IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.04.2022

PRONOUNCED ON : 12.04.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.No.3864 of 2022
and
Crl.M.P.Nos.1878 & 1879 of 2022

1.K.Jayaraman
2.Shanthi
3.J.S.Arun Keerthi @ Arun Kritik @ J.S.A.Arun
4.K.Vamadevan ... Petitioners/Accused 1-4

Vs.

The State
Rep. by: Additional Superintendent of Police,
Vigilance and Anti Corruption
City Special Unit – I
Chennai – 16. ... Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to C.C.No.1 of 2021 on the file of Special Judge for the Cases under Prevention of Corruption Act, 1988, Chennai and quash the same.

For Petitioners : Mr.AR.L.Sundaresan, Senior Advocate
for M/s.AL.Ganthimathi

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed to call for the records relating to C.C.No.1 of 2021, on the file of the Special Judge for the cases under the Prevention of Corruption Act, 1988, Chennai and quash the same.

2.The respondent filed a final report against the petitioners for offences under Section 13(2) r/w 13(1) (e) of the Prevention of Corruption Act, 1988 r/w 109 IPC. It is alleged in the final report that the first petitioner joined

Government service on 17.09.1981 as Union Engineer/Assistant Engineer. He worked as Block Development Officer, Ayothyapattinam and continued to work in various level upto 2007. He was promoted as Divisional Engineer and worked at Krishnagiri (H) Division from 14.08.2006 to 12.06.2009. Then promoted as Deputy Superintendent Engineer and worked at Salem (H) Circle from 13.06.2009 to 01.12.2009 and then promoted as Superintending Engineer and worked at Salem (H) Circle from 02.12.2009 to 04.07.2011. He was transferred to Chennai (C&M) circle and worked from 06.07.2011 to 15.07.2013 and then promoted as Chief Engineer and posted at Construction & Maintenance (H) Chennai and worked there from 15.07.2013 till his superannuation on 31.01.2016. He is a public servant as defined under Section 2(c) of the Prevention of Corruption Act, 1988. During the check period from 01.01.2007 to 31.01.2016, he had properties to the tune of Rs.65,64,033/- at the beginning of the check period on 01.01.2007 and he was in possession of properties and pecuniary resources to the value of Rs. 14,99,55,323/- as on 31.01.2016 at the end of the check period. He acquired assets worth Rs.14,33,91,290/- during the check period. He had a total income of Rs.18,81,56,287/- from known sources of income. The expenses incurred for himself and his family members worked out to Rs.6,75,69,821/-. The resultant savings during the check period is Rs.12,05,86,466/-. Thus, the first petitioner found to have acquired and possessed properties and pecuniary resources in his name and in the name of his dependent family members, his wife Tmt.J.Shanthi, his son J.S.Arun Keerthi @ Arun Krithik @ J.S.A.Arun, which are disproportionate to his known sources of income to the extent of Rs.2,28,04,824/-. The first petitioner was unable to account satisfactorily for this disproportionate income and thus, he committed offences punishable under Section 13(2) r/w 13(1) (e) of the Prevention of Corruption Act 1988. The petitioners 2 and 3 knowingly abetted the first petitioner in the acquisition of disproportionate assets by active participation and committed offences punishable under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act 1988 r/w 109 IPC.

3.The fourth petitioner being the Manager of the accused had consented the accused to purchase the landed properties in his name and later, transferred the same to the second and third petitioners. He also abetted the first petitioner in the acquisition of disproportionate assets by his active participation and committed offences punishable under Section 13 (2) r/w 13(1)(e) of the Prevention of Corruption Act 1988 r/w 109 IPC.

4.This case has been taken cognizance by the learned Special Judge for the cases under Prevention of Corruption Act, 1988, in C.C.No.1 of 2021 and pending.

5.The learned counsel for the petitioners submitted that in statement-II, the details relating to assets at the end of the check period as on 31.01.2016 shows that in Sl.No.46 to 49, four fixed deposit receipts standing in the name of the second petitioner Shanthi in Indian Bank, Fairlands Branch, Salem are shown as assets and income acquired during the check period. The details are as follows:

Sl.No.	FD No.	Date	Amount
1	913654505	21.10.2010	50,89,270/-
2	913655418	21.10.2010	50,90,625/-
3	915281437	28.10.2010	51,04,516/-
4	915280818	28.10.2010	50,00,000/-

6.However, against these fixed deposits loan had been obtained to the tune of Rs.87,74,346/- against FD Nos. 913654505 & 913655418 and another loan of Rs.88,94,565/- against FD Nos.915281437 & 915280818. When there is an outstanding loan amount of Rs.1,76,68,911/- is pending, taking fixed deposit amount of Rs.2,02,84,411/- as income during the check period is not correct. If this amount of Rs.2,02,84,411/- is deducted from consideration of income, there is no question of petitioners possessing disproportionate assets to the known sources of their income.

7. It is further submitted that the FIR shows that the first petitioner had shown Rs.66,67,532/- as his income for the years 2006-07 to 2015-16 and the second petitioner Shanthi had shown an income of Rs.1,91,67,248/- during the same period in the income tax returns. However, these incomes had been deliberately omitted in the known sources of income in the final report. If this income is considered as income of the petitioners during the check period, absolutely there is no disproportionate of assets acquired by the petitioners.

8.The learned counsel for the petitioners submitted that when there is no disproportionate of assets acquired by the petitioners, making them to face trial is abuse process of law and therefore, he prays for quashing the case in C.C.No.1 of 2021, on the file of the Special Judge for the cases under the Prevention of Corruption Act, 1988, Chennai.

