



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.A. (MD) No.254 of 2019

State Bank of India,
Represented by its
Branch Manager,
Arasaradi Branch,
Somasundaram Colony,
Maduari.

... Appellant/Victom

Vs.

1.K.Thakshinamurthy

... 1st Respondent/Accused No.1

2.N.Shyamala

... 2nd Respondent/Accused No.2

3.State rep. by,
The Inspector of Police,
SPE/CBI/ACB,
Chennai - 600 006.

... 3rd Respondents/Complainant

Prayer: Criminal Appeal is filed under Section 454 (1) of Cr.P.C, to set aside the order of confiscation alone passed by the learned Special Judge for CBI Cases, in the Court of the II Additional District Court, Madurai, passed in enquiry upon the properties confiscated in C.C.No.1 of 2001, by the judgment dated 31.07.2018 and hold that the appellant is entitled for the said properties ordered to be confiscated.

For Appellant

: Mr.M.Karunanithi
For Mr.D.Rameshkumar

For Respondents

: Mr.B.Prahalad Ravi for R1

: Mr.M.Karthikeyavenkatachalapathy
for R2

: Mr.Nagendran
Spl. Public Prosecutor for R3



JUDGMENT

In C.C.No.1 of 2001, the first and second respondents faced prosecution for the offence under Section 109 of I.P.C. r/w Section 13(1)(e) of Prevention of Corruption Act, 1988, and the said case ended in conviction on 28.09.2007, on the file of the learned Special Court for CBI Cases, in the Court of the II Additional District Court, Madurai, and both the respondents were sentenced. The convicted accused filed Crl.A.(MD)Nos.512 and 544 of 2007 before this Court. The appeals were dismissed. Challenging the same, the convicted accused moved the Honourable Supreme Court but the Honourable Supreme Court confirmed the judgment passed by this Court.

2.In the meanwhile, aggrieved by the confiscation of the disproportionate assets in favour of the State, the appellant/Bank filed Crl.A.(MD)Nos.203 and 204 of 2014. The said appeals were allowed by judgment dated 12.04.2017 and the judgment of the learned Trial Judge in respect of the confiscation of the properties in C.C.No.1 of 2001 was set aside. The matter was remitted to the file of the learned Trial Court for fresh consideration. The Trial Court was directed to conduct an enquiry for the confiscated properties in C.C.No.1 of 2001 after giving due opportunity to either side.

3.Thereafter, the learned Special Judge took up the issue regarding confiscation of the properties vide separate proceedings. By order dated 31.07.2018, the learned Special Judge held that there was no need to modify the confiscation order passed earlier. The claim made by the Bank was negatived. Challenging the same, this criminal appeal has been filed.

4.Heard the learned counsel on either side.

5.This Court must necessarily observe that the first and second respondents will not have any *locus standi* to oppose the prayer made by the appellant/Bank. The first respondent's counsel drew the attention of this Court to the order dated 09.10.2014 in Crl.A.Nos.544 and 512 of 2007.

6.This Court must appreciate the fair stand taken by CBI that they are not opposing the request made by the appellant/Bank.

7.It is not in doubt that the first respondent herein was an employee of State of Bank of India. The case of the prosecution is that he swindled the bank fund and with that swindled money, he purchased the property in question. Apart from four cases, he was also slapped with a case of disproportionate assets. This Court while allowing the appeal filed by the Bank had specifically observed in paragraphs 14 as well as 16 of its order dated 12.04.2017, that the confiscated items were acquired by the first and second respondents herein only out of the swindled fund of the



appellant/Bank.

8. Therefore, the properties will have to necessarily go only to the appellant/Bank. The learned Special Judge clearly erred in confiscating them to the State. In this view of the matter, the order impugned in this appeal is set aside and the appeal is allowed. This Court directs that the appellant/Bank is entitled to the confiscated properties.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

Ias

To:

1. The Special Judge for CBI Cases,
II Additional District Court, Madurai.
2. The Inspector of Police,
SPE/CBI/ACB,
Chennai - 600 006.
3. The Special Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.B.PRAHALAD RAVI, Advocate Sr. No.74866
+2CC TO MR.D.RAMESHKUMAR, Advocate Sr. No. 74295

Crl.A. (MD) No.254 of 2019
09.07.2019

DB(CO)

TR (07.08.2019) 3P 7C