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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	:	27..01..2022
Orders Pronounced on	:	04..02..2022

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Original Petition No.20111 of 2021
& Crl.M.P.No.10967 & 10968 of 2021

M.Marichamy

... Petitioner

-Versus-

The Superintendent of Police,
Central Bureau of Investigation,
Anti Corruption Branch,
Chennai.

[Crime No: RC MA1 2016 A 0048 dated 27.12.2016]

... Respondent

Petition filed under Section 482 of the Code of Criminal Procedure, 1973, call for the records relation to Crl.M.P.No.321 of 2021 in C.C.No.10 of 2018 on the file of the learned Principal Special Judge for CBI Cases (VIII Additional City Civil Court, Chennai) taken on file for the alleged offence u/s 109 IPC r/w 13(2) r/w 13(1)(e) of The Prevention of Corruption Act, 1988, and to set aside the order dated 15.09.2021 made in Crl.P.No.321 of 2021 in C.C.No.10 of 2018

For Petitioner

: Mr.P.S.Raman,
Senior Counsel for
Mr.Sella Visalakshmi
for petitioner

For Respondent

: Mr.K.Srinivasan,
Spl. Public Prosecutor
for CBI Cases

ORDER

This original petition has been filed by A3 against the order dated 15.09.2021 passed by the learned Principal Special Judge for exclusive trial of CBI Cases, Chennai in Crl.M.P.No.321 of 2021 in C.C.No.10 of 2018 dismissing the application filed under Section 91 of Cr.P.C. to summon the Income Tax Returns of the petitioner firm and to consider the



same in an application filed by him under Section 239 of Cr.P.C. to discharge him from the charges.

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

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(i) There are totally 3 accused in this case. One Thangavel (A1) is the brother of the petitioner-M.Marichamy (A3), who was working as Section Supervisor in Employees Provident Fund Organization at Regional Office, Chennai and P.Vijayalakshmi (A2) wife of A1.

(ii) According to the prosecution, during the period between 01.12.2011 and 09.12.2016, A1 acquired assets to the tune of Rs.1,09,49,215/- in his name and in the name of his wife (A2) which are disproportionate to his known sources of income which he could not satisfactorily account for. Hence, on the basis of source information, a crime was registered for the offence u/s 109 of IPC r/w 13 (2) r/w 13(1)(e) of The Prevention of Corruption Act, 1988 initially against M.Thangavel (A1) and his wife Smt.P.Vijayalakshmi (A2). Subsequently, the investigation revealed that the petitioner who said to have been running a firm by name M/s.Efficient Management Consultant (in short "EMC") and the firm was maintaining Current Account with South Indian Bank, T.Nagar, Chennai. From that account, a sum of Rs.36.00 lakhs was paid to various vendors towards purchase of an immovable property situated at CIT Nagar in the name of A2 by A1. Subsequently, A1 constructed a commercial and residential buildings on the property and a sum of Rs.34,00,000/- was also paid to the contractor. That amount was also paid through the petitioner firm during 2013-2014. That apart a sum of Rs.09.50 lakhs was paid to M/s.Shriram Chits Pvt Limited on behalf of A2 and another sum of Rs.2.35 lakhs was transferred from the account of the petitioner firm to A2. Earlier a total sum of Rs.77.53,200/- was deposited into the account of the petitioner firm, which was subsequently, paid to the vendors of the land, builder and towards other dues by way of cheques.

(iii) Further according to the prosecution, during the relevant period, the petitioner's family was staying in a rental accommodation at Alwarpet in Chennai and there was no materials available to show that the petitioner had huge income through his business. During investigation, despite opportunity having been given to the petitioner to offer explanation, he failed to satisfactorily explain the sources of income for the deposit made into his firm's account as well as cheque which he had issued on behalf of A1 and A2 for the purpose of purchase of land and construction of building. In the said circumstances, on the basis of materials collected during the investigation, the respondent filed charge sheet implicating the petitioner as A3 for the offence u/s 109 of IPC r/w 13(2) r/w 13(1)(e) of the



Prevention of Corruption Act, 1988. The learned Special Judge on taking cognizance of offence issued process.

(iv) While so, the petitioner herein filed a petition in Crl.M.P.No.7326 of 2018 under Section 239 of Cr.P.C. seeking to discharge him from the charges. Pending that application, the petitioner filed moved a petition before the learned Special Judge under Section 91 of Cr.P.C. seeking to summon his Income Tax Returns (ITRs) filed for the year 2012-2013, 2013-2014 and 2014-2015 which was seized during investigation, alleging that those ITRs would be sufficient to establish that his firm had sufficient income during the relevant period for making payment in favour of A1 and A2. Even though all those documents were seized by CBI during investigation, the prosecution did not consider the same and it did not form part of the final report and they are still available with the respondent-CBI.

