BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT
Reserved on : 09.12.2020
Pronounced on : 11.12.2020
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
Crl RC (MD) No.524 of 2020
and
Crl MP(MD)Nos.4676 & 4677 of 2020

J.Amala Jessi Jacquilin ... 1st Petitioner/1st Accused

S.Rajeswaran ... 2nd Petitioner/2nd Accused

Vs.

State, rep.by
the Inspector of Police,
Vigilance and Anti Corruption,
Nagercoil, Kanyakumari District.
(Crime No.7 of 2012) ... Respondent / Complainant

Prayer : This Criminal Revision Case is filed under Section 397 & 401 of the Criminal Procedure Code, to set aside the order passed by the learned Special Judge/Chief Judicial Magistrate, Nagercoil, Kanyakumari District made in Crl MP No.1008 of 2016 dated 01.07.2020 in Special Case No.2 of 2016 and allow this criminal revision case.

For Appellant : Mr.S.Hameed Ismail

For Respondent : Mr.A.Robinson,
Government Advocate (crl.side)

JUDGMENT

Heard the learned counsel on either side.

2.This revision case is directed against the order dated 01.07.2020 passed by the learned Special Judge/Chief Judicial Magistrate, Nagercoil, Kanyakumari District dismissing Crl.MP No.1008 of 2016 filed by the petitioners herein. Crime No.7 of 2012 was registered on the file of the respondent against the petitioners herein for possession of assets disproportionate to the known sources of income. The first petitioner is now working as Assistant Executive Engineer, Rural Development Department in Nagercoil. Her husband Rajeswaran was a Lecturer in a Government aided college. He was suspended in the year 1995 and terminated in the year 2002. The check period is 01.12.1999 to 31.03.2009. The case of the prosecution is that the assets that stood to the credit of the accused officer as on 01.12.1999 is Rs.7,88,987/-. The assets that stood to the credit of the petitioners at the end of the check period was valued at Rs.56,15,017.17/-. The income earned by the petitioners during the check period was quantified at Rs.43,88,367/-. Their expenditure during this period was quantified at Rs.21,03,309.40/-. The assets acquired during this period were valued at Rs.48,26,030/- Thus, the disproportionate assets acquired during the period was valued at Rs.25,40,972.57. It works out to 57.90%. The prosecution took the explanation from the petitioners and went into the same and finally filed final report before the jurisdictional court. Cognizance of the offences was taken and summons were issued to the petitioners herein.

3.Controverting the stand taken by the prosecution and contending that not even a prima facie case is made out against them, the discharge application was taken out by filing Crl.MP No.1008 of 2016 under Section 239 of Cr.PC. The prosecution filed a detailed counter calling for dismissal of the discharge application. The learned Trial Judge after hearing both sides came to the conclusion that the contentions urged by the accused can be gone into only in a full-fledged trial and that on a careful consideration of the averments made in the charge sheet it found that the charges cannot be termed as groundless. In that view of the matter, the learned Trial Judge dismissed the discharge application. Challenging the same, this Criminal Revision Case has been filed.

4.The learned counsel appearing for the revision petitioners pointed out that the case against the petitioners primarily rested on two items. The house had been constructed in the name of the second petitioner Rajeswaran and it was valued at Rs.17,24,341/-. A shopping complex was also constructed in the name of the second petitioner and it was valued at Rs.19,77,099/-. The valuation of the shopping complex is not disputed. All that the petitioners would state is that the shopping complex was constructed entirely by the elder brother of the first petitioner by name Justin. He is said to be a Civil Contractor. His statement under Section 161 of Cr.Pc also has been enclosed in the typed set of papers.

5.The learned counsel for the petitioner would also contend that the construction of the house was done by a former student of the first petitioner and that according to him, he carried out the construction by receiving a sum of Rs.10.00 lakhs. The petitioners' counsel seriously disputed the valuation of the house. It has been mentioned at Serial No.11 in Statement No.II.

6.It is true that the prosecution had examined Thiru.Justin the brother of the first petitioner and recorded his statement under Section 161 of Cr.PC. He had also been shown as L.W 56. Merely because the statement of Thiru.Justin, the brother of the first petitioner had been enclosed along with the final report, this Court need not necessarily go by the same. It is well settled that the final report filed by the prosecution is not binding on the court. The court can always take a independent call. In this case, the court below after a detailed consideration of the material on record had chosen to take cognizance of the offence and it has also subsequently framed the charges. That does not mean that all the materials enclosed by the prosecution will have to be necessarily taken as gospel truth. The prosecution may not even examine the said Justin as a prosecution witness during the trial. In the ultimate analysis, it is the jurisdictional court that will have to weigh the material/evidence adduced on either side and decide the issue. Merely because the statement of LW.56/Justin has been enclosed along with the final report, that does not mean that the court is bound by the same. It is obvious that the stand taken by the list witness did not inspire the confidence of the court. It does not inspire my confidence also. He has not placed any material to show that he built the commercial complex for his sister by spending his own money to the tune of Rs.20.00 lakhs.

