IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.12.2020

PRONOUNCED ON : 18.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.R.C. Nos. 907, 1025, 1026 and 1104 to 1109 of 2020 and connected Crl.M.Ps

M.Gopinath	A.1/Petitioner in Crl.R.C.907/20
Vijayakumar	A.7/Petitioner in Crl.R.C.1025/20
M.Ganesan	A.3/Petitioner in Crl.R.C.1026/20
R.Prasad	A.6/Petitioner in Crl.R.C.1104/2020
Ramasubramaniam	A.8/Petitioner in Crl.R.C.1105/20
M.G.Surendranath	A.5/Petitioner in Crl.R.C.1106/20
T.Chinnadurai	A.4/Petitioner in Crl.R.C.1107/20
Rani Gopinath	A.2/Petitioner in Crl.RC.No.1108/2020
Prabhu	A.9/Petitioner in Crl.R.C.1109/20

vs.

State rep. By
The Additional Superintendent of Police
SPE:CBI:ACB, Shastri Bahavan
3rd Floor, No.26, Haddows Road
Chennai 600 006. Respondent in all Crl.R.Cs.

Prayer in Crl.R.C.No.907 of 2020: Criminal Revision filed under Section 397 read with 401 Cr.P.C. seeking to call for the records and set aside the impugned order dated 04.08.2020 passed in Crl.M.P.No.4031 of 2018 in C.C.No.29 of 2017 by the XIV Additional Special Judge for CBI Cases, FAC XII Additional Special Court for CBI Cases, Chennai and discharge the petitioner from the above case.

Prayer in Crl.R.C.No.1025 of 2020: Criminal Revision filed under Section 397 read with 401 Cr.P.C. seeking to call for the records and set aside the impugned order dated 04.08.2020 passed in Crl.M.P.No.4037 of 2018 in C.C.No.29 of 2017 by the XIV Additional Special Judge for CBI Cases, FAC XII Additional Special Court for CBI Cases, Chennai and discharge the petitioner from the above case.

Prayer in Crl.R.C.No.1026 of 2020: Criminal Revision filed under Section 397 read with 401 Cr.P.C. seeking to call for the records and set aside the impugned order dated 04.08.2020 passed in Crl.M.P.No.4033 of 2018 in C.C.No.29 of 2017 by the XIV Additional Special Judge for CBI Cases, FAC XII Additional Special Court for CBI Cases, Chennai and discharge the petitioner from the above case.

Prayer in Crl.R.C.No.1104 of 2020: Criminal Revision filed under Section 397 read with 401 Cr.P.C. seeking to call for the records and set aside the impugned order dated 04.08.2020 passed in Crl.M.P.No.4036 of 2018 in C.C.No.29 of 2017 by the XIV Additional Special Judge for CBI Cases, FAC XII Additional Special Court for CBI Cases, Chennai and discharge the petitioner from the above case.

Prayer in Crl.R.C.No.1105 of 2020: Criminal Revision filed under Section 397 read with 401 Cr.P.C. seeking to call for the records and set aside the impugned order dated 04.08.2020 passed in Crl.M.P.No.4038 of 2018 in C.C.No.29 of 2017 by the XIV Additional Special Judge for CBI Cases, FAC XII Additional Special Court for CBI Cases, Chennai and discharge the petitioner from the above case.

Prayer in Crl.R.C.No.1106 of 2020: Criminal Revision filed under Section 397 read with 401 Cr.P.C. seeking to call for the records and set aside the impugned order dated 04.08.2020 passed in Crl.M.P.No.4035 of 2018 in C.C.No.29 of 2017 by the XIV Additional Special Judge for CBI Cases, FAC XII Additional Special Court for CBI Cases, Chennai and discharge the petitioner from the above case.

