IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.08.2020
PRONOUNCED ON : 25.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.11121 of 2020 and
Crl.M.P.No.4551 of 2020

M.Shajahan ... Petitioner

Vs.

State rep. by,
Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
No.4, Ramasamy Nagar,
Kavundampalayam,
Coimbatore. ... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the Crime No.7/2015/AC/CB dated 06.07.2015 on the file of the Deputy Superintendent of Police, Vigilance and Anti Corruption, Coimbatore and quash the same.

For Petitioner : Mr.C.Umashankar

For Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash FIR in Crime No.7/2015/AC/CB, dated 06.07.2015 on the file of the respondent.

2.The petitioner is the accused in Crime No.7/2015/AC/CB, for offence under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988.

3.The case of the prosecution is that the petitioner is now working as Special Sub Inspector of Police, Kinathukadavu Police Station, Coimbatore and formerly, he was Head Constable at Podanur Police Station, Coimbatore District. While serving so, acquired pecuniary resources in his name and in the name of his wife S.Yasmin, which are disproportionate to his known sources of income, during the period from 01.06.2010 to 31.05.2013. A detailed enquiry conducted by the respondent revealed that the petitioner is a native of Coimbatore and hails from a humble family and got married to his material uncle daughter. The wife of the petitioner was running restaurant inside the campus of Karpagam College, Coimbatore. They have three daughters.

4.During the check period, the petitioner was found in possession of pecuniary resources and properties in the form of house sites, deposits in banks, jewels, motor vehicle and etc., to the tune of Rs.24,31,690/- in his name and in the name of his wife as on 01.06.2010 at the beginning of the check period. At the end of check period on 31.05.2013, the possession of pecuniary resources and the properties were to the tune of Rs.1,24,40,694/-. The petitioner gained income from lawful sources such as salary from the Government, income through the sale of jewels, car loan, gift, house rent and interest from bank to the tune of Rs.1,28,25,833/-. The petitioner incurred expenses to the tune of Rs.73,12,606/-. The petitioner had acquired pecuniary resources and properties to the tune of Rs.1,00,09,004/-. From the above, it is seen that the petitioner could have saved Rs.55,13,227/- that is Rs.1,28,25,833 - Rs.73,12,606/- = Rs.55,13,227/-. But, the petitioner had acquired assets in his name and in the name of his wife to the tune of Rs.44,95,777/- in excess of the likely savings, during the check period. Thus, the petitioner had acquired pecuniary resources and found in possession of properties to the tune of Rs.44,95,777/-, which is disproportionate to his known sources of income during the period from 01.06.2010 to 31.05.2013. Hence, a case under Section 13(1)(e) r/w 13(2) of the Prevention of Corruption Act, 1988 came to be registered against the petitioner in Crime No.7/2015/AC/CB.

5.The learned counsel for the petitioner submitted that the FIR has been registered without any formal complaint, though it is mentioned that the information was received by writing. The FIR was filed based on surmises and conjectures that too on imaginary allegation. The check period in this case is June 2010 to July 2013 and the FIR was registered on 06.07.2015, after a delay of two years. He further submitted that the respondent without considering the fact that all the income and expenditure along with assets were shown in the Income Tax returns and audited periodically, registered a case against the petitioner.

6.The learned counsel for the petitioner further submitted that there is nothing found in the FIR about the explanation given by the petitioner and his wife with regard to the properties owned by them. The petitioner's wife is from a wealthy family and she has her own income from her own business and she is also getting rental income, which is shown in Income Tax returns. Thus, without considering these facts, the respondent mechanically registered the FIR. The assets, which was purchased and owned by the petitioner and his wife are legally permissible, as such filing of FIR is not lawful in the legal sense. Due to filing of FIR, the promotional chances of the petitioner has been stalled and he has been made to look small in the eyes of society.

