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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 07..12..2021

Orders Pronounced on : 06..01..2022

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.No.349 of 2019

State Represented by
The Inspector of Police,
CBI, ACB, Chennai.

...Petitioner/Appellant/Complainant

-Versus-

Shri. Vijay Rajmohan

...Respondent/Accused No.1

Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure, 1973, praying to set aside the order dated 13.12.2018 passed in Crl.M.P.No.3908 of 2018 in C.C.No.03 of 2018 by the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai, discharging from the charges.

For Petitioner : Mr.K.Srinivasan,
Spl. Public
Prosecutor for CBI
cases

For Respondent : Mr.V.Gopinath,
Senior Counsel for
Mr.R.Sunilkumar

ORDER

This Civil Revision Petition has been filed by the Central Bureau of Investigation (CBI) challenging the order dated 13.12.2018, passed in Crl.M.P.No.3908 of 2018 in C.C.No.03 of 2018, by the learned Principal Special Judge for CBI Cases, VII Additional City Civil Court, Chennai, discharging the respondent from the charges levelled against him.



2. The facts leading to the filing of the present revision petition, in brief, are as follows:- (i) The respondent/A1 was an Official of Central Secretarial Service, Government of India. He was working in various departments of the Central Government, lastly, he was working as Joint Director General of Foreign Trade, Department of Commerce, Government of India. During the period between 01.01.2005 and 31.10.2012 he was working in New Delhi and Bangalore. During the above period, he had acquired assets which were disproportionate to his known and lawful sources of income and as on 31.12.2012 he was found to be in possession of disproportionate assets and pecuniary resources to the tune of Rs.79,17,593/- in his name and in the name of his relatives for which the respondent did not have satisfactory account.

(ii) Earlier, based on a complaint, a crime was registered against the respondent (A1), his father, mother and wife, who were arrayed as A2 to A4 respectively for offences under Section 109 of IPC r/w 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 (hereinafter will be called as "the Act"). After investigation, a final report was filed alleging that the respondent (A1) was having assets worth Rs.79,17,593/- (66.38%) disproportionate to his known sources of income, as follows:-

Calculation of DA		
Assets at the beginning of the check period	- 'A'	292727
Assets at the end of the check period	- 'B'	3359362
Total income during the check period	- 'C'	11928538
Expenditure during the check period	- 'D'	16779496
Assets acquired during the check period	(B - A)	3066635
Likely savings during the check period	(C - D)	4850958
Disproportionate Assets		79,17,593
% of Disproportionate Assets		66.38%

(iii) Thereafter, the respondent filed a petition seeking to discharge him from framing of the charges under Section 227 of Cr.P.C., on the ground that the conclusion of the CBI regarding his alleged disproportionate assets was without any basis and the documents so-collected during the investigation would clearly reveal that there is no disproportionate assets, however, the CBI, illegally clubbed the assets of others without showing that the source of money to those assets have been flown from him. That apart, the amount flown from one of the trust being run by his father (A2) was also included in his assets on assumption and the assets and the contribution to the trust has not been properly considered by the CBI and no opportunity was given to him to explain the sources of his income. The materials



available on record do not prima facie made out any offence against him. It was also contended by the respondent that when the application filed by the CBI seeking sanction, the sanctioning authority found that there was no material available against the petitioner for disproportionate assets and hence, closed the issue and ordered for reinvestigation, thereafter, without conducting reinvestigation, once again based on the pressure given by the Central Vigilance Commission (CVC) and the CBI, the sanctioning authority in total non application of mind accorded sanction for prosecution and the sanction order itself is nullity, based on such illegal sanction order, no cognizance could be taken by the court.

(iv) The above said contentions were resisted by the CBI on the ground that during the check period between 01.01.2005 and 30.10.2012, the respondent had acquired and was in possession of movable and immovable pecuniary resources in his name and also in the name of his wife and family members which were disproportionate to his known sources of income around 66.38% for which the respondent (A1) did not have account. The evidence collected during investigation would clearly reveal the disproportionate assets of the respondent. During the course of investigation, all the accused had been given sufficient opportunity to explain the possession of disproportionate assets but, they could not give any satisfactory explanation and the sanctioning authority after careful consideration of the entire materials had accorded sanction, by order dated 24.07.2017. The representation given by the respondent was also considered based on the order passed by this Court in W.P.No.18570 of 2017 dated 21.07.2017.

(v) Upon considering the submissions made on either side, the trial court has held that the sanctioning authority had accorded sanction without applying its mind in a proper perspective and accorded sanction on extraneous consideration. The trial court having considered the communications between the sanctioning authority, CVC and CBI held that only on the advise of the CVC, the sanctioning authority had accorded sanction on extraneous consideration and it was not a valid sanction, as such no cognizance of offence could be taken against the respondent. That apart, there was no prima facie case made out against the respondent to frame charges. Holding so, the trial court allowed the application filed by the respondent and discharged him from the charges. Challenging the order passed by the learned Special Judge discharging the respondent, the CBI has come forward with the present revision petition.