Prayer in Crl.R.C.No.1107 of 2020: Criminal Revision filed under Section 397 read with 401 Cr.P.C. seeking to call for the records and set aside the impugned order dated 04.08.2020 passed in Crl.M.P.No.4034 of 2018 in C.C.No.29 of 2017 by the XIV Additional Special Judge for CBI Cases, FAC XII Additional Special Court for CBI Cases, Chennai and discharge the petitioner from the above case.

Prayer in Crl.R.C.No.1108 of 2020: Criminal Revision filed under Section 397 read with 401 Cr.P.C. seeking to call for the records and set aside the impugned order dated 04.08.2020 passed in Crl.M.P.No.4032 of 2018 in C.C.No.29 of 2017 by the XIV Additional Special Judge for CBI Cases, FAC XII Additional Special Court for CBI Cases, Chennai and discharge the petitioner from the above case.

Prayer in Crl.R.C.No.1109 of 2020: Criminal Revision filed under Section 397 read with 401 Cr.P.C. seeking to call for the records and set aside the impugned order dated 04.08.2020 passed in Crl.M.P.No.4039 of 2018 in C.C.No.29 of 2017 by the XIV Additional Special Judge for CBI Cases, FAC XII Additional Special Court for CBI Cases, Chennai and discharge the petitioner from the above case.

For petitioner in all Crl.R.C.s : Mr. A. Ramesh, Senior Counsel for Mrs.Nidhin K.Mookamkavil and Mr. N. Jayachander

For respondent in all Crl.R.Cs. : Mr. K. Srinivasan Spl. Public Prosecutor for CBI Cases

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COMMON ORDER

Though these criminal revisions have been preferred by A.1 to A.9 calling into question, the legality and validity of the dismissal of their discharge applications by the trial Court vide separate orders of even date, viz., 04.08.2020, yet, inasmuch as all the instant criminal revisions emanate from the same FIR and charge sheet, they are considered and decided by this common order.

2 The facts in a nutshell leading to the institution of the present batch of revisions, are as under:

2.1 Gopinath (A.1) joined as Assistant Chief Controller of Imports and Exports in 1988 and retired as Joint Director General of Foreign Trade on 30.07.2015. On source information that he had amassed wealth disproportionate to his known source of income during his tenure, the CBI registered an FIR in Cr.No.36 of 2014 on 22.08.2014, a year before his retirement.

2.2 After the FIR was registered for the offences under Section 120-B IPC and Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 (for brevity "the PC Act") for having acquired assets disproportionate to his known sources of income against Gopinath (A.1), his wife Rani (A.2), his brother Ganesan (A.3), his brother-in-law Chinnadurai (A.4), the CBI conducted searches in the lockers in Sakthi Finance and seized Rs.1 crore from one locker and Rs.2.08 crores from another locker.

2.3 After completing the investigation, the CBI filed a final report in C.C. No.29 of 2017 in the Special Court for CBI

Cases, Chennai, for the offences under Sections 120-B and 109 IPC and Section 13(2) read with Section 13(1)(e) of the PC Act against 14 accused, viz., Gopinath (A.1), Rani (A.2), Ganesan (A.3), Chinnadurai (A.4), Surendranath (A.5 – son of A.1), Prasad (A.6 – employee of A.2), Vijayakumar (A.7 – employee of A.2), Ramasubramaniam (A.8 – Chartered Accountant), Prabhu (A.9 – employee of A.2), R.G. Agri Exports Private Ltd. (A.10 – in which A.2, A3 and A.4 are Directors), Coromandel Cables Pvt. Ltd. (A.11 – in which A.2 to A.4 are Directors), Rose Agro Farms Pvt. Ltd. (A.12 – in which A.4 is the Managing Director), R.G.Housing and Infra Pvt. Ltd. (A.13 in which A.2 and A.5 are partners) and R.G. Minerals & Metals Pvt. Ltd. (A.14 in which A.2 and A.5 are partners).

2.4 It is further alleged in the final report that apart from the above 14 accused, there are two other proprietary concerns viz., R.G. Construction and R.G. Travels for which Rani (A.2) is the Proprietrix. The check period in this case is 01.01.2004 to 25.08.2014.