7.It is further submitted that on receipt of the Final Opportunity Notice, the petitioner and his wife gave individual explanations dated 24.05.2019 to the respondent. In the explanation of the petitioner's wife dated 24.05.2019, she mentioned the Jewel Loan from M/s.Syndicate Bank, Kalapatty Branch, Coimbatore, Loan obtained from M/s.Sri Ram Chits, Coimbatore, Loan obtained from M/s.Meenakshi and Company, amount received from her mother through Dhana Settlement, dated 01.08.2011, rental advance amount received from tenants and lease advance received from one Ranganathan, which all worked to Rs.83,95,000/-, which were not considered by the respondent. Further, the learned counsel for the petitioner in support of his contention filed Income Tax returns and statement of bank account of the petitioner's wife. The petitioner's wife is an independent person as per the Tamil Nadu Police Subordinate Service Conduct Rules, 1964, the petitioner is entitled to acquire properties from the income received on her own, for which no prior intimation is required. The learned counsel for the petitioner further submitted that the petitioner's wife was running catering business is admitted by the respondent. The income from the catering business and the rental income on the property settled by the petitioner's mother-in-law to his wife, were not properly taken into account by the respondent. The Government of Tamil Nadu by G.O.(3D)No.23, Home (Police VI) Department, dated 07.04.2020, only recommended for departmental action against the petitioner/accused officer. In view of the same, the continuation of investigation and further proceedings would amount to abuse of process of law and prayed for quashing of FIR.

8.The learned Additional Public Prosecutor appearing for the respondent submitted that in this case, the FIR against the petitioner for disproportionate assets, was registered, after following the rules and procedures. He further submitted that during investigation, statement of the witnesses recorded, materials collected against the petitioner. On verification of the same, it came to light that the petitioner had acquired properties in his name and in the name of his wife. Thereafter, Final Opportunity Notice was issued to the petitioner as well to his wife along with Statement-I (Assets at the commencement of the check period i.e., as on 01.04.2008, Statement-II (Assets at the end of the check period i.e as on 31.05.2013), Statement-III (Income from known sources during of the check period i.e., from 01.04.2008 to 31.05.2013, Statement-IV (Expenditure during the check period i.e., from 01.04.2008 to 31.05.2013, Statement-V (Value of the assets acquired during the check period i.e., from 01.04.2008 to 31.05.2013, Statement-VI (Likely savings during the check period i.e., from 01.04.2008 to 31.05.2013. On receipt of the Final Opportunity Notice, both the petitioner and his wife sent explanation and the same were considered. Since the explanations given were not satisfactory, the respondent registered a case against the petitioner. Thereafter, on completion of investigation, now charge sheet is filed before the concerned Jurisdictional Court on 18.08.2020.

9.The learned Additional Public Prosecutor further submitted that both the petitioner as well as his wife hail from a middle class family. The wife of the petitioner is none other than the petitioner's maternal uncle's daughter. The petitioner was in possession and acquired pecuniary resources and properties to the tune of Rs.44,95,777/-. He further submitted that since charge sheet is filed in Crime No.7/2015/AC/CB on 18.08.2020 before the concerned Court, he prayed for dismissal of the petition.

10.This Court considered the rival submissions and perused the materials available on record.

11.The FIR in Crime No.7/2015/AC/CB came to be registered on 06.07.2015 against the petitioner for offence under Section 13(2) r/w 13(i)(e) of the Prevention of Corruption Act, 1988. During the check period, the petitioner was in possession and acquired pecuniary resources and properties to the tune of Rs.44,95,777/-. During investigation, statements of witnesses were recorded, documents were collected, issued Final Opportunity Notice to the petitioner and his wife, received the explanation along with annexing documents. From the explanation, it is seen that the petitioner's wife claimed income through jewel loan from M/s.Syndicate Bank, Kalapatty Branch, Coimbatore, loan from M/s.Sri Ram Chits, Coimbatore, loan obtained from M/s.Meenakshi and Company, amount received from her mother through Dhana Settlement dated 01.08.2011, rental advances received from the tenants, lease advance amount received from one Ranganathan, totally to the tune of Rs.83,95,000/-, which were not considered by the respondent. Further, the petitioner's wife had also annexed the Income Tax returns and bank statements along with the explanation. The respondent, on considering the explanation offered by the petitioner, fixed the check period from 01.06.2010 to 31.05.2013.

12.Not completely satisfied with the explanation offered by the petitioner and his wife, the respondent found the petitioner was in possession of disproportionate assets to the tune Rs.57 lakhs, which is 54% more than the assets, he can acquire and hold. Hence, the respondent filed the charge sheet before the concerned Court on 18.08.2020. The petitioner is to now face the trial before the trial Court and to give explanation.

13.In the result, the Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is closed.

14.It is made clear that the observations and findings recorded in this order is only for the purpose of disposal of this quash petition. It is open for the trial Court to decide the case on its own merits, uninfluenced by this order.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
No.4, Ramasamy Nagar,
Kavundampalayam,
Coimbatore.

2.The Public Prosecutor,
High Court, Madras.

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