IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.03.2021

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.1283 of 2020
and
Crl.R.C.Nos.28 & 29 of 2021

Sathya
W/o.Ramakrishnan ... Petitioner in Crl.R.C.1283/2020

Sathya
W/o.Ramakrishnan ... Petitioner in Crl.R.C.28/2021

Ramakrishnan
S/o.Narayanasamy ... Petitioner in Crl.R.C.29/2021

Vs.

State Rep. by Inspector of Police
Vigilance and Anti Corruption
Salem District
(Crime No.13/AC/2018) ... Respondent in all Crl.RCs.

Common Prayer: Revision petitions filed under Section 397 r/w 401 of Cr.P.C. seeking to set aside the order dated 24.02.2020, passed in Crl.M.P.Nos. 1 to 3 of 2020 in Crime No.13/AC/2020 on the file of the Special Court for Trial of cases under Prevention of Corruption Act 1988, Salem.

For Petitioners : Mr.E.V.Venugopal in all Crl.RCs.

For Respondent : Mr.T.Shunmugarajeswaran
Government Advocate (Crl. Side)
in all Crl.RCs.

COMMON ORDER

(The cases have been heard through video conference)

Petitions have been filed seeking to set aside the order dated 24.02.2020, passed in Crl.M.P.Nos.1 to 3 of 2020 in Crime No.13/AC/2020 on the file of the Special Court for Trial of cases under Prevention of Corruption Act 1988, Salem.

2.The brief facts of the case:

The petitioner in Crl.R.C.No.1283 of 2020 & Crl.R.C.No.28 of 2021 viz. Sathya is the wife of the petitioner in Crl.R.C.No.29 of 2021 viz. Ramakrishnan. She is the 3rd party to the case registered by the respondent herein against her husband (A1) and A2 in Crime No.13/AC/2018 in Salem V&AC, for the offence u/s.120B, 167, 477-A, 468, 471, 420, 409 IPC and 13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988. She is a teacher by profession and she is presently working as Secondary Grade Assistant in St.Joseph's Primary School in Attur from the year 2001. A case has also been registered on 25.07.2019 against her husband viz. Ramakrishnan(A1) and four others in Salem V&AC in Crime No.13/AC/2018 for the offence u/s.120-B, 167, 477-A, 468, 471, 420, 409 r/w 109 IPC and 13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988.

The petitioner in Crl.R.C.No.29 of 2021 viz. Ramakrishnan (A1) is a Civil Engineer and he has been working in the Department of Municipal Administration and Water Supply for more than 35 years. The petitioner was formerly working as Municipal Engineer, Attur Municipality, Attur, Salem District during the period between 12.09.2015 to 27.06.2017. He was also holding full additional charge as Municipal Commissioner of Attur Municipality for the period between 12.09.2015 to 29.08.2012 and also between 01.09.2016 to 06.06.2017. Thereafter, he was working as Executive Engineer, Town Panchayats (DTP), Dharmapuri Zone, Dharmapuri. The respondent has registered a case in Salem V&AC in Crime No.13/AC/2018 u/s.120B, 167, 477-A, 468, 471, 420, 409 IPC and 13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988, as against the petitioner viz. Ramakrishnan (A1) and A2. A case has also been registered on 25.07.2019 against the petitioner and four others in Salem V&AC in Crime No.13/AC/2018 for the offence u/s.120-B, 167, 477-A, 468, 471, 420, 409 r/w 109 IPC and 13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988.