2.5 From statement 'A, Statement 'B', Statement 'C' and Statement 'D', it is seen that the value of disproportionate assets for which Gopinath (A.1) was not able to account for, has been arrived at Rs.27,48,83,214/- (Rupees twenty seven crores, forty eight lakhs, eighty three thousand and two hundred and fourteen only). A bird's eye view of the calculation arrived at by the CBI is as under:

1	Assets at the begining of the check period as per Statement "A"	62,13,163
2	Assets at the end of check period as per Statement "B"	24,00,95,823
3	Asset acquired during the check period	23,38,82,660
4	Income during the check period as per Statement "C"	2,43,25,098
5	Expenditure during the check period as per Statement "D"	28,12,51,552
6	Disproportion	27,48,83,214
7	D.A.Percentage	113%

Calculation of Disproportionate Assets

E = [(B-A + D]-C

E/C x 100 = %

(B-A) =240095823-6213163 =233882660

E	= [(B-A + D]-C	
(B-A)+D	=233882660+284251552	=518134212
(B-A)+D)-C	=518134212-243250998	=274883214
E/C x 100	=274883214/243250998 x100	=113%"

2.6 The accused appeared before the trial Court, collected the documents under Section 207 Cr.P.C. and filed 9 petitions under Section 239 Cr.P.C. for discharging them from the prosecution.

2.7 The C.B.I. filed their counter and after hearing either side, the trial Court has, by separate orders in each petition, dismissed them on 04.08.2020.

2.8 Aggrieved by the dismissal of their discharge applications, A.1 to A.9 have preferred the instant revisions invoking Section 397 read with Section 401 Cr.P.C.

3 Heard Mr. A. Ramesh, learned Senior Counsel representing Mrs.Nidhin K. Mookamkavil, learned counsel representing Mr.N.Jayachander, learned counsel on record for the petitioners and Mr.K.Srinivasan, learned Special Public Prosecutor appearing for the CBI.

4 Mr. A. Ramesh, besides attacking the trial Court's order, placed additional typed set of papers and facts before this Court in support of his plea for discharging the accused from the prosecution. This Court perused the petitions filed by the accused under Section 239 Cr.P.C. before the trial Court. Be it noted that the points argued by Mr. A. Ramesh before this Court did not find a place in the discharge petitions filed before the trial Court.

5 Though the scope of an enquiry under Section 397 read with Section 401 Cr.P.C. is only to find out if there is any illegality or impropriety or incorrectness in the order of the lower Court, this Court did not curtail the submissions made across the Bar nor refused to receive additional records submitted on behalf of the accused, because, this Court has the power under Section 482 Cr.P.C. also to see if the allegations levelled against the accused fall within the parameters of the law laid down by the Supreme Court for quashing a prosecution. In fact, in Amit Kapoor vs. Ramesh Chander and another[1], the Supreme Court has clearly laid down the norms for exercise of the revisional powers as well under Section 482 Cr.P.C.

1 (2012) 9 SCC 460

"13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the CrPC.

27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge."

Of course, the law relating to discharge of an accused or for quashing a prosecution are a legion and it may not be necessary to refer to all the cases and make this order verbose.

6 A thorough reading of the individual impugned orders passed by the trial Court shows that the trial Judge has considered not only the paltry points raised by the accused in their discharge applications, but also the grounds raised by the accused in their written arguments to the Court and has assigned reasons for rejecting them. It must be borne in mind that while dealing with a discharge application, the trial Court is not required to give any finding on facts, because, at that stage, evidence is yet to be adduced.

7 Further, this Court, in exercise of revisional jurisdiction, cannot sit in appeal over the reasons assigned by the trial Judge in the impugned orders, because, in Bir Singh vs. Mukesh Kumar[2], the Supreme Court has held thus:

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457], it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is therefore, in the negative."

