

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 341 of 2018****IN THE MATTER OF****Sri Sushnta Dasgupta & Anr.****Vs.****Central Bureau of Investigation.**

**For the petitioner : Mr. Abhra Mukherjee, Adv.,
Mr. Sauradeep Dutta, Adv.**

**For the CBI/Opposite Party : Mr. Sukanta Chakraborty, Adv.,
Mr. Sagar Saha Adv.**

Judgment on : 23.12.2022

Subhendu Samanta, J.

This is an application U/s 482 of the Code of Criminal Procedure filed by the petitioner for quashing of a proceeding of special case no. 3 of 2013 now pending before Learned 3d Special Court Calcutta and against an order dated 12.10.2017 passed by the said Special Judge, rejecting the application of the petitioner praying for discharge.

The brief fact of the case is that the opposite party Central Bureau of Investigation registered a FIR being No. RC 0102012A0006 on 24th February 2012 on the basis of letter of complaint lodged by one Inspector of CBI /ACB/Calcutta alleging inter alia that the petitioner No. 1 has amassed

huge assets in his name and in the name of his family members during the check period from 01.01.2012 to 27.01.2012 which was disproportionate to his known source of income.

CBI conducted investigation and after investigation charge sheet has been submitted against both the petitioners alleging accused No. 1 for commission of offence U/s 13(2) read with 13(1)(c) of Prevention of Corruption Act 1988 and against accused No. 2, U/s 109 IPC read with section 13(2) read with 13(1) (c) of Prevention of Corruption Act 1988.

The petitioners thereafter filed an application before the Special Judge, U/s 239 Cr.P.C. seeking discharge. The prayer of the petitioner was turned down. Hence this revision.

During the course of argument before this court I find no merit in the prayer of the petitioner No. 1 thus, there is no illegality in the impugned order in respect of petitioner No. 1 Sushanta Das Gupta.

Argument was advanced for discharge in respect of petitioner No. 2 Smt. Soma Das Gupta wife of petitioner No. 1 Sushanta Das Gupta.

Learned Advocate for the petitioner submitted before this court that the petitioner No. 2 is the wife of the petitioner No. 1 and she is the house wife. She had no role to play in the instant alleged offence committed by the petitioner No. 1. The allegation that her name appears along with her husband in a number of saving scheme certificate cannot be the reason for bringing her as an accused in this case. During the course of investigation she stated before the I.O. that she had no knowledge regarding the financial transactions. She is simple home maker and she is not at all conversant any financial dealings of her husband. Learned Advocate for the petitioner further argued that it is the only course of affairs while a husband request his wife to be part with any financial account jointly, the wife having no other source of income easily agreed to such proposal. The allegation of the prosecution regarding the active participation of the petitioner No. 2 in the alleged commission of offence is not proper and illegal in the eye of law. She

never abated her husband in any alleged commission of offence. Thus, the allegation labelled against her by the CBI is baseless and she is liable to be discharged.

Learned Advocate appearing on behalf of the CBI raised strong objection and submitted before this court that the petitioner has amassed huge assets during the check period. During the course of investigation assets standing in the name of the accused No. 1 (A-1) was calculated and it appears at the end of check period the A-1 being the public servant accumulated huge assets which is disproportionate to his known source of income. During the course of investigation huge bank account were seized, movable and immovable properties acquired during the check period were calculated, jewellery purchasing during that period were also measured, huge amount of Kishan Vikash Patra (KVP) and other NSC, certificates with the several branch of post offices during the said period being not less than 223 in numbers were also calculated.

From the bank accounts it appears that all the bank accounts are standing in the name of A-1 and A-2. The KVP or other certificates also standing in the name of A-1 and A2 jointly and also A-1 with her son Debanjan Das Gupta jointly. After through search and investigation CBI has calculated the possession of disproportionate asset of A-1 on the check period is @ of Rs. 79,19,617.06/- which A-1 cannot satisfactorily account for.