Further, that on 26.07.2018 at about 7.00 a.m., the respondent headed by the Deputy Superintendent of Police and 15 persons consisting of the Police and Revenue Officials conducted search in their house without any warrant, stating that the complaints have been received regarding misappropriation in the maintenance work and asked them to cooperate for the search. The search commenced at about 7.00 a.m. and concluded at about 3.00 p.m. During the search no documents or materials were recovered by the respondent and thereby, they have obtained the locker details and locker keys pertaining to them. The bank locker No.25/4, which stands jointly in the names of the petitioners in Crl.R.C.No.1283 of 2020, Crl.R.C.Nos.28 & 29 of 2021 at No.94, Attur

Urban Co-operative Bank, Attur, Salem District and the locker Nos.50/6 and 17/8 which stand exclusively in the name of the petitioner in Crl.R.C.No.1283 of 2020, Crl.R.C.No.28 of 2021 in the same bank. On 01.10.2018, the respondent conducted search, the said lockers were opened in the presence of the witnesses and inventories were taken from the lockers. In the Locker No.25/4, which stands jointly in the name of the petitioners Crl.R.C.No.1283 of 2020, Crl.R.C.Nos.28 & 29 of 2021, 17 items of gold jewellery weighing 489.650 grams and one item of silver weighing 1020 grams and an amount of Rs.2,90,000/- were found. From the locker No.50/6 which stands exclusively in the name of the petitioner in Crl.R.C.No.1283 of 2020, Crl.R.C.No.28 of 2021, 21 items of gold jewellery weighing 741,690 grams were found and from the locker No.17/8 which is also stands exclusively in the name of the petitioner in Crl.R.C.No.1283 of 2020, Crl.R.C.No.28 of 2021, 14 items of gold jewellery weighing 415.950 grams and one item of silver article weighing 58.100 grams, one locker deposit Receipt for an amount of Rs.26,000/- and an amount of Rs.500/- were found. Thereafter, in the presence of the witnesses, the lockers were sealed, the warrant along with keys and the list of inventories were handed over to the Court.

Thereafter, the petitioner in Crl.R.C.No.29 of 2021 viz. Ramakrishnan, filed a petition under Section 451 of Cr.P.C., before the learned Special Judge (Special Court for Trial of Cases under Prevention and Corruption Act) Salem, in Crl.M.P.No.1 of 2020, seeking to release the key pertaining to Locker No.25/4 and additional key No.008064 which stands jointly in the names of the petitioners viz. Ramakrishnan & Sathya, which is also a case property in Crime No.13/AC/2018, registered by Salem V&AV as C.P.No.10 of 2018 for the interim custody.

The petitioner in Crl.R.C.No.1283 of 2020 and Crl.R.C.No.28 of 2021 viz. Sathya, filed petitions under Section 451 of Cr.P.C., before the learned Special Judge (Special Court for Trial of Cases under Prevention and Corruption Act) Salem, in Crl.M.P.Nos.2 & 3 of 2020, seeking to release the keys pertaining to Locker Nos.17/8 and 50/6 which stand exclusively in her name, for her interim custody, which is also a case property in Crime No.13/AC/2018 as C.P.No.10 of 2018, registered by the Salem V&AC

The respondent filed a separate counter in Crl.M.P.Nos.1 to 3 of 2020, before the learned Special Judge (Special Court for Trial of Cases under Prevention and Corruption Act) Salem and it has been stated in the counter that the petitioner in Crl.R.C.No.29 of 2021 viz. Ramakrishnan along with four other accused had forged the Government records and misappropriated a sum of Rs.33,10,170/-, without actually executing the work and to substantiate the allegation, the lockers of the petitioners were freezed by the Investigating Officer and the inventories were taken and the locker keys were produced before the Court. Thereafter, a case in Crime No.13/AC/2018 was registered in Salem V&AC, against the petitioner in Crl.R.C.No.29 of 2021 viz. Ramakrishnan (A1), for the offence punishable u/s.120B, 167, 409, 420, 468, 471, 477-A IPC and 13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988, and also registered a case against the petitioner in Crl.R.C.No.29 of 2021 and four others for the offences punishable u/s.

120-B, 167, 409, 420, 468, 471 and 477(A) IPC and 13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988 r/w 109 IPC. The respondent has further stated that the officials of V&AC after having obtained search warrant from the competent Court, searched the premises of the petitioners and their lockers. They have also taken inventories in the presence of the official witnesses and after the search, the lockers were sealed, the warrant along with keys and the list of inventories were handed over to the Court on 02.10.2018 in Form-19. The respondent further stated that the investigation of the above said case is pending and that the material witnesses have to be examined. At this stage, if the locker keys are released, the accused may tamper the records and withdraw the jewels and cash amounts and would cause great hardship to the prosecution and they may not be able to realize the misappropriated Government money from the accused. Accordingly, prays for dismissal.

