IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2022

PRONOUNCED ON : 07.11.2022

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.762 of 2022

B.Mangaiyarkarasi .. Petitioner/A2

Vs.

Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Villupuram, Cuddalore, I/C,
Villupuram District. .. Respondent

PRAYER : This Criminal Revision Case is filed under Section 397 read with Section 401 of Cr.P.C., to set aside the order of dismissal dated 10.02.2022 made in CMP No.1 of 2022 in Cr.No.17 of 2019 on the file of the learned Special Judge for Cases under the Prevention of Corruption Act at Villupuram, by allowing the present Criminal Revision Case.

For Petitioner : Ms.M.Rakhi
For Respondent : Mr.S.Udayakumar
Government Advocate (Crl. Side)

ORDER

Petitioner is the 2nd accused in Cr.No.17 of 2019 and she had filed Crl.M.P.No.1 of 2022 in the above crime number under Section 451 of Cr.P.C., before the learned Special Judge for Cases under the Prevention of Corruption Act at Villupuram, to return the property documents and keys of the safe lockers. The said petition was dismissed and hence, the present Criminal Revision.

2. The brief facts leading to filing of the registration of the case by the respondent herein are as follows:

(a) On 11.09.2018 an F.I.R in Crime Number.18/2018/AC/VPM was registered under Section 7 of the Prevention of Corruption Act,1988, as amended by the Prevention of Corruption (Amendment) Act, 2018 against Mr.S.Babu, Motor Vehicle Inspector, Kallakurichi, who is the husband of this petitioner viz., Mrs.Mangaiyarkarasi, in Villupuram Vigilance and Anti-

Corruption Detachment. In the said case, a trap was conducted and the accused was arrested for demanding and obtaining an undue advantage of Rs.25,000/- from one B.Muthukumar at the office of the accused at Kallakurichi.

(b) In sequence of the aforesaid trap and arrest, a house search was conducted in the house of the said accused situated at No.31A, Dowlath Nagar, Semmandalam, Cuddalore by a team headed by the Inspector of Police, Vigilance and Anti-Corruption Detachment, Cuddalore at the request of the Trap Laying Officer in Crime No.18/2018/AC/VPM.

(c) In the said search, 11,459.22gms of silver articles, 1127.54 gms of silver articles, 1127.54 gms of gold jewels, 21 bank passbooks, accounts in various banks standing in the name of the accused, his spouse and his two daughters, were found. The total amount in all the accounts of the passbook is Rs.44,05,888/-. Further, there was cash of Rs.30,17,000/- found in the house. Further, there were RC books for 3 cars and 4 two wheeler vehicles and also a document relating to a building G+3 in the name of spouse of the accused/petitioner herein.

(d) The amount in the accounts of various banks standing in the name of accused, his spouse/petitioner herein and daughters along with the cash in the house alone arrived to nearly Rs.75,00,000/- and the value of gold jewels and silver articles approximately is Rs.60,00,000/-.

(e) The total amount of gold found in the search was estimated with the help of the appraiser to be 12,113.670 grams which approximately comes to a value of Rs.5,51,17,198.50/- and the silver is 20,766 grams which approximately comes to a value of Rs.15,15,918.00/- There were also 50 documents for immovable property and 40 life insurance policies.

(f) There was suspicion of commission of cognizable offence of possession of assets disproportionate to known source of income and hence after obtaining permission from headquarters, an F.I.R was registered on

09.10.2019 against the accused, his spouse/petitioner herein and his two daughters under Sections 13(2) r/w 13(1)(b) and 12 r/w 13(2) r/w 13(1)(b) of the Prevention of Corruption Act, 1988 as amended by the Prevention of Corruption (Amendment) Act, 2018 in Crime No.17 of 2019 at Villupuram Vigilance and Anti-Corruption Detachment.