8 Mr. A.Ramesh's first contention is that Gopinath (A.1) was subjected to a witch-hunt during his tenure, inasmuch as, 6 cases were registered against him previously and action were dropped and the present case, which is the seventh case, is accentuated by malice and therefore, it requires to be quashed.

9 The second contention of Mr.A. Ramesh is that the CBI relied upon the income tax returns of the accused only in part and not in their entirety; had they relied upon the income tax returns filed by the accused in their entirety, they would have found explanation for the words "acquisition by the accused" and even the trial Court had failed to look into this aspect and

2 (2019) 4 SCC 197

therefore, this Court has to refer to the income tax returns filed by the accused in their entirety. In support of this contention, Mr.Ramesh relied upon the judgments of the Supreme Court in State of Andhra Pradesh vs. J.Satyanarayana[3] and Kedari Lal vs. State of Madhya Pradesh and others[4].

10 Garnering support from the Division Bench judgment of the Orissa High Court in Janaki Ballav Patnaik vs. State of Orissa[5], Mr.Ramesh's third contention is that the failure of the prosecution to take into consideration the independent income of the wife of the accused therein, had resulted in the discharge of the former Chief Minister of Orissa J.B.Patnaik from a disproportionate assets case.

11 Relying on the judgment of the Supreme Court in Krishnanand Agnihotri vs. The State of Madhya Pradesh[6], DSP, Chennai vs. K.Inbasagaran[7] and M. Krishna Reddy vs. State Deputy Superintendent of Police, Hyderabad[8] and the judgment of the Gauhati High Court in Ananda Bezbaruah vs. Union of India[9], the fourth contention of Mr. Ramesh is that if it is the case of the prosecution that the co-accused were benamidars, the burden is on the prosecution to prove that fact and that the presumption under Section 20 of the PC Act will be of no avail to the prosecution.

12 Next, Mr. Ramesh placed reliance on the judgment of the Supreme Court in State of M.P. vs. Mohanlal Soni[10] to drive home the point that the Income Tax returns should have been accepted by the CBI, because, they were not filed belatedly, but were being filed annually in compliance with the Income Tax Rules.

13 As regards Rani (A.2), Mr. Ramesh contended that she is an Engineer and has been doing business independently on her own and had filed income tax returns for the same and thus, she is a separate entity by herself and it is not necessary for Gopinath (A.1), a public servant, to disclose his wife's earnings to the Government when she is not a dependent on him; further, she had shown in her income tax returns that she has availed unsecured loans of around Rs.8 crores and also a loan of Rs.5 crores from REPCO Bank, which the CBI did not take into account; that apart, as per Rule 18 of the Central Civil

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Services Conduct Rules, a Government servant need not disclose his wife's earnings to the Government.

14 Coming to Chinnadurai (A.4), Mr. Ramesh contended that a sum of Rs.6 crores has not been added in his total income.

15 With regard to Surendranath (A.5), son of Gopinath (A.1) and Rani (A.2), Mr. Ramesh contended that the Benz car was purchased by Surendranath (A.5) availing a loan from State Bank of India which has not been given credit by the CBI. He also took this Court through the provisions of the Income Tax Act to contend that the income of the partners of a partnership firm has to be distinctly calculated.

16 As regards Ramasubramaniam (A.8), it is Mr. Ramesh's contention that he is the Chartered Accountant of the family and that for the sin of having opened the bank locker jointly in the name of the co-accused, he has been implicated without anything more, inasmuch as, there is no record to show that he had opened the lockers in Sakthi Finance, Chennai.

17 With regard to A.10 to A.14, Mr. Ramesh contended that they are juristic persons and they cannot be brought under the net of conspiracy or abetment, because, they do not have mind like natural persons and therefore, their prosecution is illegal.

18 Per contra, Mr. Srinivasan refuted the aforesaid submissions seriatim and placed reliance on the following judgments in support of his contentions:

- State of Karnataka vs. J. Jayalalitha and others[11];
- Iridium India Telecom Ltd. Vs. Motorola Incorporated and Others[12];
- Sunil Bharti Mittal vs. Central Bureau of Investigation[13]; and
- Amit Kapoor vs. Ramesh Chander and another (supra).

