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BAIL SLIP:

P.Suyambu, Appellant/Accused No.1 S/o.Pazhathiah Nadar, aged about 54 years Male is released on Bail on 19.10.2011 made in MP(MD)No.1 of 2011 in Crl.A(MD)No.308 of 2011.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.(MD) No. 308 of 2011

P. Suyambu ... Appellant/Petitioner /Accused No.1

Vs.

State through the,
Deputy Superintendent of Police,
SPE:CBI:ACB:Chennai
in R.C. No. 38 of 1998 ... Respondent/Respondent / Complainat

Prayer:- This Criminal Appeal is filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the Judgment and conviction imposed by the trial Court in C.C. No.6 of 2001, dated 22.09.2001, on the file of the Special Judge for CBI Cases, Madurai, and acquit the appellant/accused from the charges levelled against the appellant.

For Appellant : Mr. A.R.L. Sundaresan
Senior Counsel for M.K. Selvaraj

For Respondent : Mr.Nagendran
Special Public Prosecutor
for CBI Cases.

JUDGMENT

The respondent police has registered a case in R.C. No. 38 of 1998 of SPE/CBI/ACB/Chennai against the appellant herein along with three accused, who are their wife and Father-in-law and Mother-in-law of the appellant herein and the same has been taken on file as C.C. No.6 of 2001 on the file of the II Additional District Court for CBI Cases, Madeira. The appellant and the

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other three accused were stood charged for the offences under Sections 120(B) r/w & 13(2) r/w 13(1)(e) of the Prevention of Corruption Act and substantive offences under Section 13(2) r/w 13 (1)(e) of the Prevention of Corruption Act, 1988 and Section 465, 465 r/w 471 of I.P.C., When the appellant and other accused were questioned as to the charges, they pleaded not guilty and therefore, they were put on trial. The learned II Additional Judge for CBI Cases, Madurai, after full-fledged trial, found the appellant herein guilty for the offences under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and 465, 471 r/w 465 of I.P.C., and the other three accused were acquitted under Section 235(1) of Cr.P.C. The appellant was accordingly convicted and sentenced to undergo 1 ½ year Rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months Simple Imprisonment for the offence under Section 13(2) r/w 13(1) (e) of the Prevention of Corruption Act and 3-months Rigorous Imprisonment and to pay a fine of Rs.2,000/-in default to undergo One month Simple Imprisonment for the offence under Section 465 of I.P.C., and 3-months Rigorous Imprisonment and to pay a fine of Rs.2,000/-in default to undergo One month Simple Imprisonment for the offence under Setion 471 r/w 465 of I.P.C., and the said sentences shall run concurrently. Challenging the above said judgment of conviction and sentence, the appellant herein is before this court with this criminal appeal.

2. The case of the prosecution is as follows :

2(i). The appellant was working as Inspector, Central Excise Commissioner Office, Mumbai-III from April 1987 to December 1998. The appellant along with his wife, mother-in-law and father-in-law, during the period between April 1987 and December 1998 at Kanyakumari, Chennai, Mumbai and other places were entered into a criminal conspiracy to do illegal act namely criminal misconduct by the appellant to wit possessing pecuniary resources of property disproportionate to known sources of income of the appellant.

2(ii).The appellant, being a public servant employed as stated during the period between April 1987 and December 1988 acquired assets and pecuniary resources which were disproportionate to the known sources of income and on or about 16.12.1988 the appellant had in possession of pecuniary resources or property in the name of appellant and the other accused which wre disproportionate to the knonw sources of income for which the appellant could not satisfactorily account, that is to say that on 16.12.1988 the appellant was found in possession of assets in his name and in the names of other accused to the extent of Rs.55,28,232/-and the appellant assets at the beginning of check period was Rs.37,473/-and the appellant's income during the check period was Rs.34,68,602/-and the appellant's expenditure was Rs.17,55,808/- and the likely savings would be Rs.17,12,794/-, but

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the appellant acquired assets to the value of Rs.54,90,759/- and hence the appellant were possessing property or pecuniary assets disproportionate to the known sources of income by Rs.37,77,965/-.

3. The prosecution filed a final report by stating that the appellant, during the period from April 1987 to December 1988, the appellant fraudulently and dishonestly opened a fictitious savings bank account No.5104 with the State Bank of Hyderabad, Mumbai in the name of 'A.P. Nadar' which the appellant known to be a fictitious person and the appellant forged the signatures in the account opening form and specimen signature card, credit slip, debit slip etc., and made payment from his account to various persons to acquire assets in his name and in the names of the other accused and also the appellant had forged the signature of various persons in the matter of share applications applied in the name of his wife, father-in-law and other names.

