



Crl.A. (MD) No. 367 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 22.02.2023

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD)No.367 of 2013

State rep. by
The Inspector of Police,
Vigilance & Anti Corruption,
Madurai Detachment.
Cr.No.1 of 2004

.. Appellant

v.

1.M.Pandian

2.P.Pandiselvi

.. Respondents

PRAYER: Appeal filed under Section 378 of the Criminal Procedure Code to call for the records in connection with the judgment passed by the Special Court for Trial of Prevention of Corruption Act Cases, Madurai, in Spl.Case No.28 of 2011, dated 22.08.2013 and quash the same.

For Appellant : Mr.S.Ravi
Additional Public Prosecutor

For Respondents : Mr.V.Karthik, Senior Counsel
for M/s.C.Muthusaravanan for R.1

Mr.R.Alagumani for R.2



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JUDGMENT

The State preferred this appeal as against the order of acquittal passed by the Special Court for Trial of Prevention of Corruption Act Cases, Madurai, in Spl.Case No.28 of 2011, dated 22.08.2013.

2.The first respondent / first accused was elected as a Councillor of Madurai Municipal Corporation in the year 1996 and was also elected as Deputy Mayor of Madurai Corporation from 28.10.1996 to 27.10.2001. The State with an allegation that the first accused / Deputy Mayor along with his wife, the second accused, has amassed wealth disproportionate to the sources of their income from the period 28.10.1996 to 27.10.2001, registered a case as against them in the year 2004.

3.PW2, then Inspector of Police, Directorate of Vigilance and Anti Corruption, registered a case in Cr.No.1 of 2004 as against the respondents on 03.03.2004, under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act and Sections 109 r/w 13(2) r/w 13(1)(e) of the Prevention of Corruption Act. The investigation agency has taken the period from 28.10.1996 to 27.10.2001 as the check period, conducted the investigation and laid charge sheet, that they have



amassed wealth to the tune of Rs.12,64,347/-. The trial Court had taken the case on file in Spl.Case No.28 of 2011 and framed the following charges:-

Charge	Against	For the offence under Section
I	A1	13(2) r/w 13(1)(e) of the Prevention of Corruption Act
II	A2	13(2) r/w 13(1)(e) of the Prevention of Corruption Act r/w Section 109 IPC

4.The prosecution, in support of their case, has examined as many as 26 witnesses and marked 40 documents during the trial. The first accused examined himself as DW1, however, no documents were marked on the side of the defence. The trial Court, after considering the evidence, by judgment dated 22.08.2013, acquitted both the accused on the charges and aggrieved over the same, the State has preferred this appeal.

5.Learned Additional Public Prosecutor appearing for the State has made his submissions as follows:-

5.1.The accused officer has constructed a house at Door No.28, JR Road, Sundararajapuram, Madurai, in the year 1996 to the tune of Rs.6,47,717/-. The Junior Engineer, Public Works Department [PW4], in his evaluation report, has



mentioned the cost for construction of the house as Rs.6,47,717/- and that the construction was made between the year 1996 and 1997. The evidence of PW4 was not disputed by the accused during the cross examination and the prosecution has established the construction value of the house, through the evidence of PW4 and the evaluation reports [Ex.P7 to Ex.P10]. There was no contra evidence produced by the accused officer that the construction was made before the check period and that the construction cost was less than Rs.6,47,717/-.

5.2.The Assistant Executive Engineer, Tamil Nadu Electricity Board [PW11] has deposed that the accused obtained electricity connection for the newly constructed building only on 26.03.1997 and the meter was installed on 31.03.1997. Therefore, it can be easily inferred that the construction was completed only in the month of March, 1997, ie., during the check period. This evidence of PW11 was not disputed by the accused officer and though the accused was examined as DW1, no plausible reply was given in his evidence that when the construction was completed in the year 1996 even prior to the check period, the necessity for obtaining the service connection only in the month of March, 1997 and the existence of any old service connection prior to the same.



5.3.The building plan approval was obtained only in the year 1999 and the house tax assessment was also obtained during the check period and that was established by the prosecution through the evidence of the Assistant, Revenue Section, Madurai Corporation [PW12]. Thus, the prosecution has proved their case by examining the above witnesses and the same was not substantially rebutted by the accused, however, without considering the evidences on record, the trial Court has erroneously acquitted the accused.

