IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.01.2022

PRONOUNCED ON :25.01.2022

CORAM:

THE HON'BLE MR.JUSTICE V. BHARATHIDASAN

Crl.R.C.No.446 of 2021
and
Crl.M.P.Nos. 7267 & 7268 of 2021

K.Nalini,
W/o.A.Maharajan ...Petitioner /2nd Accused

Versus

State rep. by
The Inspector of Police,
CBI/ACB,
Chennai. ...Respondent/Complainant

PRAYER : Criminal Revision Petition filed under Section 397 read with 401 of the Code of Criminal Procedure, to call for the records in C.C.No.12 of 2018 on the file of learned IX Additional Special Court for CBI Cases, Chennai and set aside the order in Crl.M.P.No. 6542 of 2018 dated 13.07.2021.

For Petitioner	:	Mr.N.R.Elango, Senior Advocate for M/s.Aruna Elango
For Respondent	:	Mr.K.Srinivasan, Special Public Prosecutor

ORDER
(This case has been heard through video conference)

This Criminal Revision Petition has been filed against the order passed by the court below dismissing the petition filed by the petitioner under Sec.239 of Crl.P.C. to discharge her from the charges.

2.Totally, there are two accused. The petitioner is arrayed as A2. A1, one Maharajan, is the husband of petitioner and they are facing charges under Sec.109 I.P.C. read with Sec.13(2) r/w

13(1)(e) of Prevention of Corruption Act, 1988 in C.C. No.12 of 2018.

3.The case of prosecution in brief is as follows :-

A1 in this case was working as Assistant Plant Protection Officer, Regional Plant Quarantine Station, Chennai. During the check period from 01.04.2016 to 25.04.2017, A1 acquired assets in his name and in the name of his wife, the petitioner herein, which disproportionate to his known source of income, for which, he could not satisfactorily explain. Hence, a crime was registered against both the accused. The materials collected during investigation reveals that, at the beginning of check period, viz., 01.04.2016, both A1 and A2 possessed immovable assets to the extent of Rs.26,16,572/- and at the end of check period viz., on 25.04.2017, both of them possessed assets worth about Rs.52,63,444/-. During that check period, they have derived income to the tune of Rs.10,10,964/- and the expenditure was Rs.13,10,773/-. Hence, they have possessed assets to the tune of Rs.29,46,681/- as disproportionate to the known source of income. During investigation, the respondent had seized unaccounted cash to the tune of Rs.21,72,250/- in their residence and in two lockers belong to both A1 and A2 including new currency of Rs.500/- and Rs.2000/- denomination. During the course of investigation, both A1 and A2 were given sufficient opportunity to explain the source of income, but they could not satisfactorily give explanation for the same. The prosecution assessed disproportionate asset based on the seizure of currency from the bank lockers to the tune of Rs.21,72,250/-, fixed deposits and also the expenditure of A1 and A2. During investigation, the respondent recorded statements from 69 witnesses and 84 documents were collected.

4.After completing investigation, the respondent filed the final report. Considering all those materials, the court below taken cognizance and issued summons. Thereafter, to discharge her from the charges, the petitioner/A2 filed a petition under Sec.239 of Cr.P.C. on the ground that the petitioner has independent source of income, she is in possession of vast extent of agricultural lands gifted by her parents, and she had derived income from the agricultural source, which was not taken into account by the respondent. That apart, she was an income tax assessee and she has filed income tax returns showing her own source of income. However, the respondent has not considered those income tax returns, which would clearly establish the independent source of income of petitioner. Admittedly, during the check period, no property has been purchased by both A1 and A2. The entire allegation based on the cash seized from bank lockers jointly maintained by A1 and A2 and nothing was seized from her. Hence, based on that, the petitioner cannot be implicated with the aid of Sec.109 I.P.C. It is further stated that during investigation, no opportunity was given to the petitioner to explain her source of income and no prima facie case is made out against the petitioner.

5.The Trial Court, after elaborately considering the materials available on record, held that, a prima facie case made out against the petitioner and sufficient ground available to proceed against the petitioner and dismissed the petition. Now, challenging the said order, the present Criminal Revision has been filed.

6.Mr.N.R.Elango, learned senior counsel appearing for petitioner would content that, admittedly, A1 is a public servant, the petitioner is his wife, she is having independent source of income and she is an income tax assessee. For the relevant period, she has filed income returns, which would clearly shows that she is having separate income and also having immovable assets, that was not considered by the investigating authority. That apart, she is also having vast extent of agricultural lands, which were gifted by her parents and from that, she has derived huge income, which is non-taxable income, but that was also not considered by the respondent during investigation. Had an opportunity was given to the petitioner, she would have clearly explained her source of income. The learned senior counsel would further submit that, admittedly, the respondent arrived the disproportionate income based on the cash seized from the lockers jointly maintained by A1 and A2 and based on that, the petitioner cannot be implicated. The materials available on record did not make out a prima facie case against the petitioner and there is no sufficient ground available to proceed against her, the Trial Court, without considering those materials, mechanically dismissed the petition.

