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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2021

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THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

CrI.R.C.No.603 of 2021
and
CrI.M.P.No10054 of 2021

T.R.Ilangovan

...Petitioner

Vs

The Inspector of Police,
Vigilance and Anti-Corruption,
Thanjavur

...Respondent

Criminal revision Petition is filed under Section 397 & 401 of Cr.P.C. to abate the deceased Rajappa from all his allegations exclude his properties from charge sheet in SplC.C.No.1 of 2015 and set aside the order passed in CrI.M.P.No.not numbered of 2021, dated 21.09.2021 on the file of the Chief Judicial Magistrate, at Tiruvarur and direct the respondents to alter the charge sheet made against the petitioner.

For petitioner ... Mr N.R. Elango,
Senior Counsel,
for Mr. C. Deepak Kumar

For respondent ... Mr. Hasan Mohamed Jinna,
State Public Prosecutor,
Assisted by
Mr. S.Santhosh, Government Advocate

ORDER

This Criminal Revision has been filed against the docket order passed by the learned Chief Judicial Magistrate and Special Judge, Tiruvarur by returning the petitioner's application filed under Section 216 of CrI.P.C. to alter the charges.

2. The petitioner is A1, in Spl.C.C.No.1 of 2015, on the file of the Chief Judicial Magistrate and Special Judge, Tiruvarur. He stood charged for an offence under Section 13(2) r/w. 13(1)(e) of Prevention of Corruption Act. Earlier, after filing of final report, the petitioner has filed an application under Section 239 of Cr.P.C. to discharge him from the charges and the same was dismissed by the Trial Court on 10.01.2019. Challenging the same, he has filed a revision before this Court



in CrI.R.C.No.564 of 2019. Pending revision, A3 in this case, who is the father of this petitioner died. Thereafter, the petitioner has filed another application under Section 216 of Cr.P.C. before the Trial Court to alter the charges, on the ground that, some of the properties purchased by A3, father of the petitioner during the check period were also included in the assets of the petitioner, During investigation, A3 has given a detailed explanation accounting of purchase of those properties that those properties were purchased from and out of his own source of income. Without considering the same, those properties were also included in the asset of the petitioner. In view of the death of A3, he is not in a position to let in evidence with regard to the source of purchase of the properties by his father. In such circumstances, those properties should be excluded from the assets of the petitioner. The Trial Court returned the petition on the ground that since the charges yet to be framed, the application under Section 216 is not maintainable. Challenging the same, the present revision has been filed.

3. Mr.N.R. Elango, learned Senior Counsel, appearing for the petitioner would submit that the properties stands in the name of deceased/A3, were purchased out of his own source of income and during investigation, he had also given explanation accounting for the same. But, that was not considered. Since A3 died, he is not in a position to appear before the Trial Court and gave explanation with regard to the source of income of the properties. Hence, those properties can not be included in the assets of the petitioner. In such circumstances, the charges should necessarily framed excluding the properties from the assets of the petitioner. But the Trial Court, without considering those application, on merits, simply returned the petition as it is not maintainable.

4. The learned State Public Prosecutor strongly opposed the revision on the ground that, the application under Section 216 of Cr.P.C. cannot be maintained by the accused, that power only available with the Court. That apart, admittedly, charges are yet to be framed in this case and hence, that petition is premature. If at all the petitioner has any grievance, he can only file any application after framing of charges. He further submitted that even though A3 died, the prosecution is able to establish that the properties were purchased from and out of the funds of A1 and they can still sustain the charges against A1.

5. This Court considered the submissions made on either side and perused the materials available on records carefully.

6. Admittedly, charges are yet to be framed in this case, it is settled that, the power to alter the charge is exclusively



vest with the Court, and no party has any right seek for alteration of charges as a matter of right. In that circumstances, the application filed by the petitioner under Section 216 of Cr.P.C. is not maintainable. If at all the petitioner has any grievance with regard to the assets stands in the name of A3, it is always open to him to file appropriate application before the Trial Court seeking to exclude those properties and cannot maintain an application under Section 216 of Cr.P.C. The Court below is rightly returned the application as not maintainable and this Court finds no error in the order of the Trial Court.

7. Considering the fact and the circumstances of the case, it is always open to the petitioner to file appropriate application before the Trial Court seeking for such relief on the ground that the assets stands in the name of the deceased/A3 can not taken into account of the petitioner. If any such application is filed, the Trial Court is directed to consider the same and pass suitable orders , after hearing the parties , on merits and in accordance with law.

8. With the above directions, the Criminal Revision Case is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Chief Judicial Magistrate and Special Judge,
Tiruvarur
2. The Inspector of Police,
Vigilance and Anti-Corruption,
Thanjavur.
3. The Chief Judicial Magistrate, Tiruvarur.
4. The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.603 of 2021

SPD(CO)
RGA(16/12/2021)