IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Saturday, the Twenty Seventh day of April Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL MISCELLANEOUS PETITION No.5211 of 2019

IN CRL.A.NO.283 OF 2017

C.ARANGANAYAGAM [PETITIONER]

Vs

THE SUPERINTENDENT OF POLICE [RESPONDENT]
VIGILANCE AND ANTI CORRUPTION,
WESTERN RANGE,
DIRECTORATE OF V AND AC,
CHENNAI

Petition praying that in the circumstances stated therein the High Court will be pleased to allow this application to record additional evidence on the side of the defence i.e. the petitioner/appellant in Special CC No.2 of 2006, pending disposal of the above Crl.Appeal No.283 of 2017.

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of MR.MURALI KUMAR FOR M/S.MCGAN LAW FIRM, Advocate for the petitioner and of MR.K.PRABAKARADDITIONAL PUBLIC PROSECUTOR [V AND AC] on behalf of the Respondent the court made the following order:-

This petition has been filed seeking to permit him to record additional evidence on the side of the defence in Crl.A.No.283 of 2017. The appeal has been filed against the judgment of sentence and conviction in Spl.C.C.No.2 of 2006 passed by the learned Special Judge/X Additional Judge, Chennai, convicting and sentencing the petitioner to undergo simple imprisonment for three years and to pay a fine of Rs.50,000/- for offences under Sections 13(1) (e) r/w 13(2) of the Prevention of Corruption Act for having had in his possession pecuniary resources and properties disproportionate to his known source of income to the extent of Rs.92,20,911/-.

2. The petitioner/appellant had submitted that he is innocent and was a dutiful public servant during his entire tenure as Member of Tamil Nadu Legislative Assembly and the Minister of Labour and Education. He had stated that he was serving in the Education Department as B.T. Assistant Teacher and Head Master and after resigning entered into politics and that the case was foisted due to political rivalry. It has been further stated that the trial Court based its conviction on the wrong conclusion that the

petitioner/appellant possessed disproportionate assets of Rs.14,70,574/- at paragraph 508 and Rs.17,04,020/- at paragraph No.533 of its impugned judgment dated 17.04.2017. It has been further stated that the FIR against the petitioner/appellant was registered on 05.09.1996 and the charge sheet in Spl Case No.2 of 2006 was filed on 11.05.2006 and there was an inordinate and unexplained delay in filing the charge sheet by the respondent police. Further, it had been stated that the investigation had not been done in a proper manner and it had been done only with a view to put an end to his political career.

3. It had been further submitted that the petitioner was not given sufficient opportunity by the respondent police to cause his explanation despite his repeated requests with regard to the same and further due to denial of sufficient time to the petitioner/appellant for giving explanation, it resulted in certain lapses and further due to lack of awareness and improper professional guidance while causing the explanation to the queries raised by the respondent police, the petitioner had missed out to give details of income and expenditure through the known source. It had been further submitted that the entire source of income was mostly from the Proprietorship Concern owned by the petitioner/appellant Viz., M/s.Chenniappa Enterprises, which was engaged in the business of producing, distributing and exhibiting of motion pictures in different languages and if the income derived from the said sources quantified as known source of income earned by the petitioner/appellant had been considered the trial Court would not have arrived at such a conclusion to derive disproportionate assets in the name of the petitioner/appellant. It had been further submitted that on the date of registration of the case, the petitioner was having known source of income to the tune of Rs.61,76,517/-.

4. The petitioner had given the details and proof of the known source of income to the tune of Rs.61,76,517/- under the following heads which he was not able to produce before the trial Court.

S. No	***Known source of income earned through production, distribution and exhibition of motion film by M/s.Chenniappa Enterprises (Proprietary concern of the petitioner/appellant***	***Amount (Rs.)***
1	Receipt and payment filed along with the Income Tax Returns for the year ending 31st March, 1996	23,34,687/-
2	Collection and Sale of Lease Rights of the movies "Mudhalamachar" and "Sevventhi" (after deducting a sum of Rs.9,32,052/- shown in the above tabular column and Rs.23,34,687/- shown as item No.1 herein above)	18,41,828/-
3	Collection from and out of the exhibition of the movie "Ek Nagaranth"	7,50,000/-
4	Sale of Lease Rights of the movie "Ek Nagaranth"	12,50,002/-
	Total (Rs.)	**61,76,517/-**

5. The details of the documents that are necessary to be taken on record in the above SPl.C.C.No.2 of 2006, are detailed as under:-

(i) 'U' Certificate dated 21.01.1991 issued by the Central Board of Film Certification, Bangalore.

