BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on : 06.02.2020
Orders pronounced on : 13.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.R.C.(MD)No.890 of 2019

M.Thangaraj ... Petitioner/Petitioner/Accused

Vs.

State through
The Inspector of Police,
Vigilance and Anticorruption Detachment,
Madurai in crime No.5 of 2013 ... Respondent

PRAYER: Revision Petition is filed under Section 397 and 401 of Criminal Procedure Code, to set aside the order of the Special Court for Trial of Corruption Act Cases, Madurai dated 17.10.2019 passed in Crl.M.P.No.178 of 2016 in Spl.C.C.No.5 of 2015 and discharge the petitioner from the case in Special C.C.No.5 of 2015 pending before the Special Court for Trial of Corruption Act Cases, Madurai.

For Petitioner : Mr.Veera Kathiravan, Senior Counsel for M/s.Veera Associates

For Respondent : Mr.M.Chandrasekaran, Addl. Public Prosecutor

O R D E R

This Criminal Revision Petition is filed by the petitioner/Accused to set aside the order dated 17.10.2019 passed in Crl.M.P.No.178 of 2016 in Spl.C.C.No.5 of 2015 and discharge the petitioner from the case in Special C.C.No.5 of 2015 pending before the Special Court for Trial of Corruption Act Cases, Madurai.

2.The case of the prosecution as follows:

(i)The petitioner is the sole accused in Special C.C.No.5 of 2015, which is pending trial on the file of the Special Court for trial of Corruption Act Cases, Madurai for the offence under Sections 13(2) read with 13(1)(e) of P.C.Act. The petitioner while serving as Motor Vehicle Inspector - Grade 1 at the office of

Regional Transport Office, Madurai North accumulated bank deposits in his name and in the name of his wife beyond his known source of income.

(ii)Upon information, discreet enquiry was conducted and thereafter, a regular case had been registered, investigated and charge sheet came to be filed. The petitioner, as Motor Vehicle Inspector, had served in various places between 1996 and 2009. He married Tmt.A.Pramila on 22.05.1998 and she is a house wife having no independent sources of income. The check period was fixed between 01.08.2002 and 31.07.2009. During the check period, the accused had accumulated wealth in the form of Special Term Deposit in his name and in the name of his wife in various branches of State Bank of India and Canara Bank in Madurai City Branch, National Savings Certificates in his name in Tallakulam Post Office, Madurai, Kissan Vikas Patra in his name in Head Post Office, Madurai to the value of Rs.22,03,594/-, which is 78% of D.P.A. As such, on completion of investigation, drawing statements 1 to 5 and listing witnesses L.Ws.1 to 46 and documents L.D.1 to L.D.49 have been filed.

3.**Submissions of the learned counsel appearing for the petitioner as follows:**

(i) Earlier, the petitioner was served with a final opportunity notice on 11.10.1992 for the same check period viz., 01.08.2002 to 31.07.2009. The petitioner had sent a reply explaining his income expenditure, failure to consider the income in full boosting the expenditure and wrong calculation made by the investigation officer on 22.05.2012. Thereafter, the petitioner was not made aware of any development and the petitioner presumed that the explanation was accepted and the enquiry against him had been closed. However, surprisingly, on 10.07.2013, an FIR in crime No.4 of 2013 came to be registered for the same check period and this time, the disproportionate asset shown was Rs.22,70,400/-, which is 128% D.P.A Thereafter, the petitioner was served with a final opportunity notice on 01.02.2014 and as per the final opportunity notice, the disproportionate asset worked out for Rs.21,96,201/- at 120%. Thereafter, the petitioner had sent his explanation on 01.03.2014 and after his reply, the disproportionate asset has been worked out to Rs.17,32,906/- at 78% D.P.A.

(ii)The explanation offered by the petitioner has not been considered and whether after two years of earlier explanation, another notice could be received and the FIR on which, the present charge sheet has been filed is a second FIR. The FIR in this case does not disclose anything with regard to the earlier final notice. The petitioner requested to include some of the items as his income in statement No.3, but, the investigating officer not considered, omitted the same for making a case as against the petitioner. Further, known source of income had been explained by the petitioner and after receipt of reply, the same has not been given due credit, even the salary received has not been correctly calculated.

(iii)A sum of Rs.1,35,000/- towards sale proceeds and gold weighing about 153.900 grams to be included as income in Statement No.3. The said jewels had been soled to one Selvam of Tanjore District on 01.02.2006, who expired later. The said fact was corroborated by the statement filed by the petitioner on 31.03.2006. The statement of Mrs.Annakkili, W/o.Selvam has been recorded by the investigating officer. Likewise, the amount of Rs.4,44,000/- as Moi amount during his marriage on 22.05.1998 have not been included as income in Statement No.3. The said Moi amount had been given in loan to one Natarajan of Chinna Salem on 22.01.1999. The said loan was returned to the petitioner during 15.07.2006 to 13.05.2007. These facts have been spoken to by L.W.20 and L.W.27, who are the father-in-law and wife of the petitioner.