(v) According to the petitioner, those ITRs filed him for the year 2012-2013, 2013-2014 and 2014-2015 would clearly establish his case that he had sufficient income during the relevant period through his business and the deposits of amounts into his account were not made by A1 and A2. That application was dismissed by the learned Special Judge holding that at the time of framing of the charges, normally the court would only consider the materials produced by the prosecution and any evidence relied on by the accused person could not be considered. That apart, ITRs filed by the petitioner could not be sufficient to hold that the income shown in ITR was true income of the petitioner and the petitioner has to independently establish the same during trial. Challenging the same, the present original petition has been filed.

3. Mr.P.S.Raman, the learned senior ocunsel appearing for the petitioner would vehemently contend that the petitioner is a partner in a consultant firm which had sufficient income which were deposited in the bank. A1 is the brother and A2 is the sister-in-law of A3 and in order to help them he had paid the amounts to the land owners as well as the contractors. During the check period namely, 2011-2016, the petitioner filed ITRs and paid income tax which would clearly establish that the petitioner had sufficient income and the amounts had not come from A1.

4. According to the learned senior counsel, despite those ITRs were seized during investigation, they were not considered by the respondent-CBI and not part and parcel of final report and they are still with the respondent-CBI. The learned senior counsel would therefore, submit that since the ITRs filed by the petitioner would clearly establish that the amounts paid by him in favour of A1 and A2 were from out of his own sources of



income and not from the funds allegedly belonged to A1.

5. The learned senior counsel would further submit that even though at the initial stage of framing of charges, the court will normally consider the materials produced by the prosecution, there is no absolute bar to consider the materials produced by the accused, if those materials are sterling in nature. The ITRs filed by the petitioner would show the income derived by the petitioner from his business and the tax paid by him which are documents of unimpeachable in character and sterling in quality and would prove the case of the prosecution false. The learned senior counsel would, therefore, submit that in those circumstances, the petition filed under Section 91 of Cr.P.C. is maintainable but, the court below without considering the same in a proper perspective, dismissed the same and as such, the order of the court below requires interference at the hands of this court. In support of his contentions, the learned senior counsel placed reliance heavily upon the judgment of the Honourable Supreme Court in *State of Orissa v. Debendra Nath Padhi* (2005) 1 SCC 568 and the judgment of this Court in *M.Gopalakrishnan v. State of Tamil Nadu*, (2019) 2 L.W. (Cri) 136.

6. Per contra, the learned Special Public Prosecutor, appearing for the respondent-CBI would contend that the petitioner is the brother of A1 and admittedly, huge amounts, during the check period, to the tune of Rs.1.29 crores were paid by the petitioner on behalf of A1 and A2 for the purchase of an immovable property and also for the construction of buildings. During investigation, opportunity was given to the petitioner to explain his income, but, the petitioner was unable to produce any document to substantiate his income for the deposit of huge amounts into his account. Even though ITRs filed by the petitioners were seized during investigation, those ITRs would not conclusively prove that the income shown in the same were true income of the petitioner, Those ITRs would not fall under the category of documents of unimpeachable in character and sterling in quality. If at all, the petitioner has any materials to substantiate his case, it is always open for him to produce the same before the court below at the time of trial and at the initial state of framing of charges, the court below could only consider the materials placed by the prosecution and could not consider any materials placed by the accused and discharge the accused on the basis of the materials relied upon by the accused.

7. In support of his contentions, the learned Special Public Prosecutor would place reliance upon the judgment reported in *State of Tamil Nadu v. N.Suresh Rajan*, 2014 (11) SCC 709.



8. I have considered the rival submissions carefully and also perused the records carefully.

9. It is an admitted fact that huge amount to the tune of Rs.1.29 crores was transferred from the account of the petitioner on behalf of A2 for the purpose of purchase of immovable property and for the construction of buildings. According to the prosecution, those amounts were ill-gotten money of A1 and the same were transferred to the account maintained by the petitioner and the petitioner, in turn, disbursed the amount on behalf of A1 and A2. The petitioner denied the version of the prosecution. According to him, he has been running a consultancy firm and derived sufficient income from his partnership business from out of which, he paid the dues on behalf of A1 and A2.

