



Crl.O.P.(MD)No.2054 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21/06/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P. (MD)No.2054 of 2022
and
Crl.MP (MD)NO.1517 of 2022

1.M.Prabakar
2.N.Muthulakshmi : Petitioners/A1 and A2

Vs.

1.State rep. By
Inspector of Police,
Vigilance and Anti Corruption,
Madurai. : R1/Complainant

2.T.Suriyakala,
Inspector of Police,
Vigilance and Anti Corruption,
Madurai. : R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in Crime No.18 2019 on the file of the 1st respondent and quash the same.

For Petitioners : Mr.AR.L.Sundaresan
Senior Counsel
for Mr.M.Ravi

For Respondents : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



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O R D E R

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This criminal original petition is filed seeking quashment of the case in Crime No.18 2019 on the file of the 1st respondent.

2.The case of the prosecution in brief:-

A *suo motu* FIR has been registered, on information with the following averments:- A1/Prabakar was found to be in possession of pecuniary resources and properties in his name and his wife name, which are beyond their known source of income. The first petitioner is a native of Ramanathapuram District, hailing from a middle class family, his father is a retired Block Development Officer and his mother namely M.Mariyammal was the house wife. They had four sisters and two brothers. All are married and settled. The first marriage of A1 ended in divorce. Later, he married another lady. Through the second wife, he had one daughter by name Vaani Doshikka. His wife and daughter are not having any independent source of work. He was working as Principal of Regional Institute of Rural Development, Krishnagiri in the year 2009, as Project Officer in Theni District in the year 2009-2011, as Project



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Director, DRDA, Madurai in the year 2011-2012, as Project Director, DRDA, Sivagangai in the year 2012, as Joint Director of Rural Development, DRDA Virudhunagar in the year 2012-2015, as General Manager (Projects) TAHDCO Chennai in the year 2015-2016, as Project Director, DRDA Dindigul in the year 2017, as General Manager Aavin in the year 2017-2018 in Vellore District. Now, he is working as General Manager in Aavin Department, Karaikudi from 18/08/2018. It has been brought to the notice that the first petitioner had purchased many vacant sites in Madurai and Ramnad District in the name of his second wife N.Muthulakshmi (A2) and his mother Mariayammal. Later, Mariayammal settled those properties in his name. He also constructed a luxury hotel with restaurant called 'VAANI VILLAS' comprised in 14 luxurious rooms, conference hall and a restaurant, behind the Thiyagaraja Engineering College. Apart from that, he has also put up a complex called 'DOSHKKA Complex' in the name of his wife; purchased four wheelers in the name of his wife and running a travels in the name of DOSHIKKA'S TOURS AND TRAVELS and also started a small ready-made shop at Villapuram Housing Board Colony in a rented building called Doshikka's Collections. So by this way, he acquired assets between 01/06/2010 and 31/08/2016. As per the enquiry, it is revealed that the



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value of the disproportionate assets comes to Rs. 4,74,59,900/-, which means the percentage of disproportionate asset is 110%. This will amount to criminal misconduct under section 13(2) r/w 13(1)(b) of the Prevention of Corruption Act 1988. So, it requires thorough and detailed investigation.

3.The second petitioner is the wife of the first petitioner/A1. The first petitioner/A1 purchased the properties in the name of his wife namely A2. It is also disproportionate to the known source of income and A2 also committed the offences punishable under section 109 IPC r/w 13(2) and 13(1)(b) of the Prevention of Corruption Act, 1988. Investigation has been undertaken and it is pending.

4.Pending investigation, this petition came to be filed by the petitioners on very many grounds.

5.A detailed counter affidavit has been filed by the respondents and re-joinder has also been filed.

6.Now let us straightaway go to the issue. The main ground, on which this petition came to be filed is that disciplinary proceedings has been initiated against A1. He



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was exonerated. Now on the very same set of allegations, criminal prosecution namely the investigation should not be permitted to undertake. This is the only point to be decided in this matter.

7. According to him, because of certain departmental officials, false allegations were levelled against him and his wife. The Government has constituted a fact finding committee launched by the Social Audit Society of Tamil Nadu, to probe into the allegation and complaint. It gave a detailed report through the Principal Secretary to the Government Rural Development and Pt. Raj Deptt, Chennai, dated 10/11/2016. In the enquiry report, it was found that A2 has shown her source of income, since she was working as faculty member in a private Collage at Pudukottai and in Bangalore and only with the support of her father, she started a business and during that process, she has also availed loans. She has also submitted the income tax returns. Apart from that, she is also paying Wealth Tax. So after finding all these things, the fact finding authority has submitted a report stating that A1 has not held beyond his legitimate scope of income and that report was accepted by the Government and passed necessary orders in G.O(D)No. 494 issued by the Rural Development and Panchayat(E1)



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Department, dated 28/09/2017 and he was placed in service and about to retire in May 2023 and only at the fag end of his service, this present FIR has been registered much after the period of three years. This is the sum and substance of the argument of the learned Senior counsel, who is appearing for the first petitioner. He would further submit that even after a lapse of three years, the investigation has not been completed so far and at the eleventh hour of his retirement, he was put in harassment. During the course of investigation, the income of the mother and wife has not been properly taken into account. Similarly, the income of the accused persons during 2016 till 2018 was not correct.

