



Crl.O.P.No. 12338 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No. 12338 of 2023

and

Crl.M.P.Nos. 5690, 7578 & 7579 of 2023

Vijay Rajmohan

... Petitioner

Vs

State rep. by  
The Inspector of Police,  
ACB, CBI, Chennai.  
(C.C.No.3/2018)

... Respondent

**Prayer:** Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the proceedings pending on the file of the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai in C.C.No.3 of 2018 and quash the same.

For Petitioner : M/s.A.Jagadeeswari

For Respondent : Mr.K.Srinivasan, Senior Counsel  
Special Public Prosecutor for CBI cases

### **ORDER**

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.3 of 2018 on the file of the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai.



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2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The case of the prosecution is that the petitioner/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 to 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 petitioner did not have satisfactory account.

4. Based on a complaint, a case was registered against the petitioner/A1, his father, mother and wife, who were arrayed as A2 to A4 respectively for the offences under Section 109 of IPC and 13(2) r/w 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988. After investigation, final report was filed and the same has been taken



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cognizance in C.C.No.3 of 2018 on the file of the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai.

5. The learned counsel appearing for the petitioner submitted that there are totally four accused, in which the petitioner is arrayed as A1. The petitioner raised ground that there is absolutely no offence made out as against the petitioner on reading of the entire charge sheet. Every purchase of immovable property as shown in the the charge sheet and the source of income is also recorded. As per the Statement-B, the movable assets are all minor articles which are found in every household as on today. The allegation is that the construction cost of the building is Rs.2,78,11,000/- and the income of the trust is only Rs.2,14,48,350/- then there is a huge difference of Rs.63,62,650/- for which excess amount, there is no explanation. The income of the petitioner's father, who was managing the trust is to the tune of Rs.96,04,245.53. That apart, there are various incomes received from his younger son, who is working in USA as a Software Engineer, who is also the Secretary of the Trust. The petitioner/A1 submitted all the amounts he received from various sources in writing to the respondents.



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However, without taking into consideration all these sources, the respondents filed final report.

6. A perusal of the records reveals that already the petitioner/A1 filed Discharge Petition before the Trial Court in CrI.M.P.No.3908 of 2018 in C.C.No.3 of 2018 and the same was allowed by an order dated 13.12.2018. Aggrieved by the same, the respondent filed a Revision Case before this Court in CrI.R.C.No.349 of 2019 and this Court passed an order, thereby set aside the order passed by the Trial Court on the ground that there are incriminating materials to attract the offences under Section 109 of IPC and 13(2) r/w 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and as such, directed the Trial Court to proceed with the trial by framing charges. It was also challenged before the Hon'ble Supreme Court of India and the same was also dismissed and the order passed by this Court in CrI.R.C.No.349 of 2019 was confirmed.

7. That apart, all the grounds raised by the petitioner is mixed question of fact and it cannot be considered under Section 482 of Cr.P.C. Even according to the petitioner, there are differences between



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the source of income and cost of the building. The trustees of the trust are none other than his father, mother, father-in-law and mother-in-law and his brother. Thus, only the blood relations and close relative of the petitioner were the trustees, who had no provable income in the year 2005. Therefore, this Court finds no ground to quash the entire proceedings.

8. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, as follows:-

*" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the*



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*Trial Court but not in Section 482 Cr.P.C. proceedings.*

*13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.*

9. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, wherein, it has been held as follows:

*“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High*



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*Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.*

*20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”*

10. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **CrI.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

*"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.*



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.....  
*13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."*

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

11. Further, the learned Special Public Prosecution submitted that the other accused persons have filed a petition in Crl.O.P.No.1951 of 2023 and by an order dated 18.10.2023, this Court dismissed all the petitions.

12. In view of the above discussions, this Court is not inclined to quash the proceedings in C.C.No.3 of 2018 on the file of the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai. Accordingly, this Criminal Original Petition stands dismissed.



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The Trial Court is directed to complete the trial within a period of twelve months from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petitions are closed.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

1. The Principal Special Judge for CBI Cases,  
VIII Additional City Civil Court,  
Chennai.

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

3. The Public Prosecutor,  
High Court, Madras.



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**G.K.ILANTHIRAIYAN. J.**

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