10. During investigation, it was found by CBI that entire amounts deposited into the account of A3 were from A1 and the petitioner had no independent sources of income at the relevant point of time. However, in order to substantiate his case, that he had sufficient income during the relevant point of time, the petitioner (A3) relied upon the ITRs filed by him for the period 2012-13, 2013-14 and 2014-15. Admittedly, those ITRs were seized by the respondent-CBI at the time of investigation but, they did not form part of the final report and they are still with the CBI. The application moved by the petitioner in CrI.M.P.No.321 of 2021 to summon those documents to enable the court to consider the same while considering the application filed seeking to discharge him from the charges.

11. It is the settled law that at the initial stage of framing of charges, court has to consider only the materials produced by the prosecution along with the final report and normally, any materials placed by the accused will not be considered at that stage. The only exception is that where the documents that were sought to be relied on by defence are of unimpeachable in character and sterling in quality. In *State of Orissa v. Debendra Nath Padhi* (2005) 1 SCC 568, a bench of three-Judges of the Honourable Supreme Court has observed as under:-

"20. Reliance placed on behalf of the accused on some observations made in *Minakshi Bala v. Sudhir Kumar* [(1994) 4 SCC 142 : 1994 SCC (Cri) 1181] to the effect that in exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence is misplaced for the



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purpose of considering the point in issue in these matters. If para 7 of the judgment where these observations have been made is read as a whole, it would be clear that the judgment instead of supporting the contention sought to be put forth on behalf of the accused, in fact, supports the prosecution. Para 7 of the aforesaid case reads as under: (SCC p. 145)

"7. If charges are framed in accordance with Section 240 CrPC on a finding that a prima facie case has been made out – as has been done in the instant case – the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under Section 173 CrPC and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed under Section 240 CrPC the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 CrPC; nor would it be justified in invoking its inherent jurisdiction under Section 482 CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence."

21. It is evident from the above that this Court was considering the rare and exceptional cases where the High Court may consider unimpeachable evidence while exercising jurisdiction for quashing under Section 482 of the Code. In the present case, however, the question involved is not about



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the exercise of jurisdiction under Section 482 of the Code where along with the petition the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing, but is about the right claimed by the accused to produce material at the stage of framing of charge. "

Therefore, there is no absolute bar for the court to consider the materials placed by the accused provided those materials are unimpeachable in character and sterling in quality.

12. Now, the question is whether ITRs which are sought to be summoned by the petitioner are that of unimpeachable character and sterling quality and on that basis whether court can discharge the accused holding that the income shown in the ITRs were the income derived by A3 from out of his business and not the ill-gotten money of A1. The issue is no more res integra. In similar circumstances, the Honourable Supreme court in State of Tamil Nadu v. N.Suresh Rajan, 2014 (11) SCC 709 has held that the fact that the accused was assessed to income tax and he paid the income tax cannot be relied upon to discharge the accused and income shown in the ITRs cannot be a ground to hold that it was actually derived by the assessee. The relevant portion of the judgment is extracted as under:-

"32.3. While passing the order of discharge, the fact that the accused other than the two Ministers have been assessed to income tax and paid income tax cannot be relied upon to discharge the accused persons particularly in view of the allegation made by the prosecution that there was no separate income to amass such huge properties. The property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give opportunity to the corrupt public servants to amass property in the name of known persons, pay income tax on their behalf and then be out from the mischief of law. "

13. In the instant case, the prosecution puts forth that the investigation revealed that the petitioner did not have sufficient income and during investigation, the petitioner was not in a position to produce any document to show that his partnership firm had sufficient income during the relevant point of time and failed to explain the sources for deposit of such huge amounts in his bank account. Mere fact that the petitioner



was assessed to income tax and he paid income tax for the income shown in the ITRs cannot be relied upon to discharge him from the charges and it cannot be held that the income shown in the ITRs were derived from the business and belonged to the petitioner to discharge the petitioner from the charges. The court below has elaborately considered those submissions and rightly dismissed the application. This court finds no irregularity or illegality in the order of the court below. Thus, the order of the court below does not call for any interference at the hands of this court the original petition deserves only liable to be dismissed.

In the result, the Criminal Original Petition is dismissed. Consequently, connected MPs stand closed.

Sd/-
Assistant Registrar(CS-CCC)

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Sub Assistant Registrar

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To

- 1.The Principal Spl. Judge
for CBI Cases(VIII Addl. City Civil Court),
Chennai.
- 2.The Special Public Prosecutor
(CBI Cases), High Court, Madras.
3. The Superintendent of Police,
Central Bureau of Investigation,
Anti Corruption Branch,
Chennai.

[Crime No: RC MA1 2016 A 0048 dated 27.12.2016]

Cr1.O.P.No. 20111 of 2021

RSV(CO)
GMY(21/02/2022)