(g) In the aforesaid locker searches, search was conducted after obtaining search warrant from the Special Court in the presence of two Bank Officials and spouse of accused/petitioner herein, by following due procedure of law. After the search, inventory was prepared for the articles and all the articles were placed again in the locker under the cover of seal. The entire events were covered by the mahazar and was attested by the Bank officials and the spouse of the accused/petitioner herein.

(h) The trap case against the husband of the petitioner namely Thiru.S.Babu is taken on file in Spl.C.No.01/2022 by the Special Judge for trial of Prevention of Corruption Act Cases, Villupuram.

(i) Before the trial Court, properties seized in the house search have been listed in the form-95, filed before the Special Court.

3. When the respective cases are pending before the Special Court for Prevention of Corruption Act, the petitioner, who is the 2nd accused (wife of the first accused) in Cr.No.17 of 2019, filed a petition under Section 451 of Cr.P.C., for return of documents, primarily on the ground that she is the wife of the 1st accused and her self acquired property has been clubbed as if it is a tainted amount of 1st accused (her husband) and specifically stated that her father was a bus operator and has procured two bus routes and on his death, by virtue of WILL, it was acquired by her through the testamentary deposition and she as a woman Entrepreneur earned income from the said bus operation and based upon the same, she has also disclosed income tax returns then and there with the Income Tax department. Contending that from and out of her self earning, made deposits in the name of her daughters for their secured future, she sought for return of 24 original

property documents standing in her name and keys of 7 safe lockers.

4. The learned counsel for the petitioner/A2 would contend that the order dated 10.02.2022 passed by the learned Special Judge for the cases under the Prevention of Corruption Act at Villupuram in C.M.P.No.1 of 2022 is bad in law. The petition was filed under Section 451 of Cr.P.C., for return of 24 original property documents and 7 lockers keys of safe lockers.

5. The learned counsel for the petitioner/A2 would further contend that the check period is from 08.08.2006 to 03.10.2018. The accused/A1 was initially recruited as Motor Vehicle Inspector Grade II, in the year 1991 and promoted as Grade I, in the year 1998. The petitioner/Mangaiyarkarasi is the wife of the first Accused and all her three daughters, are also added as Accused.

6.According to the petitioner, she was doing the business and looking after the bus operation from the year 1997 and also filed income tax returns from year 1997 to 2018 and she has got independent source of income. The same has to be excluded from the calculation of alleged accumulation of wealth of the first accused herein. The so called self acquired property has been clubbed, as if, it is tainted money and a case has been registered under the Prevention of Corruption Act.

7. Though, no documents were filed before the Special Court, additional typed set of papers were filed before this Court with regard to the Income Tax returns filed by the petitioner for the Assessment Years from 2005-2006 to 2018-2019. Further, the details of safety lockers (Serial Nos.2,3,4,5,6,7,8) standing in the name of the Petitioner/A2, list of 24 property documents, 41 life insurance policies taken with private insurance company and LIC corporation, assets & properties of daughters viz., B.Shobika, B.Rasika &B.Rethiga and copy of bank pass book of daughters have also been filed by way of the additional typed set of papers.

8. According to the learned counsel for the petitioner/A2, petitioner's father is a transport bus owner and he had two buses, which was operated between Nagapattinam and Kumbakonam. On his death, he has executed a WILL, in and which, she has obtained the same, and vide proceedings of the Secretary, Regional Transport Authority, Tiruvarur, in the year 2014 itself, she was allowed to transfer the ownership in respect of Stage Carriage Bus bearing Registration No.TN 51 AA 1144 and its spare bus bearing Registration No.TN 51 AA 1122, from the name of the deceased father to her name. The insurance policy has also been transferred in the name of the petitioner. Temporary permit was also issued in the name of the petitioner even in the year 2014 and the same was reflected in the Income Tax returns. In Paragraph No.5 at Page No.75 of typed set of papers, the petitioner has narrated her income. It also reflects that she has filed her income tax returns for the Assessment Years from 2006-2007 to 2017-2018.