5.4.The rental incomes, as claimed by the accused, is not proper since the accused have not placed any materials, viz., rental agreements or receipts, entered into between them and the tenants [PW20 to PW22]. The accused were not having any such rental income. The tenants of the accused, viz., PW20 to PW22, have stated that they were paying a meagre rent of Rs.225/- and Rs.375/- to the accused, however, PW21 & PW22 have not supported their version at the time of trial and turned hostile. But the fact remains that the accused have not substantiated that they are having rental income, as claimed by them. Though the accused officer was examined as DW1, he did not establish the factum of rental income. Therefore, the learned Additional Public Prosecutor prayed for interference.



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6. Learned Senior Counsel appearing for the first respondent made his submissions as follows:-

6.1. This is an appeal against acquittal. In case of an appeal against acquittal, double presumption is available in favour of the accused. Firstly, the presumption of innocence is available under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

6.2. The house at Door No.28, JR Road, Sundararajapuram, Madurai, was a old house gifted to the second respondent by way of a Will from her grandmother. It is only a renovation and not a new construction, as claimed by the prosecution. The prosecution has projected the case that the house was constructed only during the check period and that too, to the tune of Rs.6,47,717/- and has projected that this amount was spent during the check period. The check period is from 28.10.1996 to 27.10.2001. The renovation of the house at Door No.28, JR Road,



Sundararajapuram, Madurai, was completed in the month of November, 1996 and the house warming ceremony was performed on 11.12.1996 in the presence of the wife of the then Hon'ble Chief Minister of Tamil Nadu.

6.3.The renovation was completed well before the house warming ceremony and the date for house warming was fixed as 11.12.1996 depending upon the convenience of the chief guest, ie., the wife of the then Hon'ble Chief Minister of Tamil Nadu. The house warming ceremony was attended by various dignitaries, including Ministers, MLAs, Mayors and Bureaucrats and the invitations were also published in various daily newspapers. These materials were also submitted to the investigative officer in the written explanation dated 04.10.2005 [Ex.P39], however, the same was not considered by the investigative officer and he has not conducted any investigation based on the written explanation submitted by the accused officer.

6.4.The prosecution is attempting to project that the construction was made during the check period, through the evidence of the Assistant Executive Engineer, Tamil Nadu Electricity Board [PW11]. The investigating agency has conveniently



omitted the relevant portion of the evidence of PW11, wherein, he has admitted that the electricity service connection No.1608 was effected several years prior to 1997 and that the service connection to the house at Door No.28, JR Road, Sundararajapuram, Madurai, was resanctioned in MM.541 with three phase connection on 31.03.1997. Therefore, it is not a new service connection as claimed by the prosecution and it was in existence even prior to 1996 and it was upgraded with a three phase service connection.

6.5. With regard to the building plan approval which was obtained in the year 1999, learned Senior Counsel submitted that it was only a renovation of the existing building and therefore, the accused officer was not aware of the requirement of a building plan prior to the renovation. On coming to know about the same, he applied for building plan approval in the year 1999 and the same was also granted to him on 29.04.1999 in document Ex.P23. The plan approval can also be obtained subsequent to the construction on payment of penalty, as fixed by the Corporation. The Assistant Commissioner of Madurai Corporation [PW24] has also admitted the same in his cross examination that for the houses which were constructed without the plan approval, approval would be subsequently granted on payment of penalty. Therefore, on this plan approval, which was obtained



belatedly, it cannot be presumed that the construction was made after the house warming ceremony, which was made in the month of December, 1996.

6.6.By relying upon the evidence of the prosecution witnesses, the learned Senior Counsel submitted that the second respondent has obtained several properties through a Will and was having rental income from those houses. The investigative officer has also admitted in his evidence that even prior to the check period on 28.10.1996, the second respondent has obtained several properties from her mother and grandmother. The prosecution has also admitted the rental come to the tune of Rs.5,18,400/-, however, the respondents claimed the rental income as Rs.11,94,200/-. The prosecution has examined PW20 to PW22, the tenants of the accused to project that the rental income is less than the income claimed by the accused. However, the witnesses have not supported the prosecution case and were treated as hostile witnesses. They have admitted the rent as Rs.1000/- & Rs.1300/-, instead of Rs.225/- & Rs.375/-, as claimed by the prosecution. Therefore, in this regard also, the prosecution has failed to prove their case and there is no reason to interfere with the judgment of the trial Court.