(vi) The learned Special Public Prosecutor would submit that the sanctioning authority after considering the entire materials and with due application of mind had come to a conclusion that a



6. According to the learned senior counsel, once the proposal for sanction is closed, the sanctioning authority cannot reopen the same without any fresh materials and accord sanction. Hence, the very granting of sanction is illegal and based on the illegal sanction, no cognizance could be taken. The trial court has rightly considered the issue and discharged the petitioner.

7. The learned senior counsel would lastly submit that the materials collected during investigation would clearly reveal that there was no disproportionate assets acquired by the respondent, but, based on assumption and presumption, without any actual material connecting the respondent with the transactions of the trust run by A2, the father of the respondent (A1), the CBI had, on extraneous consideration of materials, come to a wrong conclusion that there was disproportionate assets. However, on considering those materials, the trial court has found that no prima facie case has been made out against the respondent and discharged the respondent from the charges and there was no illegality in the order passed by the learned Special Judge.

8. I have considered the rival submissions and materials available on record carefully.

9. The trial court discharged the respondent from the charges on two reasons. Firstly, the sanctioning authority accorded sanction on extraneous consideration without properly considering the material available on record in total non application of mind. Secondly, the materials available on record do not prima facie constitute offence of disproportionate assets and do not make out any case against the respondent.

10. So far as the grant of sanction for prosecution is concerned, it was the contention of the respondent that, earlier based on the advise given by the CVC, the proposal for granting sanction was closed enabling the CBI to re-investigate the matter. But, without, any re-investigation, based on the recommendations of the CVC, the sanctioning authority had reopened the matter and without any fresh materials, accorded sanction for prosecution against the respondent.

11. In this respect, perusal of the records would show that, on receipt of the request from the CBI seeking sanction for prosecution, the sanctioning authority after examining the entire materials had raised as many as 23 queries from the CBI by its order dated 26.11.2015. Thereafter, by a detailed letter dated 15.12.2015, the CBI had clarified all the 23 queries item-wise. In the mean time, the sanctioning authority also sought for opinion from CVC and CVC, in turn, after considering the



materials found that, the investigation in respect of some of the aspects of the matter was lacking and that the conclusion arrived at by CBI was inadequate, which needed to be supplemented, while recommending for grant of sanction for prosecution. The CVC, by its letter dated 01.06.2016, advised for further discussion with the CBI to guide him suitably and advise him on the need for further investigation to be carried out. The relevant portion of the recommendations of the CVC reads as follows:-

"3. While the Commission has fully agreed that this is a prosecutable case for possession of assets beyond known sources of income against the Charged Officer, it is observed that the investigation and the logic based on which such conclusion is being arrived is inadequate and it needs on to be supplemented.

4. While recommending sanction for prosecution, Commission has advised that Head of Branch (CBI) be called in the Commission for a further discussion to guide him suitably and advise him on the need for further investigations to be carried out."

12. The Government had also, by letter dated 26.08.2016, sought for further clarification from CVC whether the Commission has advised him that, the case may be returned to CBI for further examination or recommended sanction for prosecution against the respondent. For which, by letter dated 20.09.2016, the CVC had advised the sanctioning authority that CBI should re-investigate the issues raised by the Commission and then submit the case with their findings. In the mean time, the CBI had, by letter dated 27.09.2016, once again given a detailed explanation to the CVC clarifying all the queries raised by the sanctioning authority as well as the CVC and submitted that the materials already collected were sufficient to prosecute the respondent and no further investigation needed to be carried out. In the mean time, by order dated 05.10.2016, based on the recommendations of the CVC for conducting re-investigation, the sanctioning authority had treated the proposal for sanction as closed till such time the re-investigation is completed and any further proposal is received from the CBI. The relevant portion of the order reads as follows:-

"2. The Central Bureau of Investigation, ACB Chennai is, therefore, requested to take appropriate action in view of CVC's advise dated 01.06.2016 and dated 20.09.2016. The proposal for sanction for prosecution in respect of Shri.Vijay



Rajmohan, then Jt. Director, DGFT, will be treated as closed till such time the re-investigation is completed and any further proposal is received from the CBI."

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13. Subsequently, on 25.11.2016, the CVC had, after examining the clarifications submitted by CBI by letter dated 27.09.2016, on being fully satisfied with the same, advised the sanctioning authority to accord sanction for prosecution. The relevant portion of the memorandum of the CVC reads as follows:-

"2. The case has been examined by the Commission. Keeping in view of the facts brought out by DoPT and clarification received from CBI, the Commission has advised sanction for prosecution against Shri Vijay Rajmohan, Joint Director DGFT in agreement with DoPT."