The learned trial Judge, after hearing the petitioners and the respondent, vide order dated 24.12.2020 had dismissed the Petitions filed by the petitioners in Crl.M.P.No.1 to 3 of 2020, observing that the investigation in this case is pending and huge amount of Government money is alleged to have been misappropriated. Aggrieved by the said dismissal orders, the petitioners have preferred the present Criminal Revisions.

3.Learned counsel for the petitioners would submit that the petitioner in Crl.R.C.No.1283 of 2020 and Crl.R.C.No.28 of 2021 is the wife and the petitioner in Crl.R.C.No.29 of 2021 is the husband. He would submit that the petitioners are innocent and that due to obvious reasons the petitioner in Crl.R.C.No.29 of 2021 was targeted and based on a false complaint, a case was registered and investigation has been commenced. He would further submit that the petitioners have been subjected to unnecessary harassment and mental agony and that without following the procedure, search was conducted in the petitioners' residence and during the enquiry, the petitioners have fairly given details about the lockers and the movable articles possessed by them in the lockers. He would further submit that the petitioner in Crl.R.C.No.1283 of 2020 and Crl.R.C.No.28 of 2021 is a lady and aged about 51 years and she is a teacher by profession and is presently working as Secondary Grade Assistant in St. Joseph's Primary School in Attur from the year 2001 and she is having 20 years of unblemished service and that the jewels were purchased out of her own income. He would further submit that the inventories have been taken and the keys were handed over to the Court, since the petitioner in Crl.R.C.No.1283 of 2020 and Crl.R.C.No.28 of 2021 being a house wife, she wanted the jewels for her personal use, thereby, the petitioners have filed petitions u/s.451 of Cr.P.C. in Crl.M.P.Nos.1 to 3 of 2020 before the learned Special Judge (Special Court for Trial of Cases under Prevention and Corruption Act) Salem, seeking for an interim custody of their properties pending disposal and there is no impediment or bar to return the properties to them subject to imposing certain conditions. The learned counsel in support of his contentions would rely on the judgment of this Court in Crl.R.C.No.170 of 2017 dated 22.05.2017. He would submit that in similar circumstances, this Court has given a direction to return the property to the petitioner by imposing certain conditions.

4.The respondent has filed a separate counter in all these Criminal Revision Cases.

5.It has been stated in the counter that a case has been registered against the petitioner in Crl.R.C.No.29 of 2021 viz. Ramakrishnan (A1), by Salem V&AC, in Crime No.13/AC/2018, for the offence punishable u/s.120B, 167, 409, 420, 468, 471, 477-A IPC and 13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988. Further, it is true that the petitioner in Crl.R.C.No.1283 of 2020 and Crl.R.C.28 of 2021 is the 3rd party and her name has not been arrayed as an accused at the time of registration of the case. The investigation prima facie discloses that the petitioner in Crl.R.C.No.29 of 2021 being a Government servant colluded with other private contractors, had forged the Government records and misappropriated a sum of Rs.33,10,170/-, with respect to 13 vouchers and the accused shared the amount among themselves and thus committed criminal conspiracy and by framing of incorrect documents, falsification of accounts, forgery of documents, used those documents as genuine and committed cheating and professional misconduct. During the course of investigation, the Investigating Officer, after sending prior intimation to the Court u/s.165 Cr.P.C. searched the premises of the petitioners on 26.07.2018 in the presence of the official witnesses and took inventories of 27 documents. Thereafter, the Investigating Officer obtained permission u/s.18 of P.C.Act from the SP (West), DVAC, Chennai and the then Investigating Officer obtained search warrant from the learned Special Judge, V&AC, Salem to search the lockers of the petitioners maintained at Urban Cooperative Bank, Attur in Locker Nos.17/8, 50/6 and 25/4. The locker No.25/4 stands jointly in the name of the Revision Petitioners herein. The locker Nos.50/6 and 17/8 stand exclusively in the name of the petitioner in Crl.R.C.No.1283 of 2020 and Crl.R.C.No.28 of 2021 viz. Sathya. The above lockers were searched on 01.10.2018 in the presence of the official witnesses, the General Manager of the Bank and also in the presence of the petitioners. During the search, Inventories were taken from the lockers, the Locker No.25/4 was containing gold jewels weighing 489.650 grams, 1020 grams of silver and a cash of Rs.2,90,000/- and after the inventories, the locker key was seized in the mahazar prepared.