Learned Advocate for the CBI further argued that the participation of A-2 in the alleged commission of offence cannot be denied. How the A-2 is acquired such a huge assets while she had no income of her own. He further argued that during the check period it appears some KVP and other certificates were matured and it was withdrawn by the A-2 herself. It further appears during the course of investigation that A-2 has purchased huge amount of jewellery and siphoned the huge amount of ill- gotten money of A-1. He further argued that A-2 being the house wife had no source of income; she had every knowledge regarding the income of her husband instead of

which she takes part with the accused No. A-1 to syphon the amount. He further argued that the A-2 may not have directly participated in the alleged offence but she actively abated the A-1 for commission of such offence. He again argued that there are sufficient materials in the CD against the A-2 and the I.O has collected statement of available witnesses who stated against the A-2 during the course of investigation. Considering the entire materials in the C.D learned Special Judge, has correctly rejected the prayer for discharge of both the petitioner. There is no illegality in the impugned order thus, the instant revision has no merit at all.

During the course of argument Learned Advocate appearing on behalf of the petitioner cited a decision of this hon'ble Court passed in CRR No. 1536 of 2012 on 06.05.2016.

Learned Advocate for appellant cited in para 7 of the said Judgment as follows-

The last submission made on behalf of the petitioner no. 2 is that she had no role to play in accumulating disproportionate assets by the petitioner no. 1 during the check period from February, 1998 to October, 2006 and as such she cannot be prosecuted on the charge of abetment punishable under Section 109 of the Indian Penal Code read with Section 13(2) and Section 13(1)(e) of the Prevention of Corruption Act. On consideration of the statements of the witnesses and documents collected during investigation and the charge sheet I find that the petitioner No. 2 submitted Income Tax Return on March 20,2007 claiming substantial income of her husband as her own income from business and her profession of Yoga during financial yea 2004-05 and 2005-06. The investigating officer has made an analysis of the materials collected during investigation and found that the petitioner No. 2 has opened joint Bank Account with her husband,

petitioner No. 1 in a bank at Naida disclosing her indentify as housewife and that the petitioner no.1 and the petitioner no. 2 failed to produce any contemporaneous documents during the check period in support of the claim of income of the petitioner no. 2 from her profession and business during the check period. The Income Tax Return was also submitted long after the check period and long after initiating the present criminal proceeding by the Central Bureau of Investigation against the petitioner no. 1. The above aspect of evidence collected during investigation indicates that the petitioner No. 2 tried to help her husband petitioner no. 1 to wriggle out of the liability of acquiring disproportionate assets during the check period , but the said evidence cannot go to prima facie establish that the petitioner no.2 instigated the petitioner no. 1 or engaged in any conspiracy or intentionally aided by doing any specific act for acquiring disproportionate assets by the petitioner no. 1. In the absence of any evidence to establish the prima facie charge of abetment against the petitioner no. 2, i would like to accept the contention made on her behalf that she is not liable to be prosecuted for the offence under Section 109 of the Indian Penal Code read with Section 13(2) and Section 13(1) (e) of the Prevention of Corruption Act. My above view is fortified by the decision of the Supreme Court in “Seeta Hemchandra Sashittal vs. State of Maharashtra reported in (2001) 4 SCC 525 wherein the Apex Court quashed the criminal proceeding under Section 13(2) of the Prevention of Corruption Act against two octogenarian ladies on the ground that the materials were insufficient to prove that those two ladies initially abetted the public servant in acquiring disproportionate assets to his known sources of income and that there was possibility of inordinate delay in conclusion of trial of the said case.

By following the ratio of the said report I am inclined to quash the criminal proceeding against the petitioner no. 2 and the order of framing of the charge by the trial court against the petitioner no. 2 however, there is sufficient evidence in the case diary for continuation of the criminal proceeding against the petitioner no. 2 for the offence punishable under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. The issue whether the sanctioning authority granted sanction for prosecution under Section 19 of the Prevention of Corruption Act by non application of mind is left open for decision of the trial court, as the deficiency in granting sanction for prosecution cannot be a ground for quashing of the criminal proceeding. I have already observed that nine prosecution witnesses have already been examined out of eighty-seven prosecution witnesses and as such learned Judge of the trial court will expedite the hearing of the case and to dispose of the same as early as possible.

Learned Advocate for the petitioner also submitted that the facts and circumstances of the cited case is very much similar and identical with this case and this Hon'ble Court quashed the criminal proceeding against the wife of the public servant against whom and allegation of accumulating disproportionate assets has been raised by the CBI.