4. On behalf of the prosecution, P.Ws.1 to 89 were examined and Exs.P.1 to P.288 were marked. On behalf of the accused, D.W.1 was examined and Ex.D.1 & D.2 were marked. When the accused were questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, they denied the same as false and incorrect by filing separate written statements. The appellant/1st accused in his written statement has given details as to his income from various sources, besides denying the evidence of some of the prosecution witnesses. But on a consideration of the oral and documentary evidence, the learned II Additional District Judge for CBI Cases, Madurai has convicted the appellant as mentioned above and acquitted the other accused as mentioned above. Aggrieved over the said conviction and sentence, this appeal is preferred by the appellant.

5. The learned Senior Counsel appearing for the appellant made the following submissions:

(a). The Judgment of the learned Judge, CBI, Madurai, dated 22.09.2011 is against the law, facts and circumstances of the case and the trial Court has not properly evaluated the evidence advanced by the defence.

(b). The failure of the prosecution to produce important witnesses and examine them though the Investigation Officer (P.W.89 Sundararajan) admitted that they were examined during investigation and recorded their statements. The witnesses are Dr.Lakshmanan, Sridharan, Proprietor of Jayashree Finance Company, T.Ganesan (D.W.1) and others.

(c). A false representation made to the sanctioning authority to get the sanction order to prosecute the appellant, though the defence has pointed out during the arguments. If the Court took notice, it would not hesitate to hold that the said

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sanction order is a nullity (Ex.P.1).

(d). The unfair investigation undertaken by the investigating agency, though the defence had pointed out the same in the written arguments submitted by the defence besides submitting a case law of the Apex Court.

(e). The serious defects in the investigation as pointed out by the defence only in respect of the accused-2 to 4 to acquit them but is denied the same benefit to the appellant and thus applied different yardsticks.

(f). If any event the reasons assigned by the trial Court for convicting the appellant are unjust, unsound and unsustainable in law and the sentence imposed is not based on legally acceptable evidence.

6. Per Contra, the learned Special Public Prosecutor for CBI Cases appearing for the respondent would content that the prosecution has proved the assets of the appellant through relevant records and therefore, the offence as alleged against the appellant are amply proved by the prosecution.

7. A perusal of the Judgment would show that it contains 113 pages and 15 pages as annexures and thus totally 128 pages. The learned Senior counsel appearing for the appellant would contend that if really the learned II Additional District Judge for CBI Cases, Madurai decided to pass orders in the case only on 22.09.2011, is it humanly possible to type 78 pages on the same day and deliver Judgment after questioning the accused regarding the sentence to be imposed on him and therefore, the learned Senior Counsel would submit that the Judgment against the appellant was already available even before closing of defence witnesses and i.e., on 22.09.2011 when the case was posted for arguments, the learned II Additional District Judge for CBI Cases instead of hearing the arguments, has delivered the judgment which consists of 128 pages which is humanly impossible. Therefore, there is a force in the contention of the learned Senior Counsel that the learned II Additional District Judge for CBI Cases has already made up his mind and prepared the Judgment even before closing of the defence witnesses and thus he would content that justice hurried is justice buried.

8. As regard the contention of the learned Senior counsel, the Investigating Officer has stated that the assets of the appellant is that total income of the family members of the appellant was Rs.34,68,602/- and the total expenditure of the total family members was Rs.17,55,808/- and the value of immovable assets was Rs.27,29,702/- and the total value of immovable assets of the appellant and his family members was Rs.27,48,530/-. Total value was Rs.55,28,232/-. Prior to the check period the value of the property was Rs.37,473/-. The value of the properties, during

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the check period was Rs.54,90,759/-. The savings amount, during the check period was Rs.17,12,794/-. The disproportionate assets value in the name of the appellant and his family members was Rs.37,77,965/-. The disproportionate assets in the name of the appellant and the other accused person is 109%. The evidence of the investigating officer P.W.89 stated that in Annexure-D in the first column domestic expenses at the rate of 30% is mentioned and the 30% made available by statistical authorities which always comes to 30% and he has not filed any documents with regard to this. He further stated that he has ascertained when the appellant joined the custom department and the appellant has joined the service in the year 1982. He has not collected the salary income of the appellant for the period from 1982 to 1987. In Annexure-C it is shown as agricultural income of P.T. Nadar for the year 1987-98 was Rs.4,99,935/-. The above evidence would prove that the appellant was owning assets worth several lakhs i.e., April 1987, commencement of the check period. Thus, the evidence of the investigating officer P.W.89, the father-in-law of the appellant was earned through the agricultural work.

9. In a case of this nature, where allegations are made against the public servant that he had assets disproportionate to the known sources of his income, the duty of the Investigating Officer is as follows:-

(a). The Investigating Officer should assess the value of the assets of the public servant immediately prior to the check period with relevance to the tax returns of the concerned persons and also loans and other incomes available to the person and also about the liability of the person prior to the check period.

(b). The actual income during the check period and the expenditure actually incurred by the public servant should be calculated without any inflation and on a reasonable basis.

