IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.04.2022

PRONOUNCED ON : 27.04.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.No.8046 of 2021
and
Crl.M.P.Nos.5292, 5293 & 9784 of 2021

Dr.Meenalosini ...Petitioner

Vs.

State represented by
Deputy Superintendent of Police,
SPE:CBI:SCB:Thiruvananthaburam
At CBI :ACB: Chennai.
In RC.54(A)/2015-CBI/ACB/CHN ...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in C.C.No.2 of 2020 in R.C.54(A)/2015.CBI/ACB/Chennai, pending on the file of the XIV Additional Special Court for CBI Cases, Chennai and quash the same.

For Petitioner : Mr.V.Gopinath, Senior Advocate
for Mr.V.Balamurugane

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI

ORDER

This criminal original petition is filed to call for the entire records in C.C.No.2 of 2020 in R.C.54(A)/ 2015.CBI/ACB/Chennai, pending on the file of the XIV Additional Special Court for CBI Cases, Chennai and quash the same.

2.The respondent filed a final report in this case against the petitioner and other accused for offences under Section 109 IPC and Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988. The case of the prosecution is that the first accused M.Krishnasamy was working as the Commissioner of Income Tax, Office of the Director (Investigation), Income Tax Settlement Commission, Additional Bench, Chennai and retired as Principal Commissioner of Income Tax, New Jalpaiguri. He was a public servant within the meaning of Section 2(c) of Prevention of Corruption Act, 1988. The second accused is the father of the first accused, the third accused Narmada and fourth accused Dr.Meenalosini are his daughters, the fifth accused is his father in law and they are private persons. The sixth accused M/s.Ayakudi Agro Farms is a partnership firm registered in the year 2009. The third and fourth accused along with Subramani and Rajakumari are the partners. This firm is represented by K.Narmada. Based on the source information, a case in RC MA1 2015 A 0054, Under Section 109 IPC and Section 13 (2) r/w 13 (1) (e) of Prevention of Corruption Act, 1988 was registered against the accused. The accused M.Krishnasamy had accumulated assets in his name and in the name of his family members and others, disproportionate to their known source of income, for which they could not satisfactorily account for. The check period was taken as 01.04.2009 to 31.12.2015. At the beginning of the check period i.e., on 1.04.2009, M.Krishnasamy and other accused persons were in possession of assets worth 83,07,380/-. Assets at the end of the check period was to the tune of Rs. 6,93,11,282/- Taking into account, the income received during the check period, expenses, assets acquired, likely savings, disproportionate assets worked out to 4,64,02,556/-. The calculation of disproportionate assets is as follows:

Assets at the beginning of the check period. Statement "A"	83,07,380
Assets at the end of the check period Statement "B"	6,93,11,282
Receipt and Income during the check period Statement "C"	4,14,06,554
Expenditure during the check period Statement "D"	2,68,05,208
Assets acquired during the check period (B-A)	6,10,03,902
Likely savings (C-D)	1,46,01,346
Extent to which assets and expenditure are disproportionate to likely savings E = (B-A) + D) – C	4,64,01,346
Percentage of disproportionate of asset over the total income (E x 100/C)	112.06%

Therefore, final report was filed against the first accused under Section 13 (2) r/w 13 (1)(e) of Prevention of Corruption Act, 1988 and the other accused under Section 109 IPC and Section 13 (2) r/w 13 (1)(e) of Prevention of Corruption Act, 1988. Challenging the filing of final report against the petitioner, this petition is filed for quashing.

3.The learned counsel for the petitioner submitted that the petitioner is a Government Doctor and also doing private practice. She married Dr.Kannan who is also a government Doctor and practicing as well. Both have independent income from their profession as Doctors. From the statements A to D filed, petitioner has known source of income from 01.04.2009 to 31.12.2015 to the tune of Rs.64,25,520/-. To calculate the disproportionate income, petitioner and her husband's income also included which is contrary to law. The statement D shows that there were expenses to the tune of Rs.36,50,860/- leaving a balance of Rs.27,74,660/-. The house property shown in statement B, flat at Vivek Residency, Madurai was purchased by the petitioner and her husband by availing bank loan. The value of 36 cents of agricultural land at Kidarapatti Village, Madurai and agricultural land measuring 1.43 acres at Kidarapatti Village, Madurai is Rs.1,80,000/- and Rs.3,36,000/- respectively. The statement of witnesses were recorded with regard to the petitioner and her husband's salary details, bank loan obtained for purchasing the flat and purchase of lands. The petitioner is living with her husband since her marriage and she is not living with her father. There is no material to show the flow of funds from her father to her. She is a public servant and therefore without obtaining a proper sanction she cannot be prosecuted. When the petitioner and her husband have independent income, prosecuting them with the aid of Section 109 IPC is not legal and therefore, the proceedings against the petitioner has to be quashed.