14. On receipt of the above recommendations, the sanctioning authority had once again sought for details of findings given by CVC as against the respondent (A1) recommending for sanction for prosecution, for which, by letter dated 09.02.2017, the CVC provided a detailed reply stating that based on the clarifications issue by CBI by their communication dated 27.09.2016 once again advised the sanctioning authority to accord sanction for prosecution. The clarification issued by the CBI was also enclosed along with that communication. Thereafter, after considering all those materials extensively and on being satisfied that there was a prima facie case made out against the respondent, the sanctioning authority had accorded sanction for prosecution. The order of the sanctioning authority reads as follows:-

"15. AND WHEREAS, from the material records placed by the Investigating Agency, a prima facie case has been made out for possession of assets disproportionate to the known sources of income in respect of Shri Vijay Rajmohan, presently Director, Ministry of Agriculture in terms of provisions of section 13(2) read with 13 (1)(e) of the Prevention of Corruption Act, 1988."

15. From the above, it is clear that the sanctioning authority has not declined the request of the CBI for grant of sanction for prosecution. Since some clarifications were needed earlier, a re-investigation was advised by CVC. However, those doubts had been suitably clarified by the CBI, after being satisfied with the same, the CVC had recommended for grant of sanction for prosecution. Thereafter, the sanctioning authority,



after considering the entire materials and after due application of mind, accorded sanction for prosecution. Therefore, the contention of the learned senior counsel appearing for the respondent in this respect cannot be countenanced.

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16. So far as the recommendations made by CVC is concerned, it is well within the power of CVC under Section 8(1)(g) of the CVC Act, 2003. One of the functions of the CVC is to tender advise to the Central Government on the matter of granting sanction. The relevant provision of the Act reads as under:-

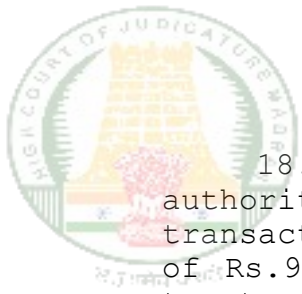
"8. (1) The functions and powers of the Commission shall be to -

..
..

(g) tender advise to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise;"

Therefore, it cannot be held that the sanction had been accorded on extraneous consideration of materials and on non application of mind. The special court, without considering those materials in a proper perspective, has erroneously come to a conclusion that the sanctioning was accorded on extraneous consideration.

17. Coming to the next ground, it is settled law that, while considering the application under Section 227 of the Code, the court cannot conduct a roving enquiry on the materials available on record and the court is expected to sift the evidence to a limited extent to see as to whether any prima facie case is made out or not. Whereas in the instant case, the special court not only conducted an elaborate enquiry, but also delved upon into the issue by considering the materials placed on record elaborately, more particularly, Statement-D, regarding expenditure during the check period pertaining to the trust run by the father of the respondent who has been arrayed as A2 in the case and various accounts maintained by the trust and had come to a conclusion that the prosecution had failed to produce any reliable material evidence to link the respondent (A1) with the trust and that the case was registered only on presumption and assumption.



18. After elaborate investigation, the investigating authority had come to a conclusion that there were various transactions between the respondent (A1) and the trust and a sum of Rs.9,50,000/- was received by the respondent (A1) from the trust account for the purchase of a property in Greater Noida in his name and his wife also came into possession of funds of the trust through the father of the respondent, who was the Chairman of the Trust. The materials collected during the investigation would reveal that heavy cash remittance in the initial stage of the trust was purportedly said to be received as loans from the trustees, however, it has been revealed to be unaccounted as the trustees were unable to explain the sources. Only the family members of the respondent were the trustees of the trust and the seed money to the trust had purportedly come from the family members who had no provable income in the year 2005. The transactions made from the trust to the respondent (A1) and his wife were not permitted by law and the ultimate use of the same was for the personal benefits. The probative value of those transactions cannot be looked into at this stage, however, the materials placed on record, give rise to a strong suspicion regarding the above transactions, which is sufficient to frame the charges. Thus, this court is of the considered view that the materials so collected during investigation clearly make out a prima facie case against the respondent for framing the charges. However, the trial court after considering the probative value of the materials has come to a conclusion that allegations were made only on presumption and assumption, which in the considered opinion of this court is not only erroneous but, also not permissible while considering the application under Section 227 of Cr.P.C.

19. For all the above reasons, this court is of the considered view that the order of the trial court is totally erroneous and therefore, the same is liable to be set aside.

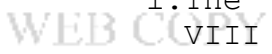
In the result, this Criminal Revision Petition is allowed and the order of the learned Principal Special Judge for CBI cases discharging the respondent from the charges leveled against him stands set aside. Since the matter is pending from 2018, the Special Judge is directed to frame the charges against the accused persons, thereafter proceed with the trial and complete the same as expeditiously as possible.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar



To

- NR (CO)
PR (25/01/2022)