8.Per contra, it is the submission of the learned Additional Public Prosecutor to the effect that the disciplinary proceeding was initiated two years prior to the registration of the FIR. Not every aspect has been taken into account during the course of departmental proceedings and no detailed enquiry was conducted and the fact finding authority has submitted a report only on the basis of the affidavit and the Vigilance Commissioner permitted the investigation process, on 18/03/2019 and the explanation has been sought from the accused persons.



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During the course of investigation, it was found that during 2017-2018, the crime has been committed by the accused.

9.In reply to this argument of the learned Additional Public Prosecutor, the learned Senior counsel appearing for the petitioners would submit that the entire documents have been perused by the fact finding authority and no progress has been made in the investigation and during the course of investigation also, no new material facts have been collected, apart from the materials that have been placed at the time of departmental proceedings. So, this is the sum and substance of the rival parties. With these back grounds, let us go to the issue as to whether the criminal proceedings can be quashed on the basis of the report of the fact finding authority in a departmental proceedings.

10.The learned Senior counsel appearing for the petitioners would rely upon the judgment in the case of **Ashoo Surendranath Tewari Vs. The Deputy Superintendent of Police, EOW, CBI & another (2020)9 SCC 636** for the purpose of argument that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. When the adjudication proceedings itself went in favour of



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the accused, the criminal prosecution and proceedings, which requires a stronger proof should not be permitted to continue.

11.The learned Additional Public Prosecutor, for the above said judgment, has quoted the observation in the case of ***P.S Rajya Vs. The State of Bihar (1996) 9 SCC 1***. In para 38, principles have been set out as follows:-

"38.The ratio which can be culled out from these decisions can broadly be stated as follows:-

(i)Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii)Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii)Adjudication proceedings and criminal proceedings are independent in nature to each other;-

(iv)The finding against the person facing prosecution in the adjudication proceedings is not binding on the



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proceeding for criminal prosecution;

(v)Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure.

(vi)The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings in on technical ground and not on merit, prosecution may continue; and

(vii)In case of exoneration, however, on merits whether the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue. The underlying principle being the higher standard of proof in criminal cases."

12.After deducing the principles in para 39, it has been held as follows:-

"39.In our opinion, therefore, the yardstick would be to judge as to whether



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the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of process of the court."

From our point of view, para 38(vii) is important and if the High Court had bothered to apply this parameter, then on a reading of the CVC report on the same facts, the appellant should have been exonerated."

13. So by applying the above said principles, the accused was discharged from the criminal proceedings. The point, which has been stressed by the Hon'ble Supreme Court is that the allegation in the adjudication process as well as the criminal proceedings must be identical in nature, the adjudication must have been rendered on merits, then the accused can be discharged. But in that case, the Central Vigilance Commissioner, while exercising the power under section 197 Cr.P.C has gone into the facts as well as the report of the competent authority on merits. On going



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through the entire records only, the Central Vigilance Commissioner refused the sanction. But here, as submitted by the learned Additional Public Prosecutor, the Vigilance Commissioner has permitted the investigation process by order, dated 18/03/2019. But the report of the fact finding committee, dated 10/11/2016 was not placed before the Commissioner. Whether this is enough for quashing the criminal proceedings is the point, which requires to be answered. The complaints have been sent by unknown persons. So, those complainants could not known by the facts finding committee that is the first point.

14.The second point is that the allegation of disproportionate to the known source of income of A1 and his wife. It is seen that it has been decided on the affidavit filed by A2 before the fact finding authority. The fact finding authority has stated that he has perused some of the documents produced by A1 with regard to the business run by the wife. Apart from the properties, it appears that no detailed enquiry has been undertaken just like that of the investigation, which is now undertaken. So, as rightly pointed out by the learned Additional Public Prosecutor, allegation has been decided by the fact finding authority only on the basis of the affidavit submitted by



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A2 and some of the documents that have been produced by A1.

So, I am of considered view that this itself is enough for the investigation process be carried forwarded.

15.When the allegation of delay has been made by the learned Senior counsel appearing for the petitioners, the entire CD file has been called for and produced. From the perusal of the CD file, I have convinced that still correspondence is going on between the Investigating officer and the relevant Department.

16.It has also been submitted by the learned Additional Public Prosecutor that within three months, the investigation process will be completed. So on the basis of the delay also, I am of the considered view that the criminal investigation process should not be stalled. However, recording the undertaking given by the Additional Public Prosecutor, I am of the considered view that I find no merit in this matter and accordingly, it is dismissed.

17.In the result, this criminal original petition is **dismissed**. But however, a direction is issued to the first respondent to complete the investigation process within a period of three months from the date of receipt of a copy



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of this order, as undertaken by the learned Additional Public Prosecutor and file a final report before the concerned court. The compliance report must be submitted to this court forthwith.

18.With the above said direction, this criminal original petition is **dismissed**. Consequently connected Miscellaneous Petition is closed.

21.06.2022

Internet:Yes/No
Index:Yes/No
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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



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G . ILANGO VAN , J . ,

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- 1.The Inspector of Police,
Vigilance and Anti Corruption,
Madurai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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