4.In response, the learned Special Public Prosecutor for CBI cases submitted that the petitioner is prosecuted only for abeting the first accused, who is her father to accumulate assets disproportionate to his known source of income. The charge against the petitioner is the abetment of illegal acquisition of wealth under Section 109 IPC and Section 13 (2) r/w 13 (1)(e) of Prevention of Corruption Act, 1988. The petitioner possessed, apart from other properties, a flat worth Rs.40,00,000/- and two agricultural lands worth Rs.1,80,000/- and Rs.3,36,000/-. She is also a partner in M/s.Ayakudi Agro Farms. This firm acquired assets worth Rs.3.64 crores during the said period. Apart from that, petitioner also purchased a Ford Fiesta Car valued at Rs.8,92,813/- and the housing loan was also repaid during the check period. The petitioner, though is a Government Doctor, has no sufficient means to acquire all these properties. Only from the funds provided by the first accused, properties have been purchased in the name of the petitioner and in the name of M/s.Ayakudi Agro Farms. Petitioner would get opportunity only during the trial for explaining her case. Charges had been framed in this case and 13 witnesses have been examined so far. Therefore, he prayed for dismissal of this petition.

5.Considered the rival submissions and perused the records.

6.As already stated, the first accused is charged for the offences under Section 13 (2) r/w 13 (1)(e) of Prevention of Corruption Act, 1988 and the other accused are charged for offences under Section 109 IPC and Section 13 (2) r/w 13 (1)(e) of Prevention of Corruption Act, 1988 for possessing assets disproportionate to the known source of income as detailed below:

Assets at the beginning of the check period. Statement "A"	83,07,380
Assets at the end of the check period Statement "B"	6,93,11,282
Receipt and Income during the check period Statement "C"	4,14,06,554
Expenditure during the check period Statement "D"	2,68,05,208
Assets acquired during the check period (B-A)	6,10,03,902
Likely savings (C-D)	1,46,01,346
Extent to which assets and expenditure are disproportionate to likely savings E = (B-A) + D) – C	4,64,01,346
Percentage of disproportionate of asset over the total income (E x 100/C)	112.06%

Statement A shows that the properties possessed by the accused at the commencement of the check period on 01.04.2009. Petitioner possessed movable assets worth Rs.94,329/-. Statement B shows the properties possessed by the petitioner and others at the end of the check period on 31.12.2015. Petitioner possessed immovable assets in the form of a flat of Rs.40,00,000/-, two agricultural lands valued at Rs.1,80,000/- and Rs.3,36,000/- Movable assets valued at Rs.21,98,768/- The income earned during the check period was Rs.64,25,520/-The expenses during this period was Rs.40,27,078/-. Thus, it was alleged that the disproportionate assets to an extent of Rs.4,64,01,346/- was found to be in possession of the accused M.Krishnasamy and his family members, including the petitioner which is 112.06%.

7.The statement of Shri.N.Kadhiresan, Sub Registrar shows that the purchase of two agricultural lands for Rs.3,36,000/- and Rs.1,80,000/-. The statement of Shri.Kondalraj, Branch Manager, shows that the petitioner and her husband availed

Rs.20,00,000/- from the Corporation Bank for the purchase of the flat at Vivek Residency, Madurai. Out of the sanctioned amount of Rs.20,00,000/- only Rs.16,90,000/- was requested by the petitioner and the loan was repaid and the account was closed on 10.04.2014. Within three years of obtaining the loan, the loan was closed. The staement of Dr.A.Jagannathan, Chief Civil Surgeon shows the salary details of the petitioner and the statement of Dr.R.Balaji shows the salary detail particulars of the petitioner's husband.

8.From the perusal of these income, expenses and salary details, there is no proper explanation with regard to the income for the purchase of all the movable and immovable properties and also the properties purchased in the name of M/s.Ayakudi Agro Farms valuing Rs.3.64 crores during the check period. Petitioner is one of the partner in M/s.Ayakudi Agro Farms. Therefore, this Court is of the considered view that the respondent has made out a prima facie case for proceeding against the petitioner. Accordingly, the trial Court has framed charges against the petitioner and the other accused and proceeded with the trial. 13 witnesses have been examined so far. When there is merits in the case against the petitioner, this petition filed for quashing the proceedings in C.C.No.2 of 2020, pending on the file of the XIV Additional Special Court for CBI Cases, Chennai, cannot be entertained and therefore, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The XIV Additional Special Judge, for CBI Cases, Chennai.

2. The Deputy Superintendent of Police,
   SPE:CBI:SCB:Thiruvananthaburam
   At CBI :ACB: Chennai.
   In RC.54(A)/2015-CBI/ACB/CHN.

+1cc to Mr.V.Balamurugane, Advocate, S.R.No.29486

CRL.O.P.No.8046 of 2021

SSI(CO)
RGA(31/05/2022)