9. The learned Government Advocate (Crl. Side) would contend that as per the prosecution, the accused has disproportionated a sum of Rs.5,10,28,183/-, which is 583% over and above the source of income and the investigation is under process. The learned Special Judge has passed the order that no documents have been filed before the court below.

10. Considered the rival submissions made by the learned counsel for the petitioner/A2 and the learned Government Advocate (Crl.Side) appearing on behalf of the respondent and perused the materials on record.

11. As stated supra, in this case, besides the typed set of papers filed along with the Criminal Revision Case, the petitioner/A2 has filed two additional typed set of papers enclosing the income tax assessments for various years. In the main typed set of documents the proceedings of the Secretary, Regional Transport authority dated 26.02.2014 was filed. The other documents are house seizure mahazar and observation mahazar,

prepared during the time of the search by the investigation officer in the bank lockers of the petitioner herein.

12. Further, at paragraph No.5 of the affidavit filed before the trial Court, a tabular column was enclosed showing the Income Tax returns filed for the Assessment Years from 2006-07 to 2017-18. The tabular column also shows the Assessment year, Date of filing, Gross total income, Net taxable income and the Tax paid thereon.

13. The sole ground on which this petition is filed is that the petitioner herein is having an independent source of income, being a woman entrepreneur and running two buses, which she obtained by way of testamentary deposition of her father under the WILL and relying upon the proceedings of the Secretary, Regional Transport Authority dated 26.02.2014 and also relying upon various income tax returns filed by her from time to time in the additional typed set of papers. However these documents are not filed before the trial Court. So the trial Court, for want of

documents, has rejected the prayer and refused to grant the relief.

14. Though the petitioner/A2 relies upon the decision of the Hon'ble Apex Court in ***Sunderbhai Ambalal Desai vs. State of Gujarat,*** reported in **2003 (1) CTC 175 (SC),** a perusal of the same reveals that those are the cases relating to offence of theft and not under the Prevention of Corruption Act.

15. Further, in the decision relied upon by the learned counsel for the petitioner in **Crl.R.C.No.170 of 2017 dated 22.05.2017** in the matter of ***Tmt.Shanthi vs. State by Additional Superintendent of Police***, though initially the case was registered under the Prevention of Corruption Act subsequently, further action was dropped and on that background, the learned Judge of this Court has ordered for release of the articles.

16. Here, in the instant case, the factual scenario is totally different. The husband of the petitioner is facing the charge under Section 13(1) (d) of the Prevention of Corruption Act. In another crime number, the petitioner is also added as an accused as A2 and the offence is under section 13(2) of the Prevention of Corruption Act.

17. However, the contention of the learned counsel for the petitioner that since 24 properties are purchased over a span of 25 years, from and out of her self earning as an woman entrepreneur and also as owner of two buses, which has been duly reflected in the income tax returns and the tax permit card issued by the transport corporation, are liable to be released since she has an independent source of income, is found to have force.

18. The march of law, on the point of, whether the wife of the accused public officer can be added as an 'abettor' in the alleged offence under the Prevention of Corruption Act as emerged from ***Nallamal's case to***

Inbasagaran's case viz., *P.Nallamal and another vs. State, represented by Inspector of Police, reported in 1996 (6) SCC 559 and D.S.P., Chennai Vs. K.Inbasagaran, reported in (2006) 1 SCC (Cri) 325*, wherein the Hon'ble Apex Court has categorically held that if the wife of the accused officer has an independent income and files necessary document to that effect, those properties and the income and the jewels that has been accounted by the woman entrepreneur viz., wife of the accused officer has to be excluded from the disproportionate case and the learned Special Judge shall keep in mind the law as pronounced by the Hon' ble Apex Court in the above two judgments and to decide the issue.