19 Before adverting to the submissions urged by Mr. Ramesh, it may be necessary to recount the development of law relating to accumulation of wealth in the name of others by a public servant. Prior to the judgment of the Supreme Court in P. Nallammal and another vs. State[14] , the general view was only that a public servant can be prosecuted for a disproportionate assets case and not a non-public servant. In P.Nallammal (supra), the Supreme Court broke the myth into smithereens with

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illustrations and held that a non-public servant can also be made a co-accused with the public servant with the aid of Section 107 IPC. Therefore, post P.Nallammal (supra), the line of investigation changed and non-public servants, including relatives and friends of the public servant who were found lending their names for the public servant to protect his ill-gotten wealth, started facing the music.

20 Coming to the argument with regard to registration of six previous cases against Gopinath (A.1) and their closure and that the present case is accentuated by ulterior motives, malice is a question of fact and cannot be looked into by this Court while exercising powers in a revision under Section 397 Cr.P.C. or in a petition under Section 482 Cr.P.C., as held by the Supreme Court in State of Bihar vs. P.P. Sharma[15] as under:

> "59. Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power. Malice in law is not established from the omission to consider some documents said to be relevant to the accused. Equally reporting the commission of a crime to the Station House Officer, cannot be held to be a colourable exercise of power with bad faith or fraud on power. It may be honest and bona fide exercise of power. There are no grounds made out or shown to us that the first information report was not lodged in good faith. State of Haryana v. Ch. Bhajan Lal [1992 Supp (1) SCC 335 : JT 1990 (4) SC 650] is an authority for the proposition that existence of deep seated political vendetta is not a ground to quash the FIR. Therein despite the attempt by the respondent to prove by affidavit evidence corroborated by documents of the mala fides and even on facts as alleged no offence was committed, this Court declined to go into those allegations and relegated the dispute for investigation. Unhesitatingly I hold that the findings of the High Court that FIR gets vitiated by the mala fides of the Administrator and the charge-sheets are the results of the mala fides of the informant or investigator, to say the least, is fantastic and obvious gross error of law."

The fact that six times cases were registered against Gopinath (A.1) itself shows that he came in the radar of suspicion, but, perhaps managed to escape providentially. However, luck did not favour him on the seventh occasion, because, the total value of properties that has been unearthed by the CBI appears to be mind-boggling.

21 According to Mr. Ramesh, Rani (A.2) was an entrepreneur in her own right. But, Rani (A.2) appears to be in almost every

15 1992 Supp. (1) SCC 222

business activity, in that, she is into construction, travels, housing, minerals, farms, cables, exports, etc. But, the CBI has submitted the title deeds relating to 167 immovable properties that stand in the name of A.2 to A.12 and A.14. That apart, when the lockers in Sakthi Finance were searched, two lockers were in the name of Surendranath (A.5) and the Chartered Accountant Ramasubramaniam (A.8), from where, a sum of Rs.1 crore was seized. Had Ramasubramaniam (A.8) confined himself to his profession in auditing the accounts of Rani (A.2), he would not have been roped in. What is the need for a qualified professional to go out of the call of his duty to lend his name in the opening of two lockers along with the co-accused from where a sum of Rs.1 crore was seized. From yet another locker standing in the name of Prabhu (A.9), employee of Rani (A.2), along with Surendranath (A.5) and Ramasubramaniam (A.8), a sum of Rs.2.08 crores was seized.

22 In the written argument, the accused sought to explain these seized amounts by saying that they were sale considerations that were received prior to demonetization and were kept in safe custody in the locker. This Court does not want to comment on this submission, because, it may have ramification in the case of the accused in trial.