9.Per contra, the learned Additional Public Prosecutor submitted that the statement of Mr.A.Muthukumaran Branch Manager, Indian Bank, Salem shows that there are four fixed deposits in the name of Shanthi, a sum of Rs.50,00,000/- was deposited in term deposit on 21.10.2010 relating to F.D.No.913654505. Its maturity date is 21.10.2015. As on 31.12.2016, there is a sum of Rs.50,89,270/- available in this fixed deposit. A sum of Rs.19,50,853/- was paid as interest for this fixed deposit till 31.01.2016. FD No.915280818 was opened on 21.10.2010 by the depositing Rs.50,00,000/-. Its maturity date is 21.10.2015. A sum of Rs.22,37,500/- was paid as interest till 31.01.2016. FD No.913655418 was opened on 21.10.2010 by depositing Rs.50,00,000/-. Its maturity date is 21.10.2015. A sum of Rs.21,18,750/- was paid as interest till 31.01.2016. As on 31.01.2016, a sum of Rs.50,89,270/- was available in this fixed deposit. FD No.915281437 was opened on 21.10.2010 by depositing Rs.50,00,000/-, its maturity is 21.10.2015. A sum of Rs.20,60,214/- was paid as interest till 31.01.2016. A sum of Rs.51,04,516/- was available in this FD as on 31.01.2016.

10.The learned Additional Public Prosecutor submitted that at the end of the check period, the aforesaid sums are available against the fixed deposits and they are shown as income. The claim with regard to the loan obtained against the fixed deposits is the subject matter of enquiry. The loans have been ingenuously created only to circumvent the prosecution. He further submitted that the income tax returns had not been filed for the periods 2006-07 and 2009-10. Merely because the petitioners are income tax assessees, they cannot claim that the details given in the income tax returns are true and the income shown are their legal income. Without any source of legal income, filing of income tax returns would not absolve the petitioners. It is again the subject matter of enquiry during the course of trial. Thus, the learned Additional Public Prosecutor prays for dismissal of this petition.

11. Considered the rival submissions and perusal the records.

12.The issue here is non-consideration of the loan availed against the fixed deposits and taking the value of the fixed deposits, without considering the loan, as income and non consideration of the income shown in the income tax returns in calculating the disproportionate assets alleged to have been acquired by the petitioners. It is the submission by the learned counsel for the petitioners that if the loan amount is deducted, there will be a reduction in the income allegedly acquired during the check period. If income shown in the income tax returns are included, then there will be an increase in the known sources of income. The resultant position is that there will be no disproportionate assets acquired by the petitioners.

13.With regard to the fixed deposit, the statement of Mr.A.Muthukumaran Branch Manager, Indian Bank, Salem is important. It is seen from his statement that the second petitioner Shanthi obtained a loan of Rs.87,74,346/- against FD No.634289286 and another loan of Rs.88,94,565/- against FD Nos.915281437 & 915280818. It appears that FD Nos.634289286 is not referred by the learned counsel for the petitioners, only the FD Nos.913654505, 913655418, 915281437 & 915280818 had been referred. It appears that these loan amounts had been repaid on 12.09.2016 and loan account was closed on 31.01.2016. The closing balance was shown in the loan account as Rs.5,95,978/-. As pointed out by the learned Additional Public Prosecutor, the statement of Mr.A.Muthukumaran Branch Manager, Indian Bank, Salem shows that following amounts are available against these fixed deposits as on 31.01.2016.

Sl.No.	FD No.	Amount
1	913654505	50,89,270/-
2	915280818	50,90,526/-
3	913655418	50,89,270/-
4	915281437	51,04,516/-

14.It is evident from his statement that the fixed deposit amounts are liable to be paid to the second petitioner Shanthi and therefore, these amounts have to be considered only as income. Further it is submitted by the learned Additional Public Prosecutor that the loan amount had been closed. The creation of loan itself is a process to avoid prosecution. This disputed fact can be considered only in the trial.

15.With regard to non inclusion of income shown in income tax returns, it is submitted by the learned Additional Public Prosecutor that the petitioner had not filed the income tax returns during the period 2006-07 to 2009-10. Statement 3, Annexure of the FIR shows that Shanthi has not filed the income tax returns for the year 2012-13. Moreover, without the proper source of income, showing the income in the income tax returns, as claimed by the learned Additional Public Prosecutor cannot absolve the petitioner from prosecution. From the materials produced, it can be gathered that the prosecution has produced prima facie materials to file the final report against the petitioners for acquiring disproportionate assets to the known source of income to the extent of Rs.2,28,04,824/-. The disputed factual aspects can only be enquired in the trial and it cannot be done in a petition filed under Section 482 Cr.P.C., especially when the respondent has made out a prima facie case for filing the final report for the offences alleged against the petitioners and for the trial.

16.In this view of the matter, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed. The trial Court is directed to proceed with the case without being influenced by the observations made by this Court in this order.

Sd/-
Deputy Registrar(CS)

//True copy//

Sub Assistant Registrar

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To

1.The Additional Superintendent of Police,
Vigilance and Anti Corruption
City Special Unit - I
Chennai - 16.

2.The Special Judge for the Cases under
Prevention of Corruption Act, 1988,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.AL.Ganthimathi, Advocate SR.No.25402

CRL.O.P.No.3864 of 2022

PPA(CO)
GMY(25/04/2022)