19. The petitioner had demonstrated her independent source of income over 25 years and acquisition of the property which are duly reflected in the income tax returns filed in the respective years and payment of income tax report and some of the excess payment made, is also returned by the Income Tax department as reflected in the State Bank account and hence, I find that the typed set of document prima facie discloses an

independent income in the nature of the self acquisition from and out of the bus transport and other business activities as disclosed in the income tax department returns in the respective years.

20. Proceedings of the Secretary, Regional Transport Authority dated 26.02.2014 whereby the bus route along with stage carriage bus No.TN51 AA 1144 and spare bus TN51AA 1122 has been bequeathed to the petitioner herein by her father and the stage bus permit has been made over to the petitioner herein in the year 2014 itself. So also the transport department has issued the Tax Card for the above said two bus on 31.03.2014 itself and No Due Certificate has also been issued by the Regional Transport Officer, Thiruvarur on 10.10.2014.

21. The trial Court ought to have considered these aspects in the proper perspective of the case. However, since no document has been filed, except the tabular column, the Special Court has disbelieved the version of the petitioner/A2. Those documents are now filed before this Court by way

of typed set of papers. Since the prayer is for the return of the property, these documents ought to have been filed before the trial Court.

22. Therefore, in view of the limited scope in the revision, this Court is of the considered opinion that the petitioner having raised the plea of self earning and making the self acquisition of the property out of the self earning as disclosed and found in the income tax returns, is entitled for application of the ratio laid down by the Hon'ble supreme Court in ***Inbasagaran's case [cited supra]*** and since those documents are not marked before the trial court, an opportunity has to be given to the petitioner/A2 to mark those documents and thereupon to invite a finding in support of the plea of the self acquired property.

23. In view of the above discussion, this Court is of the considered view that non marking of these documents before the learned Special Judge for cases under the Prevention of Corruption Act, appears to be a lapse on the part of the Advocate, who appeared for the petitioner before the trial

court and hence, this Court is inclined to allow the revision to the limited extent.

24. Accordingly, **the Criminal Revision Case in Crl.R.C.No.762 of 2022 is allowed** and it is ordered as under:

(i) The order passed by the learned Special Judge for cases under the Prevention of Corruption Act at Villupuram, in Crl.M.P.No.1 of 2022 in Cr.No.17 of 2019 dated 10.02.2022 is set aside.

(ii) The matter is remanded back to the Special Court and the said court is required to take the Criminal Miscellaneous Petition on file for fresh consideration.

(iii)The petitioner/A2 is at liberty to mark the copies of the documents, filed before this Court as additional documents viz,

(a) The proceedings of the Secretary of the Regional Transport Authority dated

26.02.2014;

(b) Tax Card issued by the Transport Department;

(c) Temporary permit issued by the Regional Transport Authority;

(d) No due certificate issued by the Regional Transport Officer;

(e) Income Tax Returns for the Assessment Years from 1997-98 to 2018-19;

(f) Summary of documents along with dates to show and demonstrate before the trial Court that the lands in question covered under the 24 sale deeds having purchased in the years viz., 1998, 2000, 2001, 2002, 2003, 2004, 2009, 2010, 2012, 2013, 2014, 2016, 2017 and 2018 along with the respective Income Tax returns, Statement of Income and Expenditure of her Auditor, filed before the concerned Income Tax Authority and Return of TDS made by the Income Tax Authority for the respective Assessment years ;

(g) Other documents, if any.

(iv) On those documents being filed, the learned Special

Judge is required to mark them, afford an opportunity of hearing and shall determine the right of the party on the return of the property seized from the family members of the petitioner, in the light of the above observations and decisions cited supra and pass necessary orders in accordance with law.

07.11.2022

Internet : Yes
Index : Yes/No
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RMT.TEEKAA RAMAN,J.,

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To

1. The Special Judge for Cases
under the Prevention of Corruption Act, Villupuram.

2. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Villupuram, Cuddalore, I/C,
Villupuram District.

3. The Public Prosecutor,
High Court, Madras.

Pre-delivery order in
Crl.R.C.No.762 of 2022

07.11.2022