7.Learned Counsel appearing for the second respondent has endorsed the submissions made by the learned Senior Counsel appearing for the first respondent.

8.This Court considered the rival submissions made by the respective parties and perused the available materials.

9.Before dwelling into the merits of the case, since the appeal is filed as against an order of acquittal, it is necessary to bear in mind the principles governing the appeal against acquittal, as laid down by the Hon'ble Supreme Court in ***V.Sejappa v. State [(2016) 12 SCC 150]***, wherein the Hon'ble Supreme Court has followed its own decision in ***Muralidhar v. State of Karnataka [(2014) 5 SCC 730]***. The guidelines issued in the said decision are extracted hereunder:

“23. ... (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals



against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

10. In yet another decision in the case of ***Chandrappa Vs State of Karnataka [(2007) 4 SCC 415]***, the Hon'ble Supreme Court has laid down the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal:

“(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is



founded.

(2) *The Code of Criminal Procedure, 1973 puts on limitation restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*

(3) *Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.*

(4) *An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.*

(5) *If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.”*



11.Keeping these principles in mind, this Court proceeded with the present appeal.

12.The first accused was the Deputy Mayor of Madurai Corporation during the period 1996 to 2001. The second accused is his wife. The appellant State registered a case on 03.03.2004 under the Prevention of Corruption Act that the accused amassed wealth disproportionate to their income during the period, when the first accused assumed office as Deputy Mayor and also filed the final report before the trial Court.

13.The prosecution has filed the final report that the accused has amassed a sum of Rs.12,64,347/- disproportionate to their income. The accused claim a rental income of Rs.11,94,200/-. The prosecution has also admitted the rental income, however, the prosecution has restricted the rental income as Rs.5,18,400/-. During the check period, the accused has constructed a building. The prosecution claim that the major construction was during the check period, however, the accused claim that the construction was completed even prior to the check period. The accused has also claimed that the he has availed a loan of Rs.14,77,648/- and the



same has also been established before the trial Court through the witnesses PW8 to PW10 and through the documents Ex.P14 to Ex.P16.

14.The trial Court has acquitted the accused on the following grounds:-

- The second accused has obtained several properties through a Will from her maternal grandmother, in which, several houses and shops have been let-in for rent. But the rental receipt or agreements have not been seized by the investigative officer.
- The second accused has obtained loans from Banks and Co-operative Societies to the tune of Rs.14,77,648/- for the purpose of construction of house building in the year 1999-2000 and the same was not taken into account by the prosecution.
- The investigative officer has admitted that he has not considered and verified the contents of the accused's reply dated 04.10.2005 [Ex.P39] before the filing of charge sheet.
- The accused was having rental income and the prosecution has admitted the rental income as Rs.5,18,400/-, but, attempted to dispute the claim of the accused on the rental income as Rs.11,94,200/- through the tenants [PW20]



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to PW22]. The tenants, however, have not supported the case of the prosecution. The investigative officer has also admitted in his evidence that there is a custom prevailing in Madurai that the owners get an advance amount from the tenants apart from the rent.

15.Now, this appeal is filed that the trial Court has not considered the evidence properly on the construction of the house at Door No.28, JR Road, Sundararajapuram, Madurai and that the rental income has not been properly assessed.

16.The main issue in this appeal is whether the construction at Door No.28, JR Road, Sundararajapuram, Madurai, was made prior to the check period or during the check period and the cost of the construction. The Junior Engineer, Public Works Department [PW4] in his evaluation reports [Ex.P7 to Ex.P10] has valued the construction cost as Rs.6,47,717/- and has also stated that the construction was made between 1996 to 1997. The Assistant Executive Engineer, Tamil Nadu Electricity Board [PW11], in his evidence, has submitted that the service connection for the building at Door No.28, JR Road, Sundararajapuram,



Madurai, was effected on 31.03.1996. The Assistant Executive Engineer (Planning), Madurai Corporation [PW16] has stated that the building plan approval and the assessment for the property at Door No.28, JR Road, Sundararajapuram, Madurai, was made in the year 1999. Therefore, through the evidences of PW4, PW11 & PW16, the prosecution has made an attempt to project that the construction of the house at Door No.28, JR Road, Sundararajapuram, Madurai, was made during the check period, ie., between 28.10.1996 and 27.10.2001.

