. The charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the court must come to a prima facie finding that there exists some materials. Therefore, suspicion cannot alone, without anything more, it is trite, form the basis or held to be sufficient for framing charge. The petitioners have been charged with offence punishable under Section 109 IPC read with Sections 13 (1)(e) and 13(2) PC Act. The initial ingredient for Section 13 (1) (e) PC Act is that other person must be in possession of the property on behalf of public servant, however, there is no material in the charge sheet that the petitioner Rekha Nambiar was in possession of any property on behalf of accused No.1 Ramesh Nambiar. It is not in dispute that M/s HYT Innovative Projects Pvt. Ltd., had paid consultation fees to petitioner Rekha Nambair for her services rendered to above noted company and the payments made to petitioner Rekha Nambiar after due deductions of the TDS, have been disclosed and reflected in the income tax returns of the above noted company.

61. It is true that the evidence in possession of the accused will be considered at the time of trial, however, the fact remains in the instant case is that documents taken into possession by the CBI establish that both the petitioners had declared the payments made and received in their ITRs and if any misconduct towards the employer has been committed by petitioner Rekha Nambiar, she can be liable for the departmental action, however cannot be booked in this case. It is not the case of the CBI that petitioner Rekha Nambiar

has acquired the assets more than her known sources. Her sources are very much known; each and every document was recovered by the CBI, however that has been ignored. Therefore, in the present case, everything cannot be left for trial. If there is no case made out against the petitioners, then why they should face the trial, which will definitely go for years together. The petitioners will also have to face the trauma of trial without having committed any offence by them. Thus, it will be misuse of judicial process.

63. In view of the above discussion and settled law, I am of the considered opinion that order on charge dated 01.05.2014 and charge dated 26.05.2014 have been passed by the learned Trial Court without application of mind by ignoring the clinching evidence available on record in favour of the petitioners. Therefore, the aforesaid orders are hereby quashed. Consequently, FIR in question and all proceedings emanating therefrom are hereby quashed qua petitioners.

64. The petitions are accordingly allowed with no order as to costs."

26. In the case on hand, there is no material filed along with the charge sheet to show that the Petitioner/A2 was in possession of any property or assets on behalf of the main accused/A1. Therefore, in the present case, everything cannot be left for trial on presumption that she abetted A1. Since there is no case made out against the Petitioner/A2 and since the trial will go for years together, then the Petitioner/A2 should not be asked to face the trial long time for having committed no offence and consequently, sending the Petitioner/A2 to face trial will be misuse of judicial process.

27. In 2006 1 SCC 420 (Deputy Superintendent of Police, Chennai Vs. I. Inbasagaran), it was held that in the absence of any evidence that the assets belonged to the accused, he cannot be held liable under the Prevention of Corruption Act, 1988 for such assets owned by the spouse.

28. In this case, as stated above, there is no material to show that the Petitioner/A2 had disproportionate assets and amounts in question more than her known sources of income and there is neither any oral evidence or material evidence to show that the Petitioner/A2 had abetted the main accused/A1, who is her husband. Since because the Petitioner/A2 being the wife of A1 and they are living under one and the same roof, charges cannot be framed against the Petitioner/A2, for having abetted A1, without any legal materials there being on record. When such being so, the Trial Court ought to have considered the charges against the Petitioner/A1, being groundless and should have discharged the petitioner/A2.

29.Further, without any specific material to show that the Petitioner had paid the educational fees for her son and daughter, the Petitioner/A2 cannot be charged for having abetted A1, attracting the offence under Section 109 of IPC. Merely because, the Petitioner/A2 being the wife of the main accused/A1, is living with him since her marriage, she cannot be held liable for the offence committed by A1. When the alleged assets do not belong to the Petitioner/A2, she cannot be held liable for the offences under the Prevention of Corruption Act, 1988 for such assets.

30.As analysed above, the Petitioner/A2 has explained her case that during the check period, she was not in possession of any property on behalf of her husband/A1, by abetting A1. The Prosecution has not been able to establish, by producing valid legal material, that the Petitioner/A2 had abetted A1 in accumulation of the disproportionate assets in question. Whereas the Trial Court, on the wrong presumption, had dismissed the discharge petition. The case of the Petitioner stands on the same footing as that of A6 who has been discharged by the Trial Court in Crl.MP.No.3520 of 2018. Hence, this Court has to necessarily interfere with such wrong presumption and mis-appreciation of materials by the Trial Court. Consequently, for the reasons stated above, the impugned order is liable to be set aside.

31.In the result, this Criminal Revision Petition is allowed, as prayed for and the Petitioner stands discharged from the case in CC.No.6 of 2018.

Sd/-

Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

Srcm

To:

1. The Superintendent of Police, CBI, Anti-Corruption Branch, Chennai
2. The XIV Additional Special Judge for CBI Cases, Chennai
3. The Public Prosecutor, High Court, Madras

+1cc to Mr.Infant Dinesh, Advocate SR.No.40244

+1cc to Mr.K.Srinivasan, SPP-CBI, Advocate SR.No.40356

PIRM(CO)

NSD(28/05/2019)

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