7.The case of the defence is that the father of the first petitioner had settled a property measuring 04.00 cents in favour of the first petitioner. This was by way of a registered settlement deed in the year 2003. The same was subsequently cancelled by him and the property was settled in favour of Thiru.Justin. Justin would claim that since the property originally settled in favour of the first petitioner had been given to him, in order to compensate, he agreed to put up the construction to the tune of Rs.20.00 lakhs for his sister's family. A copy of the agreement dated 20.10.2005 was produced by the accused to the Investigation Officer and the same has also been enclosed along with the final report. The Hon'ble Supreme Court in more than one case has held that investigation should be fair. The prosecution should not suppress any document or material that may favour the accused. The investigation officer in this case bearing in mind the said mandate of the Hon'ble Supreme Court has chosen to place the statement of the said Justin as well as the agreement dated 20.10.2005 before the court below. That does not mean that the prosecution going to examine the said Justin as their witness or mark the said document as a prosecution exhibit.

8.The learned Government Advocate (crl.side) Shri.A.Robinson would also draw my attention to the fact that though the said agreement is dated 20.10.2005, the stamp paper on which the agreement has been written bears the date as 20.08.2004. During the course of argument, he would also comment that the stamp vendor Thiru.Thangaswamy who sold the same was facing two criminal cases. His license was also cancelled. Of course, the learned counsel for the petitioners would interject and state that since the said Thangaswamy passed away and that the proceedings against him had abated.

9.I must note here that the agreement dated 20.10.2005 is not a registered document. As regards the construction of the house, it is true that one Jose Christoper was examined. He was the Contractor who built the house in question. His statement has also been recorded. He states that he was a student of the first petitioner and that he received a sum of Rs.10.00 lakhs for constructing the house. But he would also admit that he had not filed any income tax returns in this regard. He would also admit that he did not make any improvement in that house and that he had not done any interior decoration. I must note here that the statements of Thiru.Justin and Jose Christopher are not founded on any documentary basis. There are no filing of any contemporaneous returns. The amounts involved is Rs.20.00 lakhs and 10.00 lakhs. But then, no income tax returns have been filed. In any event, as rightly pointed out by the learned Government Counsel, at the stage of discharge application, the court cannot be conducting a mini trial. He placed reliance on the decision of the Hon'ble Supreme Court reported in ***(2014) 11 SCC 709 (State of Tamil Nadu vs. N.Suresh Rajan).*** The Hon'ble Supreme Court in the said decision held as follows :

> "29.....True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

The learned counsel for the revision petitioners would place reliance on the very same registered documents executed by the father of the first petitioner. I am afraid at this stage that I am not in a position to go into their probative value. The prosecution has prima facie placed materials to indicate that the petitioners herein had acquired assets disproportionate to the known sources of income. The second petitioner/the husband of the first petitioner was working in a aided college. But he was terminated in the year 2002. He is said to have started certain businesses. But, even this was started in the year 2009. The check period is from December 1999 to March 2009.

10.It is incumbent on the part of the accused to establish their defence that the house in question was constructed by the student of the first petitioner at a cost of Rs.10.00 lakhs and that the commercial complex in the name of the second petitioner was constructed by Thiru.Justin. Only if these two aspects are proved, the petitioners may have a good chance of securing an acquittal. But the exercise of proving or establishing this defence will have to take place only in a regular trial. This exercise cannot be undertaken at the stage of discharge application. If I do so, I will be overreaching myself. The order of the court below appears to be cryptic. But then, the court below must have borne the interest of the accused at heart. If the contention of the accused is to be considered, then it may possibly prejudice their interest in the trial. Probably for this reason, the court below had chosen to dismiss their discharge application by passing a short order.

11.The court below has not misdirected itself either on law or on facts. In order to protect the interest of the petitioners, I make it clear that the observations and reasons set out in this order are only made for the purpose of disposing this criminal revision case. It will not have any bearing on the defence of the petitioners. The court below shall consider the case of the petitioners entirely uninfluenced by this order. The FIR was registered way back in the year 2002. The case was taken cognizance in the year 2016. The discharge application itself has been pending for four years. Therefore, I direct the court below to conclude the entire trial within a period of one year from the date of receipt of a copy of this order. The first petitioner is a government employee. Her personal appearance before the court below is dispensed with. Of course, she has to appear for answering the charges, examination under Section 313 of Cr.Pc and at the time of pronouncement of judgment. The personal appearance of the second petitioner is also dispensed with on the same lines.

12.With this direction, clarification and observation, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Skm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Inspector of Police, Vigilance and Anti Corruption,
Nagercoil, Kanyakumari District.

2.The Special Judge/Chief Judicial Magistrate,
Nagercoil, Kanyakumari District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Crl RC (MD) No.524 of 2020
and
Crl MP(MD)Nos.4676 & 4677 of 2020
11.12.2020

KVN(CO)
KK(23.12.2020) 6P 4C