Learned Advocate appearing on behalf of the CBI cited some decisions in support of his contention, they are **(1977) 1 SCC 816, 2010 SCC ONLINE DEL 4053 and (2001) 6 SCC 647.**

In the case of **K. Ponnuswamy[(2001) 6 SCC 674]** Hon'ble Supreme Court has upheld the order of conviction of the Special court confirmed by the High Court of a government servant A-1 and not pass any order of conviction against his wife and his daughter that is A-2 and A-3 respectively. In the said case Hon'ble Apex court is of view that the assets

standing in the name of A-2 and A-3 can very well be considered to be the assets of A-1; as plea of benami has not been proved by the accused persons.

I have also gone through the every judgments laws advanced by the Learned Advocate on behalf of the CBI.

The fact of the case goes to show that the A-2 is the house wife. It is true that a huge amount of Bank Account and KVP/saving certificates were collected by the CBI during the course of investigation and they are standing jointly in the name of A-1 and A-2.

Section 239 of the Code of Criminal Procedure is read as follows –

Section **“S 239 when accused shall be discharged-** if, upon considering the police report and the documents sent with it U/s 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after going the prosecution and the accused praying of being her, the Magistrate considers the charge against the accused to be ground less, he shall discharge the accused, and record his reasons for so doing”

It is the acceptable the principal of law, at the time of hearing discharge petition the Court is not in a position to weigh the evidence of the prosecution and the court is also not to look into the merit of the evidences. It is the duty of the court in hearing but application U/s 239 Cr.P.C. that the charge against the accused person whether groundless or not. It is also in the domain of the court to consider it is possible to prove the particular accused to be guilty if the charge labelled against him is consider to be true. If the evidences in the charge sheet are not sufficient to prove the guilt of the accused, he is entitled to discharge. So let me consider whether the charge labelled against the A-2 of this case is sufficient to prove her guilty.

The charge was framed against the A-2 U/s 109 IPC read with section 13(2)read with Section 13(1)(c) P.C Act 1988. It is the allegation of the CBI that A-2 has abetted the A-1 to commit the alleged offence.

The abetment has defined U/s 107 of IPC as follows-

Abetment of a thing.- A person abets the doing of a thing, who- First- Instigates any person to do that thing; or Secondly.- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that thing.

The word 'instigate' denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of mens rea, therefore, is necessary to concomitant of instigation.

To prove the offence punishable U/s 109 IPC, there are some ingredients to be proved; they are-

The abettor in exercise of his mental process caused the principal accused to commit an offence and the abettor has done it in the following way-

- (i) by way of instigating the principal accused, or
- (ii) by way of conspiracy that one or more other person for doing that offence by the principal accused or

(iii) by way of intentionally aiding by act or illegal omission, for doing offence by the principal accused. In the present case the CBI has not

collected any evidence against A-2 that she has any point of time instigate A-1 for commission of such offence. On the other hand the peculiar facts and circumstances of this case goes to show that the A-2 is the wife of A-1. A-2 has no independent income of her own. Usually, it is the natural course that an unemployed wife is always dependent upon the will of her employed husband. The A-2 is within the fiduciary relationship with A-1. A-1 is in a position and capacity to dominate the will of A-2. Thus in the situation the A-2 has no scope to deny the will of A-1 to participate in the Bank Account or purchasing the KVP and other certificate jointly. Mere participation with A-1 cannot ipsofacto prove guilty of the A-2 in this case.

No evidence was collected by the CBI to prove the above ingredients against the A-2. In considering the entire circumstances I am of view that the charge labelled against the A-2 by the CBI can not prove her guilt in trial.

In summing up, it can be safely hold that the impugned order passed by the learned special judge, in respect of A-2 is not proper. Facts and circumstances and the evidences on record goes to show that the charge against the A-2 is ground less and she is entitled to be discharged.

Accordingly the instant criminal revision is allowed in part. The impugned order passed by the learned special judge, in special case No. 3 of 2013 is hereby modified.

The accused No. 2 namely Soma Das Gupta is discharged from this case.

She is also discharged from her respective bail bonds.

The CRR is disposed of.

All connected CRAN Applications if pending is also disposed of.

Any order of stay passed by this court during the pendency of this revisional application is also vacated.

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(Subhendu Samanta, J.)