17.A cursory look on the above evidences speaks otherwise. The fact remains that the first accused has assumed charge as Deputy Mayor of Madurai Corporation with effect from 28.10.1996. According to him, the house at Door No. 28, JR Road, Sundararajapuram, Madurai, is a old building, which they claim to have been renovated in the year 1996. The accused officer has also stated that though he is entitled for a Bungalow for the Deputy Mayor from the Corporation, he has not occupied that Bungalow since he was having his own house at Door No. 28, JR Road, Sundararajapuram, Madurai. The accused claim that he has completed the renovation works in the month of November, 1996 itself and the house warming ceremony was conducted on 11.12.1996 in the presence of the wife of the then Hon'ble Chief Minister of Tamil Nadu.



WEB COP 18. As required under Rule 2 of Members of the Madras City Municipal Corporation (Disclosure of Assets) Rules, 1973, the accused officer has submitted his return of assets to the Municipal Corporation on 21.05.1999 and the same was marked as Ex.P12. The prosecution in this case was initiated only on 03.03.2004. Therefore, there is no reason to disbelieve this statement submitted by the accused officer in Form II before the Municipal Corporation in the year 1999. Admittedly, the house warming ceremony of the house at Door No.28, JR Road, Sundararajapuram, Madurai, was held on 11.12.1996. The first accused, in his written explanation submitted to the investigative officer in Ex.P39, has made a specific averment in this regard that the house warming ceremony was performed in the presence of the wife of the then Hon'ble Chief Minister of the Tamil Nadu and the function was attended by several Ministers, MLAs, Mayors and Bureaucrats. He also claimed that inviting these dignitaries, he has made publications in the daily newspapers on 11.12.1996. This statement, which was marked as Ex.P39, was submitted to the investigative officer [PW25] on 04.10.2005, however, the investigative officer has admitted that he has not verified with any witnesses on the contention of the accused in Ex.P39.



WEB COPY 19. According to the accused, though the renovation works were completed in the month of November, 1996, he waited for the convenient date of the dignitaries and thereafter, performed the house warming ceremony on 11.12.1996. Therefore, from the available evidence, it cannot be presumed that the major construction for the house at Door No.28, JR Road, Sundararajapuram, Madurai, was made within a period of 45 days from the start of the check period.

20. The evidences of PW11 and PW16 are also not much helpful to the case of the prosecution. PW4, the Junior Engineer, has admitted in his cross examination that the construction of the building could have been made anytime in the year 1996-97. PW11, the Assistant Engineer, has admitted that the service connection was in existence for the building and it has been resanctioned with a three phase service connection on 31.03.1997. When the prosecution is relying on the evidence of PW4 that the construction was completed in the year 1996-97, it cannot rely on the evidence of PW16, the Assistant Executive Engineer (Planning) of Madurai Corporation that the building plan approval was obtained in the year 1999. It is not the case of the prosecution that the construction was made in the



year 1999, after obtaining the plan approval from the Madurai Corporation. PW24, the Assistant Commissioner, has also admitted in his evidence that they will issue plan approval with penalty for the constructed buildings also.

21.The prosecution has admitted that the second accused is having several house properties, which she obtained through a Will from her grandmother. The prosecution has also admitted the rental income of the accused, however, fixed the rental income as Rs.5,18,400/- based on the statements of the tenants [PW20 to PW22]. Though these witnesses said to have stated the rent as Rs.225/- and Rs. 375/- before the investigative officer, they have not supported the case of the prosecution and have stated about the rent as Rs.1000/- and Rs.1300/- during their evidence. PW21 & PW22 were also treated as hostile witnesses and they have also stated that they gave some amount as advance to the accused. The prosecution cannot rely upon these evidences to substantiate their case that the rental income is only Rs.5,18,400/- and not Rs.11,94,200/-.

22.For the foregoing reasonings and discussions, this Court is not inclined to entertain this appeal and the judgment of the trial Court acquitting the accused



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does not warrant any interference. Accordingly, this criminal appeal stands dismissed. Pending miscellaneous petitions, if any, shall stand closed.

Index : Yes / No

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Internet : Yes

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To

1. The Judge,
Special Court for Trial of Prevention of Corruption Act Cases,
Madurai.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
3. The Record Keeper / Section Officer,
E.R. / V.R. / Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI,J.

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