IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.10.2019
Pronounced on : 25.10.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.926 of 2019 and
Crl.M.P.No.13278 of 2019

A.Maruthachalam ... Petitioner/Accused

Vs.

State Rep. by,
The Inspector of Police,
Vigilance and Anti-Corruption,
Coimbatore.
(Cr.No.3/2008/AC/CB) ... Respondent/Complainant

PRAYER: Criminal Revision is filed under Sections 397 and 401 r/w 482 of Cr.P.C of the Code of Criminal Procedure, to call for the records in Crl.M.P.No.5 of 2016 in Spl.C.C.No.40 of 2011 on the file of the Special Court for trial of Prevention of Corruption Act, Coimbatore to set-aside the order dated 26.07.2019 passed therein by the learned Special Judge, to direct the learned Special Judge to amend or alter the alleged combined charge dated 28.06.2011 framed against the petitioner as per the direction dated 18.11.2015 issued by this Court in Crl.R.C.No.1228 of 2011.

For Petitioner : M/s.C.S.Dhanasekaran
For Respondent : Mrs.M.Prabhavathy,
Additional Public Prosecutor

*****

ORDER

This Criminal Revision has been filed to set-aside the order dated 26.07.2019 in Crl.M.P.No.5 of 2016 in Spl.C.C.No.40 of 2011 passed by the Special Judge, Special Court for trial of Prevention of Corruption Act, Coimbatore to amend or alter the alleged combined charge dated 28.06.2011 framed against the petitioner as per the direction of this Court in Crl.R.C.No.1228 of 2011 dated 18.11.2015.

2.An application has been filed by the petitioner seeking further action based on the order passed in Crl.R.C.No.1228 of 2011, dated 18.11.2005. The brief facts which led to Crl.R.C.No.1228 of 2011 is that originally the petitioner along with his wife Geetha Rani was arrayed as accused in C.C.No.14 of 2008, for the offence under Sections 13(2) r/w 13(2)(e) of Prevention of Corruption Act, 1988 and 109 IPC. Both the petitioner and his wife filed discharge petition under Section 239 Cr.P.C before the trial Court in Crl.M.P.No.516 of 2009, the trial Court by order dated 31.05.2011 discharged the petitioner's wife and dismissed the petition as against the petitioner. Against which, the petitioner preferred Crl.R.C.No.1228 of 2011 before this Court. This Court by order dated 18.11.2015 dismissed the said revision confirming the order passed in C.M.P.No.516 of 2009 dated 31.05.2011 and directed the Court below as follows:-

> "The Court below is strictly directed to the effect that if any combined charge is framed before discharging the second accused, with regard to allegations made against the revision/petitioner/first accused, charge may be suitably altered or amended and proceed with the trial."

3.Based on which, the petitioner filed an application before the trial Court in Crl.M.P.No.5 of 2016 in C.C.No.40 of 2011. The trial Court by order dated 26.07.2019 dismissed the application. Against which the present revision.

4.The revision is against the charges framed against the petitioner on 28.06.2011, which is filed along with the revision. On perusal of the same, it is seen that the trial Court made corrections in charges prepared earlier questioned the petitioner and the charges were framed. The contention of the learned counsel for the petitioner is that this charge was prepared prior to the discharge of the petitioner's wife by the trial Court and the charge is not clear. As per Section 215 of Cr.P.C, there is an error. Due to which, the petitioner was misled.

5.The learned Additional Public Prosecutor appearing for the respondent would submit that there is no error in the charges framed by the trial Court. The charge sheet came to be filed after thorough investigation. The petitioner was given opportunity to explain about the accquisition of properties including properties acquired in the name of his wife, admittedly the petitioner's wife is a house wife. The petitioner has given explanation to all the properties including properties in his wife's name. The explanation report has been filed by the respondent. The details of explanation for statement 1 to 7 is found. Further, it is submitted that the petitioner's wife had been discharged by the Court below on 31.05.2011. In the instant case the petitioner is the principal offender and he has offered his explanation pertaining to the accumulated asset in his name and in the name of his family members. The respondent explanation for not challenging the discharge of petitioner's wife is due to passage of time and possibility of the trial getting delayed and further to accelerate the trial the respondent did not prefer an appeal and proceeded against the petitioner with the available material and evidence.

6.It is also submitted that the petitioner had filed Crl.R.C.No.1228 of 2011 before this Court, challenging the dismissal of his discharge petition in Crl.M.P.No.516 of 2009 by the trial Court. This Court dismissed the revision of the petitioner by order dated 18.11.2015, confirming the finding of the trial Court that the petitioner has not given proper explanation with regard to accusation of disproportionate wealth and further in Special C.C.No.14 of 2008 four prosecution witnesses were already examined. In the meanwhile, the petitioner filed C.M.P.No.401 of 2013 before the trial Court to defreeze the locker and release of jewels. Further, it is submitted that the petitioner is the principal offender and there is no combined charge framed against the petitioner and there is no material error. The trial Court had exonerated the petitioner's wife from the charges. Further the discharge of the petitioner's wife will not change the basic structure of the case and the trial Court had rightly dismissed the petition by giving a well reasoned order.

7.Considering the rival submissions and on perusal of the materials this Court finds that the respondent had produced the certified copy of the charges framed against the petitioner document Nos.60 and 61 in Special C.C.No.40 of 2011. On perusal of the same, it is seen that the document No.60 is the explanation called from the petitioner for the properties held by him in his name and in the name of his family members, document No.61 is the explanation given by the petitioner for the properties in his name and of his family members. In the explanation statement No.2 item 8 to 13 and 15 are the fixed deposit receipts and other investment in the name of the petitioner's wife. The petitioner had given a detailed explanation for his wife transaction. The admitted case of the petitioner is that his wife is a house wife.

8.In view of the explanation given by the petitioner for the investment of his wife, the petitioner is duty bound to give plausible explanation. Now, it is for the petitioner to give explanation for disproportionate assets to the satisfaction of the trial Court. The charges are not misleading and the corrections occasioned does not lead to failure of justice.

9.Further, the case is of the year 2008. So far four witnesses have been examined as could be seen from the order of the lower Court in Crl.M.P.No.5 of 2016 dated 26.07.2019.

10.In view of the above, this Criminal Revision is dismissed. Since, the case is pending for more than 11 years, the trial Court is directed to complete the trial within a stipulated time on a day to day basis, as per Section 4(4) of the Prevention of Corruption Act, 1983. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vv2
To

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

2.The Inspector of Police,
Vigilance and Anti-Corruption,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.S.Dhanasekaran , Advocate SR.No. 89371

Crl.R.C.No.926 of 2019

VGI (CO)
A.SK(25/11/2019)