(iv)Despite the availability of contemporaneous document and oral evidence pertaining to the transaction, the investigating officer has failed to consider. Further, the sum of Rs.40,000/- received by the petitioner's wife from her sister Doctor Mangayarkarasi on 10.12.2006 and as well as the amount of Rs.3,50,000/- and Rs.2,30,000/- received by the petitioner and his wife from his father-in-law and mother-in-law have not been included in the income of the petitioner, despite corresponding withdrawals from their bank account has been produced. It is not in dispute that the father-in-law is a retired Deputy General Manager in Telecom Department and the mother-in-law is a BT Assistant. His brother-in-law and sister-in-law are well settled, one of the brother-in-law is employed in US and hence, the in-laws of the petitioner's family are with resources and their transactions are through banks. Further, his father-in-law, mother-in-law and sisters-in-law have been examined as L.Ws.20, 21, 26, 27 and 42 and other family members and friends have clearly stated about the financial income. The listed witnesses L.Ws.22, 23, 35 to 41 and 43 support the case of the petitioner. In their 161(3) Cr.P.C. statements, they have clearly mentioned about the gifts given to the petitioner and his family members on various occasions at various dates and these statements were failed to be considered in its right perspective. If the statement of these witnesses are considered in its right perspectively, there would not be any case of disproportionate asset.

(v)The complainant in this case is one T.Sooriyakala, Inspector of Police, Vigilance and Anti Corruption, who is also the investigating officer in this case, who conducted investigation and filed charge sheet against the petitioner, which caused great prejudice to the petitioner. The lower Court mechanically dismissed the petition without application of mind giving any reason for the grounds raised and prejudice merely stating that the points to be decided only at the end of trial. Likewise, for the assessment of expenditure of income returns, property statement, the lower Court stated that these facts have to be considered only at the end of the trial and referring the decision in ***Sajjan Kumar Vs. Central Bureau***

of Investigation (2011) 1 MLJ (Crl.) 552 (SC), where, the Supreme Court has underlined 7 principles and also referring the decision in ***Soma Chakravatry Vs. State (2007) 5 SCC 403***, mechanically dismissed the petition. Though by way of a chart, the petitioner's averments and the reply of the State have been mentioned in the order, there has been no advertence and discussions to the same. Accordingly, he prayed for quashing the same.

4.**Submissions of the the learned Additional Government Pleader appearing for the State are as follows:**

(i)Against the petitioner, who was a Motor Vehicle Inspector - Grade 1, initially a detailed enquiry was conducted and during the enquiry, final opportunity notice was given and not satisfied with the same, a case came to be registered against the petitioner and after examination of the witnesses and collection of materials, final opportunity was given in this case and thereafter, reply was sent by the petitioner. Final opportunity notice was issued for disproportionate asset standing in the name of the petitioner to Rs.29,96,201/- which is 120% D.P.A. Thereafter, on receipt of reply and explanation, the percentage of D.P.A has been calculated by giving due credit, now the disproportionate asset is Rs.17,32,906/- which is 78%. So, the respondent had been fair in considering the representation of the petitioner.

(ii)It is pertinent to note that the petitioner's contention that interest from the Fixed Deposits ought to have been taken as income cannot be countenanced for the reason that according to the prosecution, Fixed Deposit itself is questionable one and when the Fixed Deposit is questionable one and the Fixed Deposit is made on the ill-gotten money and the income arrived and derived from the ill-gotten money cannot be treated as income. The Branch Manager, State Bank of India had stated that 7 FDs have been withdrawn on 22.06.2012, which would expose the criminal intend of the petitioner. Against the petitioner, a detailed enquiry was going on and he was called and final opportunity notice was issued to him on 11.10.2012 and on coming to know about the same, he has withdrawn the entire amount.

(iii)After comparison of the petitioner's reply to the final opportunity notice, during detailed enquiry and after registration and completion of investigation, it could be seen that there are variants in the stand taken by the petitioner. The petitioner had been improving his defence, which would show that the defence raised by the petitioner are not true and further, at this stage, the probative value of materials need not be gone into and all the materials collected during investigation have been produced before the trial Court and the trial Court before framing of charge had applied its mind and given a well reasoned order dismissing the discharge petition and he prayed for dismissal of the petition. In support of his contention, he relied on the following decisions of the Hon'ble Supreme Court of India.