7.Per contra, learned Special Public Prosecutor appearing for respondent C.B.I. would content that, during the check period, both A1 and A2 acquired assets to the tune of Rs.29,46,681/-, which is disproportionate against their known source of income to the tune of 291.47%. Even though sufficient opportunity was given to them, they have no satisfactory explanation for the assets. So far as income tax returns relied on by the petitioner, her Auditor one Sivankalai, who has filed the income tax returns, was examined by the respondent as L.W.44, wherein he has admitted that he has not filed any document for the agricultural source of income and income tax return has been filed only based on the oral instructions of A1. That apart, income tax returns were filed after the commencement of investigation and it cannot be relied upon by the petitioner. So far as agricultural source of income of the petitioner is concerned, mother and relative of the petitioner were examined as L.W.51 and L.W.50. They have categorically stated that no income derived from those lands, which would clearly shows that the petitioner would not have received an agricultural income. The bank balance of the petitioner has been considerably increased from Rs.26,886/- at the beginning of check period to Rs.3,48,661/- at the end of check period. That apart, she had also paid rent to the tune of Rs.5,85,000/- through her bank account. During the investigation, sufficient opportunity was given to the petitioner, but she did not give any satisfactory explanation. That apart, if the petitioner has any materials to show that she is having independent source of income, those materials cannot be considered at the stage of framing of charges and it is always open to her to place it during trial. Considering available materials, the court below has rightly dismissed the petition and there is no infirmity in the order.

8.Heard and considered rival submissions made by both sides and perused the records.

9.It is the case of possessing assets against the known source of income. A1 is a public servant. The petitioner/A2 is his wife. The check period was between 01.04.2016 to 25.04.2017. The case of prosecution is that, at the beginning of check period, their assets was only Rs.26,16,572/- and at the end of check period, it was increased to Rs.52,63,444/-. There is disproportionate assets of Rs.29,46,681/-, which was not satisfactorily explained by the accused. The respondent has assessed the assets based on the seizure of cash to the tune of Rs.21,72,250/-, from the residential premises of accused and also from two lockers jointly maintained by both A1 and A2. So far as the petitioner's bank account is concerned, her bank balance has been considerably increased from Rs.26,886/- at the beginning of check period to Rs.3,48,661/- at the end of check period and the increase is to the tune of Rs.3,21,775/-. That apart, A2 also paid rent at the rate of Rs.45,000/- per month to the tune of Rs.5,85,000/- from her bank account. According to the prosecution, the petitioner is house wife and she is having no independent source of income and all those amounts transferred to her from the assets of A1. Hence, the petitioner was implicated in the crime.

10.The contention of the petitioner is that, she is having independent source of income and she is an income tax assessee, during the check period, she has filed income tax returns showing her income and those amount was not received from A1. That apart, it is stated that she is having vast extent of agricultural lands gifted by her parents. From those agricultural lands, she has derived huge income, which is not taxable income, that was not taken into account by the respondent. So far as income tax returns filed by the petitioner is concerned, one P. Sivankalai, petitioner's auditor was examined as L.W.44, wherein he has clearly stated that, the petitioner never visited his office and did not submit any document for preferring income tax returns. Only A1 orally informed him about the income details of A2, and based on the information furnished by A1, he has filed the income tax returns of the petitioner. According to him, no material available to show the agricultural income of the petitioner. The statement of Chartered Accountant shows that income tax return has been filed without any document, and on the oral instructions of A1. So far as agricultural income, the petitioner's mother one Mariammal was examined as L.W.51 and the petitioner's relative one Geetha was examined as L.W.50, wherein they have clearly stated that there is no income derived from the agricultural lands during the check period. That apart, the petitioner also said to have made some business transaction with her relatives and those persons were also examined as L.W.45 to 50, but they have not produced any materials for the transactions. So far as contention of petitioner regarding giving opportunity to explain the source of assets possessed by her, it is clearly stated that during the course of investigation, sufficient opportunity was given to her to explain source of income and expenditure made by her, but she was not able to give any satisfactory explanation. The Trial Court, considering the same, has held that sufficient opportunity was given to the petitioner during the course of investigation. Considering those materials, the court below has come to a conclusion that a prima facie case is made out against the petitioner and there are sufficient ground available to proceed against her and the petitioner cannot be discharged at this stage.

11.The law is well settled, at the time of framing charges, the Court has to consider whether sufficient ground available to proceed against the accused based on the materials available on record. Even the person charged with for offence might have a defence and that matter has to be decided only during the trial and the document produced by the accused cannot be considered at the stage of framing charges, and the court has to evaluate only the materials and documents filed by the prosecution. In the above circumstances, if at all, the petitioner is having any valid defence and materials to support her case, it is always open to her to produce the same during trial and all those materials cannot be considered at this stage.

12.Considering all those materials, this Court is of the considered view that, a prima facie case is made out against the petitioner and there are sufficient ground to proceed against her. The Trial Court, considering the same, has rightly dismissed the petition and I find no irregularity or illegality in the order passed by the court below. I find no merit in this

Criminal Revision Case and the same is liable to be dismissed. Accordingly, this Criminal Revision Petition is dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The IX Additional Special Court for CBI Cases,
   Chennai.

2. The Inspector of Police,
   CBI/ACB,
   Chennai.

3. The Special Public Prosecutor (CBI)
   High Court, Madras.

Copy To

The Section Officer,
V.R Section,
High Court,
Madras.

Crl.R.C.No.446 of 2021

JP-II(CO)
RGA(14/02/2022)