(ii) Agreement Lease Deed dated 10.11.1993 entered between M/s.Chenniappa Enterprises and M/s.G.K.Movie Land.

(iii) Paper advertisement dated 24.03.1994 in Malai Malar Tamil evening daily.

(iv) Lease Agreement dated 25.10.1994 entered into between M/s.Chenniappa Enterprises and Mr.K.Selvaraj.

(v) Lease Agreement dated 25.10.1994 entered into between M/s.Chenniappa Enterprises and Mr.Palaniappan.

(vi) Lease Agreement dated 25.10.1994 entered into between M/s. Chenniappa Enterprises and Mr.R.Shanmugam.

(vii) Lease Agreement dated 25.10.1994 entered into between Chenniappa Enterprises and Mr.R.Sampath Kumar.

(viii) Lease Agreement dated 05.05.1995 entered into between Chenniappa Enterprises and Mr.N.S.Sreejith.

(ix) Receipt of payment for the year ending 31.03.1995.

(x) Balance Sheet of the petitioner for the year ending 31.03.1995.

(xi) Receipt of payment for the year ending 31.03.1996.

(xii) Balance Sheet of the petitioner for the year ending31.03.1996.

(xiii) Order dated 28.02.2002 passed by the Commissioner of Income Tax (Appeals), Central-II, Chennai in ITA No.150/2001-02 for the Assessment Year 1995-96.

(xiv) Order dated 30.05.2003 passed by the Additional Income Tax Appellate Tribunal in ITA No.928/MDS/2001 pertaining to the Assessment Year 1997-98.

(xv) Order dated 22.06.2007 passed by the Income Tax Appellate Tribunal in ITA No.1045/MDS/2002 pertaining to the Assessment Year 1995-96.

6. Description of the documents and the reasons for marking the same are detailed as under:-

S.No.	Description of Document	Reason
1	U' Certificate dated 20.06.1991 issued by the Central Board of Film Certification, Bangalore. **(Document before Check period that was not placed for consideration before the Trial Court)**	To establish the fact that the petitioner was doing active business of film distribution through his proprietary concern Viz., M/s.Chennaiappa Enterprises
2	Agreement Lease Deed dated 10.11.1993 entered between M/s.Chenniappa Enterprises and M/s.G.K.Movie Land. **(Document during check period that was not placed for consideration before the Trial Court)**	To establish the fact that Rs.12,50,002/- was received by the petitioner/appellant towards consideration for the first release paid by the M/s.G.K.Movie Land for the movie title "Ek Nagarath"
3	Paper advertisement dated 24.03.1994 in Malai Malar Tamil evening daily. **(Document during check period that was not placed for consideration before the Trial Court)**	To establish the fact that the petitioner's proprietary concern viz., M/s.Chenniappa Enterprises, relased a movie Viz., "Mudhalamichar"
4	Lease Agreement dated 25.10.1994 entered into between M/s.Chenniappa Enterprises and Mr.K.Selvaraj. **(Document during check period that was not placed for consideration before the Trial Court)**	To establish the fact that the petitioner had an income of Rs.3,50,000/- from his proprietary concern Viz., M/s.Chenniappa Enterprises during the check period.
5	Lease Agreement dated 25.10.1994 entered into between M/s.Chenniappa Enterprises and Mr.Palaniappan. **(Document during check period that was not placed for consideration before the Trial Court)**	To establish the fact that the petitioner had an income of Rs..2,00,000/- from his proprietary concern Viz., M/s.Chenniappa Enterprises during the check period.
6	Lease Agreement dated 25.10.1994 entered into between M/s. Chenniappa Enterprises and Mr.R.Shanmugam. **(Document during check period that was not placed for consideration before the Trial Court)**	To establish the fact that the petitioner had an income of Rs.3,00,000/- from his proprietary concern Viz., M/s.Chennaiappa Enterprises during the check period..
7	Lease Agreement dated 25.10.1994 entered into between Chenniappa Enterprises and Mr.R.Sampath Kumar. **(Document during check period that was not placed for consideration before the Trial Court)**	To establish the fact that the petitioner had an income of Rs.4,00,000/- from his proprietary concern Viz., M/s.Chenniappa Enterprises during the check period.