Further, the locker No.50/6 was searched and inventory was taken at the same time and found that 741.690 grams of gold jewles and the locker key was seized under mahazar and the locker No.17/8 was searched and inventory was taken and the same was found containing 415.950 grams gold jewels and 58.100 grams of silver and document for the Locker deposit Receipt for Rs.26,000/- along with Rs.500/- cash and the locker was seized under mahazar prepared. All the inventories were entered in the Form-91 and the locker keys were handed over before the Special Judge Court on 02.10.2018 along with inventories.

6.It is further stated that during the course of investigation, a vigilance enquiry was initiated against the petitioner in Crl.R.C.No.29 of 2021 viz. Ramakrishnan (A1) for accumulating wealth and based upon the V.R.No.7128/2019/LB /SL after getting necessary orders from the Government, on 20.11.2019, a case was registered by the V&AC, in Crime No.21/AC/2019 u/s.13(2) r/w 13(1) (e) of the Prevention of Corruption Act, 1988 was registered against the Revision petitioners, in which, the petitioner in Crl.R.C.29 of 2021 viz. Ramakrishnan is arrayed as A1 and the petitioner in Crl.R.C.No.1283 of 2021 and Crl.R.C.No.28 of 20221 viz. Sathya is arrayed as A2 for abetting the commission of offence and upon the instructions of DVAC, the said case was transferred to V&AC, Dharmapuri for further investigation. He would further state that in the disproportionate asset case, the jewellery kept in the lockers and the cash balance in their accounts were arrayed as assets of the accused which are disproportionate to their known sources of income. The petitioners have burked the above fact and have filed these Criminal Revisions for withdrawing the jewels from the lockers to defeat the ends of justice and if the properties were allowed to be withdrawn, it could not be confiscated if the prosecution proves the case in Crime No.13/AC/2018 on the file of the V&AC, Salem and in Crime No.21/AC/2019 on the file of the V&AC, Dharmapuri. The trial Court finding that the investigation is pending, has rightly dismissed the petitions filed by the petitioners, seeking for interim custody of their seized properties.

7.Learned Government Advocate (Crl. Side) would vehemently oppose stating that the investigation in Crime No.13/AC/2018 on the file of the respondent is pending and he would further submit that based on the recovery made from the petitioners, a case in Crime No.21/AC/2019 has been registered by the V&AC, Dharmapuri, against the petitioners for the offence u/s.13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988, for having found in possession of disproportionate assets and that the investigation is pending in both the cases. The trial Court on finding that the investigation is pending and that the petitioners have not explained the sources, had rightly rejected the petitions filed by the petitioners for release of locker keys. He would further submit that Section 451 Cr.P.C. will not be applicable to the facts of this case. He would submit that as per Section 102 of Cr.P.C, the respondent has been granted powers to withhold the seized properties pending investigation and that the properties cannot be returned to the petitioners at this stage. He would further submit that the respondent has filed a petition before the learned Special Judge, seeking for transfer of the properties seized in Crime No.13/AC/2018 by Salem V&AC to the Special Court in Crime No.21/AC/2019, registered by V&AC, Dharmapuri and since the investigation is pending, the seized properties are relevant and necessary for the investigation in the subsequent disproportionate asset case registered in Crime No.21/AC/2019, V &AC Dharmapuri. He would further submit that the said petition is pending and the orders are yet to be passed.