23 It is true that the income tax returns should not be just like that rejected, especially when the accused had filed them annually. However, it is the specific case of the CBI that the firms A.10 to A.14 were only smokescreen to protect the ill-gotten wealth of Gopinath (A.1) and in order to regularize the ill-gotten wealth, the accused had submitted their income tax returns as if the entities had had business transactions and earned money. It may be relevant to state here that the address of four entities, viz., A.10, A.11, A.13 and A.14 has been shown as “A-7, VI Cross Street, Indira Nagar, Adyar, Chennai”. The CBI has recorded the statement of one Selvakumar, S/o Subramaniam (L.W.75) who has stated that in the plot at No.A-7, VI Cross Street, Indira Nagar, Adyar, Chennai, there are boards of some construction and travel companies displayed, but, there is no activity at all and it would remain locked always. In the teeth of this statement and combined with other attendant circumstances of the case, there are prima facie materials to show that the family members of Gopinath (A.1), employees and Chartered Accountant of Gopinath (A.1) had floated shell companies to launder the ill-gotten wealth of Gopinath (A.1).

24 The fact remains that Gopinath (A.1) has not disclosed the acquisition by his wife in his annual property returns to the Government for which Mr. Ramesh contended that it was not necessary to disclose as the other accused had independent sources of income which were assessed to income tax and were not

dependent on Gopinath (A.1). In support of this contention, Mr. Ramesh relied upon the letter dated 29.01.2015 addressed by Gopinath (A.1) to the Deputy Director General of Foreign Trade (Vigilance) asking him for clarification of the definition of the term "dependents" under the Service Rules as applicable to Grade "A" officers under the Government of India. In reply, a letter dated 07.04.2015 has been addressed to Gopinath (A.1), wherein, it has been stated as follows:

> "(i) 'dependent' - The officer is required to furnish the details in I to VI statements in respect of his family members, viz., spouse, sons, daughters, parents and any other relative, who is dependent upon him."

25 On the strength of this exchange of correspondence, Mr.Ramesh wants this Court to hold that the non-disclosure of the income earned by Rani (A.2) and other family members of Gopinath (A.1) in the annual returns is not fatal. This argument is tantamount to missing the wood for the trees, for, the CBI has recorded the statement of one Nirmal Kumar, S/o A.M. Singh, Deputy Director General of Foreign Trade, who has stated as follows:

> "As per the records, available Shri Gopinath JDGFT has neither intimated nor obtained permission for engagement of his dependent (wife, son and daughter) in business.
>
> Shri M.Gopinath has not yet submitted statement of assets and liabilities under Rules framed u/s 44,45 of Lokpal & Lokayuktas Act 2013 and last date for filing these returns is 15/10/2015.
>
> Earlier I had forwarded the certified copies of pay particulars and other documents to CBI vide my letter dt.29/05/2015.
>
> Read over and admitted as correct."

26 Thus, it appears that Gopinath (A.1) has not even informed the fact that his wife was not a dependent on him and that she is an entrepreneur on her own right. This is only an incriminating circumstance and not a proof of corruption. If the CBI is able to prove in the trial that there were actually no business activities in the entities floated by the family members of Gopinath (A.1), then, the fact that those entities had filed income tax returns, etc., would fall like a pack of cards. Therefore, in the teeth of the statement of Nirmal Kumar and Selvakumar, an opportunity should be given to the CBI in the

trial to establish that all these business entities, viz., A.10 to A.14 are only letter pad concerns and a finding that they are lawful business entities cannot be given by this Court in a revision under Section 397 Cr.P.C. or in a petition under Section 482 Cr.P.C.

