NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on : 22.11.2019

Order Passed on : 28/01/2020

CR.R. No. 469 of 2019

Shanti Lal Gupta, S/o. Shri Kanhiya Lal Gupta, aged About 64 Years, Sub-Divisional Officer, Irrigation Department, Baikunthpur, Korea Chhattisgarh. M.I.G. -P. 4/87. L.P. Bhargav Nagar, Ujjain (M.P.).

---- Applicant

Versus

State Of Chhattisgarh, Through : Station In-Charge, Economic Offence Wing, Korea Chhattisgarh.

-----Respondent

For Applicant	: Mr. Kishore Bhaduri, Advocate with Mr. Pawan Kesharwani and Mr. Sunny Agrawal, Advocates
For Respondent	: Mr. Devendra Pratap Singh, Dy.A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

28/01/2020

1. This revision petition has been brought challenging the legality, propriety and correctness of the order dated 16.01.2019, passed by the Special Court under Prevention of Corruption Act, Korea in Special Criminal Case No.1/2018 against the petitioner, framing charge under Section 13 (1) (e) read with Section 13 (2) of Prevention of Corruption Act.

2. According to the prosecution case, the petitioner herein, who was a public servant had during the check period from 01.02.1995 to 13.04.2016 amassed wealth disproportionately, the value of which was in excess to his income from lawful sources. The property of value Rs.71,66,480/- were found disproportionate, which is the basis of charge framed against him.

3. It is submitted that an unnumbered FIR was lodged on 22.04.2016 against one Umashankar Ram and not against this petitioner. The said Umashankar Ram has not been charge-sheeted in this case. On the basis of the information received, the premises of the petitioner were raided by the respondent although he was not an accused in the FIR lodged. The date of FIR and the date of issuance of warrant is shown 22.04.2016. Subsequent to that raid party was constituted and raid was conducted on 23.04.2016. The inventory of the articles seized shows that, the petitioner is the person accused, whereas there is no FIR against him.

4. It is further submitted that in the final report prepared, the inventory mentions the article of Serial No.12, 13, 14, 15, which are the expenditure made from the income of the son of the applicant, therefore, this expenditure has been wrongly calculated. In the final report itself it is shown that the petitioner had purchased a house in the year 1995, which was sold by him on 16.05.2015 to one Vineet Gupta on the basis of a written agreement after having received Rs.32.00 lakhs in cash. This cash receipt of the petitioner can not be regarded as unlawful income only because the sale had not been registered. Similarly the calculation on the expenditure of the

education of the children of the petitioner and other expenses are imaginary. The expenditure made by the son has to be separated. Similarly the expenditure, seizure of cash made has to be separated because that cash was the part of the consideration received from the sale agreement of the house. Therefore, the calculation of the disproportionate assets made in the final report is totally erroneous and appears to be intentional to falsely implicate the applicant. Reliance has been placed on the judgment of Supreme Court in ***Sajjan Singh Vs. State of Punjab***, ***AIR 1964 SC 464***, ***Krishnanand Agnihotri Vs. State of M.P., 1977 (1) SCC 816***, ***Akabar Hussain V. State of Jammu & Kashmir & Anr., 2018 (16) SCC 85*** and in case of ***Hemchand Vs. State of Jharkhand, 2008 (5) SCC 113***. It is submitted that the petitioner can not be charged on the basis of the faulty calculation made by the respondent in the final report and the explanation submitted by the petitioner to the respondent during the investigation has not at all been considered. Hence, the framing of charge against the petitioner is erroneous, which is liable to be set-aside.

5. State counsel opposes the petition and the submission made in this respect. It is submitted that the explanation given by the petitioner during the investigation has not been found satisfactory and there is clear allegation that he is the person, who had made all the investment, which have been found to be disproportionate compared to his income from lawful sources. Referring to the judgment of Supreme Court in case of ***Krishnanand Agnihotri Vs. State of M.P.,*** reported in ***1977 (1) SCC 816***, it is submitted that the

verdict of the High Court was given in criminal appeal and not at the stage of framing charge, therefore, it can not be referred to at this stage. It is submitted that what the investigation officer has not considered can be explained to the Court itself in the trial, therefore, looking to the evidence i.e. present in the charge-sheet against the applicant, he is not entitled for any relief.

6. In reply, it is submitted that the addition of income of sale agreement is erroneous, when the respondent had reason to believe that income was lawful. Therefore, the inclusion of this cash amount in the inventory prepared is faulty. Relied on the judgment of Supreme Court in case of ***State of M.P. Vs. Awadh Kishore Gupta***, reported in ***2004 (1) SCC 691***, it is submitted that the accused can explain and declare the source of his income as lawful that should be taken into account. Therefore, investigation officer in this case was bound to take into account the explanation given by the accused, by not doing so he has committed illegality. Hence, the prosecution against the applicant is unlawful. Therefore, it is a case in which fair investigation has not been done for which reliance has been placed on the judgment of Supreme Court in ***Babubhai Vs. State of Gujrat,*** reported in ***2010 (12) SCC 254.***

7. I have heard the learned counsel for the parties and perused the documents placed on record.

8. Considered on the submissions made by the counsel from both the sides. The submissions made on behalf of the petitioner that income of his son has been erroneously included in the calculation prepared in final report needs some consideration. As argued that

the income of son has been erroneously included in the income of the applicant, despite that the calculation shows the expenditure to be excessive to the lawful income including the income of the son of the applicant. As regard the cash income, which finds mentioned in the final report has not been shown in the chart as lawful income of the applicant, however, the cash recovered has been shown on the expenditure part, which is amount of Rs.20.80 lakhs. The amount so shown in the expenditure part of the valuation part is same amount, which the applicant received in the agreement to sale of his house from the purchaser is a matter of fact, which is needed to be established in evidence. Similarly, despite the inclusion of income of son of the applicant, the expenditure is on excessive side and assets found in the possession of the applicant are disproportionate. This again needs to be explained by the applicant and i.e. possible only when the trial takes place. Therefore, I am of this opinion that the learned trial Court has not committed any error in holding that there is prima-facie case against the applicant for framing charges against him.

9. In a result, I do not find any substance in this petition, which is liable to be and it is hereby dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram