IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.11.2022
PRONOUNCED ON : 24.11.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.15691 & 15692 of 2022 and
Crl.M.P.Nos.8820 & 8829 of 2022

1.S.Narayanan ... Petitioner in Crl.O.P.No.15691 of 2022
2.A.D.Senthureswaran ... Petitioner in Crl.O.P.No.15692 of 2022

Vs.

The State Rep. by
The Deputy Superintedent of Police,
Central Bureau of Investigation, ACB,
Chennai.
Crime No.RC No.43(A)/1996. ...Respondent in both petitions

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.9 of 2001 on the file of the Learned XII Additional Special Judge for CBI cases, City Civil Court, Chennai and quash the same against the petitioners herein.

In both petitions:
For Petitioners : Mr.N.Manoharan

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

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COMMON ORDER

Criminal Original Petitions filed to quash the proceedings in C.C.No.9 of 2001, pending on the file of the XII Additional Special Court for CBI cases, City Civil Court, Chennai against the petitioners/A3 & A2.

2.Since both the Criminal Original Petitions are arising out of case in C.C.No.9 of 2001, this Court disposes both the petitions, by way of common order. For the sake of convenience and clarity, the petitioners are referred to as accused, as per their rank, in the charge sheet.

3.A1, the public servant, Former Chairman-cum-Managing Director, Tamil Nadu Minerals Limited, Chennai, was charged for offence under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988. Since A1 passed away on 19.04.2021, the charge against him stands abated. On the death of the public servant (A1), the charges against the abettors/A2 & A3, also to abate. Hence, they have filed the present Criminal Original Petitions.

4.Gist of the case is that A1 was appointed as Chairman-cum-Managing Director, Tamil Nadu Minerals Limited, Chennai on 11.07.1991. The check period is from 11.07.1991 to 31.01.1996. A1 and his family members acquired disproportionate assets at the end of the check period i.e., on 31.01.1996, which is as follows:-

- Assets at the beginning of the check period is to the tune of Rs.29,40,436/-.
- Assets at the end of the check period is to the tune of Rs.7,64,10,569/-.
- Assets acquired during the check period is to the tune of Rs.7,34,70,133/-.
- Income received during the check period is to the tune of Rs.43,64,025/-.
- Expenditure incurred during the check period is to the tune of Rs.43,52,131/-.
- Likely savings during the check period is to the tune of Rs.11,894/-.
- Disproportionate assets acquired during the check period is to the tune of Rs.7,34,58,239/-.

5.As regards, the petitioners/A3 and A2 are concerned, A3 was working as Clerk in the Arignar Anna Sugar Mills, Kurungulam, Thanjavur and he is family friend of A1. A2 is the elder son of and, was working as an Officer in Indian Bank.

6.During the house search conducted at the residence of A1, several documents seized including fixed deposits made during the check period at Indian Overseas Bank, Kilpauk Branch, Chennai; City Union Bank, George Town Branch, Chennai; Canara Bank, Anna Nagar (East), Chennai; Indian Bank, Egmore, Kilpauk, Kellys Branch. The fixed deposits were in the name of A3 and the maturity value was to the tune of Rs.21,61,897/-. The fixed deposits were made in the name of A3 out of the funds provided by A1. As regards A2 is concerned, some fixed deposits were made in the account of A1 and also immovable properties acquired in his name. In Annexure-B, the details of the fixed deposits provided in serial Nos.25 to 30. Likewise for the properties acquired in the name of A2 provided in serial Nos.8, 9, 13, 16, 17, 20, 21, 34, 35, 38, 42 & 43. Apart from that, A2 is also a Trustee of the family trust. Since no acceptable explanation with corresponding documents could be provided by the accused, the explanation was rejected and charge sheet filed before the trial Court listing 281 witnesses and 705 documents. Now, the trial is at an advanced stage and so far 197 witnesses deposed and PW197, the Investigating Officer's chief examination is completed and cross examination is pending.

7.Primary contention of the learned counsel for the petitioners/A3 & A2 is that A3 is not a public servants and will not fall within the ambit of the provisions of Prevention of Corruption Act, 1988 (Hereinafter referred to as 'Act'). The Hon'ble Apex Court in the case of "***P.Nallamal Versus the State reported in 1999 (6) SCC 559***" clearly laid down that the non public servant can be prosecuted along with the public servant for the offence of abetment as defined in Section 109 of IPC. In this case, admittedly, the public servant (A1) died on 19.04.2021. The learned counsel further submitted that the essence of the offence punishable under Section 13(1)(e) of the Act is only in the event of failure of the public servant to satisfactorily account for the pecuniary resources and disproportionate assets to his/her known source of income. In the event of public servant able to satisfactorily account, then no offence would be made out and he/she is not liable to be prosecuted. It is only when the public servant fails to satisfactorily account as mandated in the provisions of the Act, then only the offence under Section 13(1)(e) of the Act is complete and he is liable for punishment under Section 13(2) of the Act.

8.The learned counsel further submitted that in this case, the penal provision is the failure to satisfactorily account for the assets. If the public servant does not survive to explain, then there cannot be a finding against him/her that he/she has not explained the assets and the sources of income. Thus, it is for the public servant, who has to give explanation about the source of income as required under Section 13(1)(e) of the Act. He further submitted that the explanation of the public servant is to the satisfaction of the judicial conscience of the Court. In the event of death of public servant, such explanation cannot be made and there cannot be substitute for the explanation to be made by A1. Further, during questioning under Section 313 Cr.P.C., the public servant can give his explanation and provide materials if any to the satisfaction of the Court. He is also entitled to get into the box under Section 315 Cr.P.C., and make a disclosure and give explanation by way of evidence to prove the documents along with his explanation.

9.The learned counsel further submitted that the public servant can examine related witnesses in support of his explanation. The assets held by the public servant were within his exclusive knowledge and therefore, it was his burden under Section 106 of the Indian Evidence Act to prove the said facts which are within his exclusive knowledge. As regards A3 & A2 are concerned, they are charged for offence under Section 109 of IPC. Without holding A1 guilt of the substantive offence under Section 13(2) r/w Section 13(1)(e) of the Act, it is not possible to hold A3 & A2 guilt of abetment. Hence, A3 & A2 cannot substitute the mind of A1 and can give any explanation in respect of the disproportionate assets held by A1 and therefore, no purpose would be served in continuing the prosecution against them.

10.He further submitted that on the death of the public servant (A1), the charge against him gets abated. In the absence of substantial evidence for his explanation, no finding can be given that the public servant has committed the offence and thereby, non public servant cannot be punished for the offence of abetment under Section 109 IPC. The *sine qua non* is the punishment of the public servant first. The offence under Section 109 IPC creates only vicarious liability on the non public servant for the offence committed by the public servant.

11.In support of his submissions, the learned counsel for A3 & A2 relied on the following decisions:-

1. *Faguna Kanta Nath Versus State of Assam reported in AIR 1959 SC 673.*

2. *State of Maharashtra Versus Eknath Yeshwant Pagar and another reported in (1981) 2 SCC 299.*

3. *Raj Kumar Dey and others Versus Tarapada Dey and others reported in (1987) 4 SCC 398.*

4. *State of Haryana and others Versus Bhajan Lal and others reported in 1992 Suppl (1) SCC 335.*

5. *Central Bureau of Investigation Versus V.C.Shukla and others reported in (1993) 3 SCC 410.*

6. *Aneeta Hada Versus Godfather Travels and Tours Private Limited reported in (2012) 5 SCC 661.*

7. *Arjun Panditrao Khotkar Versus Kailash Kushanrao Gorantyal and others reported in (2020) 7 SCC 1.*

8. *P.Mohanraj and others Versus Shah Brothers Ispat Private Limited reported in (2021) 6 SCC 258.*

12.*Per contra,* the Special Public Prosecutor for CBI cases appearing for the respondent submitted that on completion of investigation, charge sheet filed on 14.03.2001 against A1 for the commission of offence, under Section 13(2) r/w 13(1)(e) of the Act, 1988 and against A2, son of A1 and A3, friend of A1, for commission of offence under Sections 109 IPC r/w 13(2) r/w 13(1)(e) of Act, 1988. The cognizance of the case was taken by the trial Court in C.C.No.9 of 2001 and the same has been pending for the 21 years. He further submitted that the disproportionate assets held by A1 acquired in his name, in the name of his son A2 and in the name of his close friend A3 and others, at the end of the period of check i.e. as on 31.01.1996.

13.It is submitted that in order to prove the case, the respondent cited 705 documents along with 281 statements of witnesses in the charge sheet.

Out of 281 witnesses, 197 witnesses deposed their evidences before the trial Court and 522 documents were also marked as exhibits. The chief examination of PW197/Investigating Officer completed and he has to be cross examined. During the course of trial, A1 expired on 19.04.2021 and accordingly, the charges against him abates recorded by the trial Court. He further submitted that the averment made by A3 & A2 are incorrect and not acceptable. It is submitted that as per Section 4 of Act, 1988, the Special Judges can try the cases of non-PC Act offences along with PC Act offences as held by the Hon'ble Apex Court held in the case of "***State through Central Bureau of Investigation, New Delhi Versus Jitender Kumar Singh reported in (2014) 11 SCC 724***".

14.He further submitted that the Hon'ble Apex Court held in the case of "***Vakil Yadav Versus State of Bihar reported (2001) SCC Crl. 1499***" that abetment to an offence of corruption was itself a distinct offence for which a charge could be framed. Now, in this case, even if the charges under Section 13(1)(e) r/w 13(2) of the Act could not be proved, the charges under Sections 13(1)(e) r/w 13(2) and 109 of IPC being separate and distinct charge, the trial is to continue. The High Court of Karnataka held in the case of "***CBI, Bangalore Versus V.M. Saraswathy, dated 20.12.2021***" that the presence or absence of principal accused for the trial cannot be the basis to proceed or not to proceed against the co-accused charged for the abetment under section 109 IPC. Such co-accused will have to stand the trial on his own. If he so desires, it is open to him to produce evidence to satisfactorily account of pecuniary resources or property disproportionate to the known sources of the principal accused. He further submitted that the investigation *prima facie* revealed that A1 while as Chairman & Managing Director of Tamil Nadu Minerals Limited, Chennai, during the period from 11.07.1991 to 31.01.1996, was found in possession of disproportionate assets both movable and immovable properties in his name and in the name of his son A2 and his close friend A3 to the tune of Rs.7,34,58,239/- (1783.26%), which is disproportionate to his known sources of income, for which, he could not satisfactorily account for and that A2 & A3 had abetted the offence.

15.He further submitted that during the course of trial, 197 witnesses deposed on the side of prosecution and the said witnesses cross examined by A2 and other accused persons. Now, the case is pending for cross examination of the Investigating Officer/PW197. Hence, in order to prove his innocence, A2 and A3 can cross examine the Investigating Officer/PW197 and he can also defend his case by way of producing defence witnesses. Hence, he prayed for dismissal of these Criminal Original Petitions.

16.Replying to the Special Public Prosecutor, the learned counsel for A3 & A2 submitted that the Special Public Prosecutor proceeded on a wrong premise on the decision of the Hon'ble Apex Court in the case of "***State through the Central Bureau of Investigation, New Delhi Versus Jitender Kumar Singh reported in (2014) 11 SCC 724***" whether the trial can proceed after the death of the public servant before the trial Court and at what stage. The contention of A3 & A2 is not on that fold. His primary contention is that when the principal offender died and thereby, the charge against the principle offender is abated, the abettor cannot be proceeded with. In this case, at the first instance, it is proved that the public servant (A1) was in possession of disproportionate assets to his known source of income, hence, it is the public servant to satisfactory account for his assets. The finding can be rendered when the public servant fails to account for the assets. The chance of giving explanation under Sections 313 and 315 Cr.P.C., by the public servant vanishes and there is no reason as to how accused can probabilize their defence. As regards A3 & A2 are concerned, they are charged for offence under Section 109 IPC and they have no occasion to know the exclusive knowledge of the public servant and they cannot get into his mind and give explanation for the public servant as per Section 106 of the Indian Evidence Act. Hence, the public servant (A1) alone has the burden to prove his disproportionate assets. This burden cannot be put on the non public servant, who are the co-accused in this case.

17.Considering the submissions made and on perusal of the materials, it is seen that the primary ground on which the petitioners filed these quash petitions is that the principal offender, namely, A1, who is the father of A2 and close friend of A3 passed away on 19.04.2021 and since the case against the principal offender/A1 gets abated, the abetment charge against the petitioners also fails. In this case, it is seen that the check period was from 11.07.1991 to 31.01.1996 and the disproportionate asset is around 1783.26%. For several of the properties which is standing in the name of A2 and A3, trail leads to A1 source and added to it, there are specific properties which were listed in Annexure B showing the same. As regards A3, during the house search conducted in the house of A1, fixed deposits in the name of A3 to the tune of Rs.21,61,897/- was seized, but no plausible explanation could be given by the principal offender as well as the petitioners for the fixed deposits.

18.In the case of ***P.Nallamal***, the Apex Court held that the contention and explanation of the accused in Prevention of Corruption Act more particularly in the case of disproportionate assets either by the Public servant and his family members and others, the explanation is only before the Trial Court and the Trial Court on the evidence and materials to consider the same. In this case, admittedly the trial reached the penultimate stage and now, the Investigating Officer/P.W.197 has to be cross examined. So far, 197 witnesses examined and 522 documents marked as exhibits. As rightly contended by the learned Special Public Prosecutor several of the witnesses and documents are pointing towards the petitioners for which the petitioners alone can given plausible explanation which the Trial Court has to consider and decide. The petitioner's contention that they cannot get into the mind of principal offender/A1 and it is A1 who has to give his explanation under Sections 313 and 315 Cr.P.C. cannot be countenanced at this stage and on the facts and materials produced.

19.The Apex Court in the case of ***Jitender Kumar Singh*** in paragraph No.44 visualized such a situation which is extracted below:

> *"44.We can visualise a situation where a public servant dies at the fag end of the trial, by that time, several witnesses might have been examined and to hold that the entire trial would be vitiated due to the death of a sole public servant would defeat the entire object and purpose of the PC Act, which is enacted for effective combating of corruption and to expedite cases related to corruption and bribery. The purpose of the PC Act is to make anti-corruption laws more effective in order to*

> *expedite the proceedings, provisions for day-today trial of cases, transparency with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been provided under the PC Act. Consequently, once the power has been exercised by the Special Judge under sub-section (3) of Section 4 of the PC Act to proceed against non-PC offences along with PC offences, the mere fact that the sole public servant dies after the exercise of powers under subsection (3) of Section 4, will not divest the jurisdiction of the Special Judge or vitiate the proceedings pending before him."*

20.In the case of "***Dr. Subramanian Swamy vs. Dr. Manmohan Singh and Another (2012) 3 SCC 64,*** the Apex Court clearly held that the endeavour of the Court is to punish the offenders and eradicate corruption by all means. Section 109 IPC is a stand alone offence and need not depend upon on the outcome of the proceedings against the principal offender. The abettors guilt depends on the nature of the act abetted and the manner in which abetment was made which has to be necessarily decided by the Trial Court. Further, the Apex Court in the case of ***Vakil Yadav*** held that even in case if the charge under Section 13(1)(e) r/w. 13(2) of Prevention of Corruption Act could not be proved, Section 109 IPC being separate and distinct charge, the trial can continue. In this case, admittedly the case against A1 gets abated due to his death and not on merits, only in the event of principal offender getting acquitted on merits the petitioners' contention has some force for consideration.

21.Further, the petitioner's contention is that if they are required to face the trial, it would be unjust due to the absence of the principal offender who was primarily required to satisfactorily account of pecuniary resources or property disproportionate to his known sources of income. Merely because the principal offencer is not available for trial, that would not enure to the benefit of the co-accused named as abettors under Section 109 IPC. It is for the co-accused to stand for the trial, give their explanation independently, if they so desire it is open to them to satisfactorily account for pecuniary resources or property disproportionate to the known sources of the principal offender. Admittedly, A2 is the son and A3 is the close friend of the principal offender/A1.

22.The High Court of Karnataka in the case of ***CBI vs. V.M.Saraswathy*** dealt elaborately with the issue on hand citing various decisions for the principle that ***abatement does not annihilate abetment***. This Court is in complete agreement with the same.

23.In view of the same, this Court finds no merits and reason to entertain these petitions and it is for the petitioners to face the trial. Accordingly, these Criminal Original Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed.

24.11.2022

Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No
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To

1.The XII Additional Special Judge for CBI cases,
City Civil Court, Chennai.

2.The Deputy Superintedent of Police,
Central Bureau of Investigation, ACB,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDERS IN
Crl.O.P.Nos.15691 & 15692 of 2022

24.11.2022