8.Learned Government Advocate (Crl. Side) in support of his contentions would rely upon the judgment ***in Teesta Atul Setalvad V.State of Gujaraj reported in Supreme Court Cases (2018) 2 SCC 372, wherein the Hon'ble Apex Court has held:***

25. Suffice it to observe that as the Investigating Officer was in possession of materials pointing out circumstances which create suspicion of the commission of an offence, in particular, the one under investigation and he having exercised powers under Section 102 of the Code, which he could, in law,therefore, could legitimately seize the bank accounts of the appellants after following the procedure prescribed in sub-Section (2) and sub-Section (3) of the same provision. As aforementioned, the Investigating Officer after issuing instructions to seize the stated bank accounts of the appellants submitted report to the Magistrate concerned and thus complied with the requirement of sub-Section (3).

26. Although both sides have adverted to statement of accounts and vouchers to buttress their respective submissions, we do not deem it necessary nor think it appropriate to analyse the same while considering the matter on hand which emanates from an application preferred by the appellants to de-freeze the stated bank accounts pending investigation of the case. Indisputably, the investigation is still in progress. The appellants will have to explain their position to the investigating agency and after investigation is complete, the matter can proceed further depending on the material gathered during the investigation. The suspicion entertained by the investigating agency as to how the appellants appropriated huge funds, which in fact were meant to be disbursed to the unfortunate victims of 2002 riots will have to be explained by the appellants. Further, once the investigation is complete and police report is submitted to the concerned Court, it would be open to the appellants to apply for de-freezing of the bank accounts and persuade the concerned Court that the said bank accounts are no more necessary for the purpose of investigation, as provided in sub-Section (3) of Section 102 of the Code. It will be open to the concerned Court to consider that request in accordance with law after hearing the investigating agency, including to impose conditions as may be warranted in the fact situation of the case.

27.In our opinion, such a course would meet the ends of justice. We say so also because the explanation offered by the appellants in respect of the discrepancies in the accounts, pointed out by the respondents, will be a matter of defence of the appellants.

28.We clarify that at an appropriate stage or upon completion of the investigation, if the Investigating Officer is satisfied with the explanation offered by the appellants and is of the opinion that continuance of the seizure of the stated bank accounts or any one of them is not necessary, he will be well advised to issue instruction in that behalf.

9.Further, relying on the aforesaid judgment, the learned Government Advocate (Crl. Side) would submit that the investigating officer had observed that the petitioners were in possession of the jewellery which creates suspicion of commission of offence. The respondent has got powers to seize the properties found under circumstances creating suspicion of commission of offence, in particular when the case is under investigation. The respondent exercised power u/s.102 Cr.P.C. had legitimately seized the jewellery after following the procedures. The petitioners will have to explain their position and source to procurement of the articles. He would further submit that the petitioners have right to explanation and that at an appropriate stage or upon completion of the investigation, if the investigating officer is satisfied with the explanation offered by the petitioners and is of the opinion that the continuance of the seizure of the jewellery is not necessary, the petitioners can renew their petitions by showing sufficient proof. He would submit that the judgment relied on by the petitioners viz. Cr.R.C.No.170 of 2017 will not be applicable to the facts of the present case, as the investigation is still in the initial stage and that the accused / petitioners have not explained with regard to the sources of procurement of these jewellery. He would further submit that a fresh case has also been registered against the petitioners for having found in possession of assets disproportionate to their sources of income and that the jewels are relevant and necessary for further investigation in this case.

10.At this juncture, learned counsel for the petitioner would submit that he is only seeking for interim custody of the properties and that as on date, the petitioners have not received any notice from the Court in the petition seeking for transfer.

11.Heard the counsels, Perused the counters filed by the respondent and other materials placed on record.