S.No.	*Description of Document*	*Reason*
8	Lease Agreement dated 05.05.1995 entered into between Chenniappa Enterprises and Mr.N.S.Sreejith. **(Document during check period that was not placed for consideration before the Trial Court)**	To establish the fact that the petitioner had an income of Rs.1,30,000/- from his proprietary concern Viz., M/s.Chenniappa Enterprises during the check period.
9	Receipt of payment for the year ending 31.03.1995. (**Document relating to the check period dated after the check period not placed for consideration before the Trial Court)**	To establish the known source of income of the petitioner.
10	Balance Sheet of the petitioner for the year ending 31.03.1995. (**Document relating to the check period dated after the check period not placed for consideration before the Trial Court)**	To establish the known source of income of the petitioner.
11	Receipt of payment for the year ending 31.03.1996. (**Document relating to the check period dated after the check period not placed for consideration before the Trial Court)**	To establish the known source of income of the petitioner.
12	Balance Sheet of the petitioner for the year ending 31.03.1996. (**Document relating to the check period dated after the check period not placed for consideration before the Trial Court)**	To establish the known source of income of the petitioner.
13	Order dated 28.02.2002 passed by the Commissioner of Income Tax (Appeals), Central-II, Chennai in ITA No.150/2001-02 for the Assessment Year 1995-96. (**Document relating to the check period dated after the check period not placed for consideration before the Trial Court)**	To establish the known source of income of the petitioner.

S.No.	Description of Document	Reason
14	Order dated 30.05.2003 passed by the Additional Income Tax Appellate Tribunal in ITA No.928/MDS/2001 pertaining to the Assessment Year 1997-98. (**Document relating to the check period dated after the check period not placed for consideration before the Trial Court)**	To establish the known source of income of the petitioner.
15	Order dated 22.06.2007 passed by the Income Tax Appellate Tribunal in ITA No.1045/MDS/2002 pertaining to the Assessment Year 1997-98. (**Document relating to the check period dated after the check period not placed for consideration before the Trial Court)**	To establish the known source of income of the petitioner.

7. It had been further submitted that if the above evidence is taken into consideration it would work out to surplus known source of income which is more and above the income assessed by the learned Trial Judge. It had been further stated that M/s.Chenniappa Enterprises is a Proprietorship Concern and it was assessed to income tax and the petitioner is the proprietor of M/s.Chenniappa Enterprises. It had been further stated that the income tax practitioner who was dealing with the filing of Returns and income tax matters, one Raman was having all the documents relating to the details of income and assessment during the relevant period and that he unfortunately passed away and thereby, the petitioner was unable to furnish documents relating to his income tax at the time of giving explanation to the respondent police during investigation and further he was also not able to produce those documents as defence documents during the Trial. The petitioner had further stated that the documents have crucial bearing on the case and if these documents had been taken into consideration, the Trial Court would not have convicted the petitioner. It has been further stated that they are all official documents pertaining to proof of income prior to the registration of the case and are not new documents and that if the petitioner is not allowed to mark them as an additional documents it will cause great prejudice to the petitioner/appellant and thereby, the petition had been filed to record additional evidence on the side of the defence at the stage of appeal.

8. The learned counsel for the petitioner/appellant would submit that documents would prove that the petitioner was engaged in the business of production and distribution of movies and prove that the petitioner was having surplus income by his independent sources. He would further submit that though these documents are relating to assessment orders passed during the years 2002 to 2007, the incomes in those documents pertain to assessment years 1995-1996 and 1997-1998 and that they have crucial bearing on the case. The learned

counsel for the petitioner would submit that the petitioner intends to let in additional evidence through the petitioner himself, one Mr.Solaiappan his Chartered Accountant or his assistant and also to examine the Manager of his firm who was handling the affairs of the firm, which was in the business of production and distribution of feature films.

9. The respondent has not filed any counter.

10. The learned Additional Public Prosecutor would submit that if the petitioner is permitted to let in an additional evidence, it may be subjected to proof and satisfaction of the Court and that the respondent has to be put on advance notice with regard to the admissibility of the documents sought to be marked. He would further submit that the orders passed by the Income Tax Appellate Tribunal have come into existence much belatedly after filing of the charge sheet.

11. At this Juncture, the learned counsel for the petitioner/appellant would submit that the orders are passed by Quasi Judicial Authorities and though they are passed subsequent to the filing of charge sheet, the subject and issue relates to the income earned by the petitioner/appellant in respect of financial and assessment years covered prior to the check period and during the check period in the present case and they have a crucial bearing in this case. He would further submit that in paragraph No.508, the trial Court had arrived at the value of the disproportionate assets at Rs.14,70,574/-, whereas, at paragraph No.533, it had been quantified as Rs.17,04,020/- and there had been discrepancies in the order of the trial Court. Further, at paragraph No.534, the trial Court had held that the petitioner despite being given an opportunity failed to produce documents relating to film distribution business in the name and style of M/s.Chenniappa Enterprises. He would further submit that the case was registered during the year 1996 and the final report was filed much belatedly after ten years. During the relevant period the income tax consultant who was in possession of files relating to the petitioner, passed away unfortunately and thereby, the petitioner was not able to trace those documents so as to give a valid explanation.