(c). The total income during the check period and assets prior to the check period must be taken together as the total assets of the public servant from which the actual expenditure and amounts saved either by cash or by properties must be deducted from the total amount and see whether there is much disproportion to the known sources of income of the public servant and the assetes on his hand. While making the calculation regarding the value of the properties and expenditure a reasonable margin has to be given this way or that way to find out the truth. Such kind of procedure to be adopted only by an unbiased Investigating Officer. There should be no suppression of income or under estimation of the income of the accused or inflation of the expenditure or inflation of the assets of the accused.

(d). The Investigating Officer should not suppress any of the income, by way of loan or gift while considering the income of the public servant.

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(e). Similarly after finding out that there is any disproportionate wealth in hands of the public servant beyond his known sources of income, the accused must be given an opportunity to explain the same. Failure to give an opportunity to the accused to explain the same is fatal to the prosecution.

10. In this case as highlighted by the learned Senior counsel appearing for the appellant, no notice was given to the appellant before prosecuting him to explain with regard to the income in his hands. In support of his contention, he relied on the Order in ***A.P. Pillai and another one Vs.The State represented by, The Inspector of Police, SPE:CBI:ACB:Chennai,*** in 2013(2)L.W.(Crl.)358, where in it is held as follows:

> 6. .....
>
> Though there is no specific procedure contemplated under the provision of Prevention of Corruption Act, normally it is expected that the Investigating Officer, while calling for explanation from the accused, must give notice to the accused in writing along with the statements showing the disproportionate amount and sufficient reasonable time must be given for his explanation. On receiving the explanation in writing and if not given in writing on recording his oral statement if any and thereafter if the Investigating Officer concludes that public servant has not satisfactorily accounted then he may file the final report and not before that.
>
> 7. Though the learned Special Public Prosecutor stated that the case diary should be perused for the purpose of ascertaining whether the Investigating Officer called for explanation orally, this Court feels that it is not necessary since in both the counters filed before the trial Court as well as before this Court, it is stated that an explanation was called for by the Investigating Officer orally only and not in writing. It is imperative on the part of the Investigating Officer to satisfy the Court that he called the public servant to satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.
>
> 8. It is to be held in this case that pre-requisite condition has not been complied by the Investigating Officer that is so as to satisfy himself he called public servant to satisfactorily account. In the said situation, the final report filed by the Investigating Officer against the accused is invalid. Hence, the proceedings against the accused 1 and 2 are liable to be quashed".

11. In Gunjit Singh Vs. The State 1996(4) Crimes 1 the Delhi High Court has held as follows:

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1). In a case under Prevention of Corruption Act documents the original sale agreement and letter of attornment seized by prosecution during investigation. At no stage prosecution doubted or disputed genuineness of any of these documents & rather placed reliance on the same – Public Prosecution had called upon appellant to admit or deny those documents – Documents became authentic & contents thereof became substantive evidence – Observation of trial Court that genuineness of these documents was in doubt was erroneous.

(2). Prevention of Corruption Act, 1947 -Section 5(1)(e) – Prosecution for appellant, an inspecting Assistant Commissioner of Income Tax, in posession of pecuniary resources disproportionate to his known source of income – Documents produced by prosecution amply proved that appellant by entering into sale transaction of his house had received Rs.7,50,000/-as advance – That amount if taken into consideration fully accounted for appellant's income – Trial Corut was in error to conclude that appellant could not substantiate his plea on basis of documents produced by prosecution – Conviction is unsustainable.

(3). The cardinal principles of criminal jurisprudence are (1) that the onus lies affirmatively on the prosectuion to prove its case beyond reasonable doubt and it cannot derive any benefit from correctness or falsity of the defence version by proving its case, (ii). that in a criminal case accused must be presumed to be innocent unless proved guilty, and (iii). That the onus of the prosecution never shits.

12. Now, in this background, the learned Senior counsel appearing for the appellant filed an petition about the Details of Assets of the appellant and on perusal of the same, before that the appellant was working in Foreign mail Office for a year in 1980 (Rs.7,000/-)and also he was working in Bombay Atomic research Centre for a year in 1981-1982(Rs.12,000/-) and the salaries obtained in Central Excise Office before the check period from July 1982 – March 1987 (Rs.77,797.35). So, the sum of Rs.96,797.35 was not at all brought into the account of the appellant as income in the form of salary in Annexure -B. But, the above said fact was not taken into consideration by the Investigating Officer before laying the charge sheet. The investigation has not been done in a proper manner to some how prosecute the appellant. In the circumstances, it is to be held that the prosecution has miserably failed to bring home the guilt of the appellant beyond all reasonable doubts and therefore the appellant is entitled for acquittal.

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13. In the result, this Criminal Appeal is allowed. The appellant is acquitted of the offences charged with. Fine amounts already paid by the appellant shall be returned to the appellant. Bail bonds executed by him shall stand cancelled.

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Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Special Judge for CBI, Madurai.

2. The II Additional District Judge for CBI Cases,
Madurai.

3.The Deputy Superintendent of Police,

S.P.E, CBI, ACB,Chennai.

4. The Special Public Prosecutor for CBI,

Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.K.Muthumalai, Advocate SR.No.44341.

TS(16.07.2019) 8P 6C

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