12.It is seen that the petitioners have filed petitions under Section 451 Cr.P.C. seeking for the release of the locker keys and to permit them to use the jewels from the locker. The Trial Court after hearing the petitioners as well as the respondent, finding that investigation is pending and a huge amount is alleged to have been misappropriated by the petitioners in this case, had declined to grant the interim custody of the properties as requested by the petitioners herein. In this case, though the case in Crime No.13/AC/2018 is registered by the respondent against the petitioner in Crl.R.C.No.29 of 2021, viz. Ramakrishnan, the petitioner in Crl.R.C.No.1283 of 2020 and

Crl.R.C.No.28 of 2021 viz. Sathya is only a 3rd party and not an accused in this case. Now it has been stated that the investigation in Crime No.13/A/2018 is still pending and a subsequent case has also been registered against the Revision Petitioners in Crime No.21/AC/2019 for acquiring and possessing wealth which is disproportionate to the known sources of income and it is also stated that the jewels seized in Crime No.13/A/2018 have been sought to be transferred to the subsequent case registered in Crime No.21/AC/2019 and it is stated that the investigation in both the cases are pending and though the Revision Petitioner in Crl.R.C.No.1283 of 2020 and Crl.R.C.No.28 of 2021 viz. Sathya is a 3rd party and not an accused in Crime No.13/AC/2018 at the time of registering the F.I.R. she has been subsequently shown as an Accused No.2 in Crime No.21/AC/2019 and the Investigation is still in progress. It is also necessary that the Revision Petitioners have to explain to the investigating agency with regard to the sources how and in what manner the jewels were acquired by them and only after the investigating agency decides that the properties are not connected to the case, they may or may not return the properties to the Revision Petitioners.

13.Admittedly, in this case the investigation is pending and a subsequent case has also been registered in Crime No.21/AC/2019 by V&AC, Dharmapuri, in respect of the acquisition and possession of properties disproportionate to known sources of income. As per Section 102(1) of Cr.P.C. any police officer may seize any property which may be alleged or suspected to have been stolen or which may be found under circumstances which create suspicion of commission of any offence. In this case, the respondent exercising power granted u/s.102 Cr.P.C. has seized the property since it has been found under circumstances which create suspicion of commission of the offence. Further, it is stated by the respondent that the valuables recovered from the lockers have not been disclosed by the petitioners before the authorities. Further, they have also not explained the sources for possessing the articles and investigation is also pending and a subsequent case has also been registered for acquiring the properties. The trial Court finding that the investigation is pending and that a huge amount of money is alleged to have been misappropriated in this case, had rightly dismissed the petitions filed by the Revision Petitioners. Further, a subsequent case has also been registered against the Revision Petitioners in Crime No.21/AC/2019.

14.The trial Court finding that the investigation is pending and huge amount is alleged to be misappropriated in this case, has declined to grant interim custody of the properties claimed by the petitioners. This Court does not find any infirmity or illegality in the order passed by the trial Court. However, it is made clear that it is left open to the Revision Petitioners to explain the sources of income and offer proper explanations to the respondent and in such event, the respondent is at liberty to consider and pass orders in accordance with law as per Section 102 Cr.P.C. It is further made clear that this order will not stand in the way of the petitioners to work out their remedy in the appropriate manner known to law.

15.At this juncture, learned counsel for the Revision Petitioners prayed that it is a targeted case registered against the petitioner in Crl.R.C.No.29 of 2021 viz. Ramakrishnan (A1) and a suitable direction may be issued to the respondent to complete the investigation at the earliest.

16.In view of the above, the respondent is hereby directed to complete the investigation and file a final report as expeditiously as possible, preferably within a period of nine months from the date of receipt of a copy of this order.

17.With the above direction, these Criminal Revision Cases are dismissed.

17.03.2021

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Index : yes / no
Internet ; yes / no
Speaking / non speaking order

To

1.The Special Judge
(Special Court for Trial of Cases
under Prevention of Corruption Act)
Salem.

2.Inspector of Police
Vigilance and Anti Corruption
Salem District

3.The Public Prosecutor
High Court of Madras
Chennai 600 104

A.D.JAGADISH CHANDIRA, J.

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and
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