1.Judgment dated **06.01.2014** - ***State of Tamil Nadu, by Inspector of Police, Vigilance and Anti Corruption Vs. N.Suresh Rajan and Others***, wherein, the Hon'ble Apex Court has held as follows:

> "It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.
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> Now reverting to the decisions of this Court in the case Sajjan Kumar (supra) and Dilawar Balu Kurane (supra), relied on by the respondents, we are of the opinion that they do not advance their case. The aforesaid decisions consider the provision of Section 227 of the Code and make it clear that at the stage of discharge the Court can not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused. Under Section 227 of the Code, the trial court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused".
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> However, discharge under Section 239 can be ordered when "the Magistrate considers the charge against the accused to be groundless". The power to discharge is exercisable under Section 245(1) when, "the Magistrate considers, for reasons to be recorded that no case against the accused

has been made out which, if not repudiated, would warrant his conviction". Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245, on the other hand, is reached only after the evidence referred in Section 244 has been taken. Thus, there is difference in the language employed in these provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the court is required at this stage to see that there is a prima facie case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in the case of R.S. Nayak v. A.R. Antulay, (1986) 2 SCC 716. The same reads as follows:

> "43………………Notwithstanding this difference in the position there is no scope for doubt that the stage at which the magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the Trial court is satisfied that a prima facie case is made out, charge has to be framed." Bearing in mind the principles aforesaid, we proceed to consider the facts of the present case. Here the allegation against the accused Minister (Respondent No.1), K. Ponmudi is that while he was a Member of the Tamil Nadu Legislative Assembly and a State Minister, he had acquired and was in possession of the properties in the name of his wife as also his mother-in-law, who along with his other friends, were of Siga Educational Trust, Villupuram. According to the prosecution, the properties of Siga Educational Trust, Villupuram were held by other accused on behalf of the accused Minister. These properties, according to the prosecution, in fact, were the properties of K.Ponumudi. Similarly, accused N. Suresh Rajan has acquired properties disproportionate to his known sources of income in the names of his father and mother. While passing the order of discharge, the fact that the accused other than the two Ministers have been assessed to income tax and paid income tax cannot be relied upon to discharge the accused persons particularly in view of the allegation made by the prosecution that there was no separate

income to amass such huge properties. The property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give opportunity to the corrupt public servants to amass property in the name of known persons, pay income tax on their behalf and then be out from the mischief of law. While passing the impugned orders, the court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned suffers from grave error and calls for rectification."

2.Judgment dated ***25.09.2019*** - ***Central Bureau of Investigation (CBI) Etc. V. Mrs.Pramila Virendra Kumar Agarwal & Another Etc.***, wherein, the Hon'ble Apex Court has held as follows:

"15. Further it is noticed that the High Court has recorded that the statement of the accused made to the police during investigation is not admissible and the procedure adopted during investigation is found to be defective. Such conclusion would arise for consideration only during trial and if the statement made is retracted and there is no other material or evidence on record to establish the charge. Hence the very manner in which the High Court has proceeded to consider the matter is erroneous and the conclusion reached is unsustainable. The private respondents/accused in any event would have the opportunity of putting forth their defence in the trial and as such all contentions in that regard are to be left open and any of the observations herein are limited to the consideration of the applications for discharge and the same shall not prejudice the case of the accused. It is for the said reason we have not thought it appropriate to advert more into the contentions relating to the charge except for noticing the charge made relating to the disproportionate assets without stating on its correctness or otherwise."

5.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and perused the materials available on records.

6.Considering the rival submission made on either side and on perusal of the materials available on records, it is seen that, at the time of framing charges, the probative value of records need not be gone into. Further, from the copy of charge sheet, it is seen that the respondent had cited 46 witnesses, out of which most of them are all relatives, in-laws and interested persons, who speak about the income derived by the petitioner and his family on various occasions. Their evidence have to be decided only during trial. A mere recording of their 161 Cr.P.C. statement alone will not go to prove that the petitioner had source of income and will absolve him of the charges.

7.Further, from the submission of L.W.23, Annakili, W/o.Selvam, it is seen that she had denied the purchase of gold by her husband Selvam of 153.900 grams to the tune of Rs.1,35,000/- and she had also disputed her husband's signature found in the sale receipt. Likewise, the sum of Rs.2,00,000/- received from his brother-in-law Karthikeyan as projected by the petitioner is without any supporting documents. Likewise, for the marriage gift of Rs.4,44,000/- said to have been received during his marriage, the same does not find place neither in the property statement of the petitioner nor in the income tax returns. Likewise, for the gifts received during other ceremonies. The lower Court had given 14 such incidents in the impugned order. The contention of the petitioner are to be decided only during the trial.

In view of the same, this Court does not find any infirmity or irregularity on the order passed by the lower Court and finds no reason to interfere with the same. Accordingly, this revision is dismissed.

Sd/-

Assistant Registrar (CO)

// True Copy //

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Sub Assistant Registrar(CS)

Arul

To

1.The Special Judge,
Special Court for Trial of Corruption Act Cases,
Madurai.

2.The Inspector of Police,
   Vigilance and Anticorruption Detachment,
   Madurai,

Copy to:
The Section Officer, Criminal Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.VEERA ASSOCIATES, (SR-6256[F] dated 13/02/2020)

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13.02.2020

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