27 Both sides relied upon various passages in the judgment of the Supreme Court in J. Jayalalitha (supra) in support of their respective contentions on the acceptability or otherwise of income tax returns. Mr.Ramesh contended that in J. Jayalalitha (supra), the Income Tax returns were submitted after the FIR was filed, whereas, in this case, the situation is different. In J. Jayalalitha (supra), the Supreme Court has adverted to the ruling in State of Tamil Nadu vs. Suresh Rajan[16] and has observed as under:

> "195. In State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721], the allegation against the respondent, who was the Minister of Tamil Nadu was acquisition of pecuniary resources and properties in his name and in the names of his family members, and friends, disproportionate to the known sources of income. Charge of abetment was also levelled against the family members and friends. Charge-sheet was submitted under Section 109 IPC read with Sections 13(1)(e) and 13(2) of the 1988 Act. All of them were discharged by the High Court.
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> 196. This Court ruled that the fact that the accused, other than the two Ministers, had been assessed to income tax and had paid income tax could not have been relied upon to discharge the accused persons in view of the allegation made by the prosecution n that there was no separate income to amass such huge property. It was underlined that the property in the name of the income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee and that if this proposition was accepted, it would lead to disastrous consequences. This Court reflected that in such an eventuality it will give opportunities to the corrupt public servant to amass property in the name of known person, pay income tax on their behalf and then be out from the mischief of law."

28 Though no separate revision petitions have been preferred by A.10 to A.14, Mr. A. Ramesh advanced arguments even for them and submitted that being juristic entities, they do not have mind of their own. This issue is no longer res integra in the light of the authoritative pronouncement of the Supreme

16 (2014) 11 SCC 709

Court in Iridium (supra). In the case at hand, the mastermind of A.10 to A.14 were Rani (A.2), Chinnadurai (A.4) and Surendranath (A.5). These individuals have also been individually arrayed as accused and they are also the brain of the juristic persons, inasmuch as, the properties were purchased in the name of the juristic persons. Thus, there are prima facie materials against A.10 to A.14 also for framing of charges and hence, they can neither be discharged nor the proceedings against them be quashed.

29 The allegation against the employees, viz., Prasad (A.6) and Vijayakumar (A.7), was that they were the power agents for maintenance of the properties that were purchased by Rani (A.2) and they have signed several documents on her behalf. Prabhu (A.9), another employee of Rani (A.2), is one of the co-operators of the locker bearing no.2516 along with Surendranath (A.5) and Ramasubramaniam (A.8) in Sakthi Finance, Chennai, from where, a sum of Rs.2.08 crores was seized in cash. Thus, in the teeth of such overwhelming materials available on record for more than a prima facie case against the accused, they can neither be discharged from the prosecution nor the prosecution against them be quashed.

30 It appears that none of the accused in this case has been arrested and they have been playing all tricks under the sun to prolong the case from 2017 to till date. Further, they were also not released on bail by the trial Court on their appearance nor bond obtained from them.

31 In such perspective of the matter, the trial Court is directed to obtain a bond for Rs.25,000/- with two sureties each from A.1 to A.9 under Section 88 Cr.P.C. It is made clear A.1 to A.9 shall cross-examine the witnesses on the day they are examined in chief without adopting any dilatory tactics as directed by the Supreme Court in Vinod Kumar vs. State of Punjab[17]. If they adopt any dilatory tactics, they shall be remanded in custody as held by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh[18].

Resultantly, all the criminal revisions stand dismissed as being devoid of merits. Connected Crl.M.Ps. are closed.

Sd/-
Asst.Registrar (CCC)
/true copy/
Sub Asst. Registrar

cad

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17 (2015) 3 SCC 220
18 2000 AIR SCW 1335

To

1 The Additional Superintendent of Police
SPE:CBI:ACB
Shastri Bahavan
3rd Floor, No.26, Haddows Road
Chennai 600 006

2 The Specail Public Prosecutor for CBI Cases
Madras High Court
Chennai 600 104

Copy to
The Section Officer
Criminal section
High Court, Madras

+5 ccs to Mrs.Nidhin K.Mookamkavil Advocate sr42302 to 42305 & 42524
+4 ccs to Mr.N.Jayachander Advocate sr42298 to 42301

Common order in
Crl.R.C. Nos. 907, 1025, 1026
and 1104 to 1109 of 2020

mp(co)
aa17/02/2021