12. The learned counsel for the petitioner/appellant would further submit that the documents sought to be marked as additional evidence pertain to income tax Returns filed and the claims made by the Income Tax Department, the appeal filed by the appellant and the orders passed by the Income Tax Appellate Tribunal. The documents are orders passed by quasi judicial authorities and that if the petitioner is not allowed to let in additional evidence, it will cause great prejudice to the accused resulting in miscarriage of justice. He would further submit that these documents are relied on for deciding the known source of income of the petitioner during the check period and the documents are relating to facts which were in existence and are not new documents.

13. Head both sides.

14. I have carefully and consciously gone through the documents filed along with the petition which are sought to be marked as additional evidence.

15. The case of the prosecution is that during the period between 24.06.1991 and 17.05.1993, the petitioner was a Minister for Labour and Education, Government of Tamil Nadu and that during the above said period, the petitioner had acquired and was in possession of movable and immovable assets and properties which were disproportionate to his known source of income. The case had been registered in Crime No.11/AC/96/HQ/V & AC on 05.09.1996 and the final report had been filed on 11.05.2006 almost about ten years after registration of the case. The petitioner had stated that he was the proprietor of M/s.Chenniappa Enterprises, which was engaged in the business of production, distribution and execution of feature films. The petitioner had submitted details, stating that the petitioner had known source of income to the tune of Rs.61,76,517/- and he had also listed corresponding documents to prove that he had income of Rs.61,76,517/-. The petitioner had listed fifteen documents in respect of the above income and to prove that income tax Returns were submitted for the above amounts during the relevant period. All the above documents are relating to the check period which were not placed for consideration before the trial Court. Particularly, document No.10 is the balance sheet of the petitioner for the year ending 31.03.1995. Document No.11 is the receipt of payment for the year ending 31.03.1996. Document No.12 is the balance sheet of the petitioner for the year ending 31.03.1996. Document Nos.13 to 15 pertains to the orders passed by the Commissioner of Income Tax and the Income Tax Appellate Tribunal and as per the petitioner, they are pertaining to income during the check period. The petitioner had also stated the reasons as to why they were not able to be produced during the trial Court.

16. This Court is of the opinion, that the documents have a bearing on the case and further this Court is of the opinion that it is necessary in the interest of justice that the petitioner/appellant should be permitted to adduce evidence, however, subjecting those documents to proof and admissibility.

17. The learned Additional Public Prosecutor would submit that in the event of the petitioner being permitted to adduce additional evidence, the petitioner may be directed to put the respondent on notice with regard to the documents and the petitioner may be directed to furnish copies of the same to verify with regard to the veracity and the genuineness of the documents.

18. In view of the same, the petition is allowed and in accordance with Section 391(2) Cr.P.C, this Court directs, the learned Special Judge/X-Additional Judge, Chennai to record additional evidence in Crl.A.No.283 of 2017 pending on the file of this Court and certify such evidence and send it to this Court. It is made clear that the learned Trial Judge, shall record such evidence after due satisfaction with regard to proof and admissibility of the documents and after putting to the respondents on notice regarding

additional evidence. The process of recording the additional evidence shall be completed on or before 30.07.2019 and the records shall be sent to this Court immediately thereafter. The petitioner shall appear before the said Trial Court on or before 03.06.2019 and the trial Court shall record additional evidence in the presence of the respondent and the Public Prosecutor appearing on behalf of the respondent. The taking of evidence shall be done in due compliance of Section 391(4) Cr.P.C., subject to the provisions of chapter XXIII of Cr.P.C.

19. With the above observations, the Criminal Miscellaneous Petition stands disposed of.

-sd/-
27/04/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SPECIAL JUDGE
X ADDITIONAL JUDGE,CHENNAI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT OF POLICE
VIGILANCE AND ANTI CORRUPTION,
WESTERN RANGE,
DIRECTORATE OF V AND AC,
CHENNAI

+1 C.C. to M/S.MCGAN LAW FIRM Advocate on payment of necessary charges SR.NO. 8996

Order

in
CRL MP.5211/2019

IN CRL.A.NO.283 OF 2017

Date :27/04/2019

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RD 07/05/2019