BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.02.2023

Pronounced on : 06.06.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

Crl.A(MD)No.79 of 2016

1.H.Geethabai
2.M.Narasimha Bai : Appellants/A1 and A2

Vs.

State through
The Additional Superintendent of Police,
CBI/SPE:ACB, Chennai,
RC No.MA1 2010 A 0026 : Respondent/Complainant

Prayer: Criminal Appeal filed under section 374(d) of the Criminal Procedure Code, to call for the records in the judgment, dated 15/02/2016 in CC No.7 of 2011 on the file of the II Additional Sessions Judge for CBI cases, Madurai and set aside the conviction and sentence and pass such further or other orders.

For Appellants : Mr.N.Ananthapadmanaban

For Respondent : Mr.C.Muthu Saravanan
Special Public Prosecutor
for CBI

J U D G M E N T

This criminal appeal has been preferred to set aside the judgment of conviction and sentence passed by the II Additional Sessions Judge for CBI cases, Madurai, dated 15/02/2016 in CC No.7 of 2021

2.The case of the prosecution in brief:-

The Superintendent of Police, CBI:ACB, Chennai received information that A1 was working as Assistant Passport Officer, Madurai, Regional Passport Office, Madurai. She possessed assets disproportionate to her known source of income and there was reasonable belief that the above said assets were acquired in her name and her family members through illegal means. So the Superintendent of Police thought it fit to make investigation. He authorised Mr.Prem Kumar, the Assistant Superintendent of Police, SP/CBI/ACB/Chennai, to investigate the matter. The above said authorisation was given under section 17(d) of the Prevention of Corruption Act, 1988. Further he has also given power under section 18 of the Act. In pursuance of the above said proceedings and authorisation, Mr.Prem Kumar, the Assistant Superintendent of Police, who was examined as PW38, the above said case was registered in Crime No.RC MA1 2010 A 0026. In pursuance of the above said authorisation and the order passed by the Superintendent of Police, he made further investigation and searches. During the course of investigation he found that the first accused joined in the Passport Department as Clerk in 1975 and working in various capacities in various places and finally, she was posted to as Assistant Passport Officer, Madurai, on 07/06/2008. During his investigation, he found that as on 07/06/2008 her assets were estimated at Rs. 15,83,420/-. Further it reveals that as on 04/02/2010, she acquired assets to the tune of Rs.40,26,201/-. The check in period was from 07/06/2008 to 04/02/2010. The total income received by her was estimated to be Rs.73,464/-. After completion of the investigation, charge sheet was filed under sections 13(2) r/w 13(1)(e) of the Prevention of Corruption against A1 and under section 109 IPC r/w 13(2) r/w13(1)(e) of the Prevention of Corruption Act, 1988 and it was taken cognizance by the II Additional District Court for CBI Cases, Madurai, in CC No.07 of 2011.

3.On receipt of the summons, the accused appeared before the trial court and copies of documents and statement of witnesses were furnished under section 207 Cr.P.C. The accused pleaded not guilty and claimed to be tried. During trial, on the side of the prosecution 38 witnesses were examined and 132 documents marked. On the side of the accused, one witness was examined and 5 documents marked.

4.After completion of the evidence by prosecution witnesses, the accused were questioned with respect to the incriminating evidences against them under section 313 Cr.P.C. The accused denied the incriminating evidence and stated that the charge sheet has been filed beyond the facts and including the personal income of A2.

5.At the conclusion of the trial, the trial found the accused persons guilty, convicted A1 and sentenced to undergo four years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- with default clause for the offence under section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988; convicted A2 and sentenced him to undergo four years Rigorous Imprisonment and to pay a fine of Rs. 1,00,000/- with default clause under section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988.

6.Challenging the above said judgment of conviction and sentence, the appellants, who are A1 and A2 are before this court.

7.Heard both sides.

8.The first accused namely Geetha Bai was working in various capacities in the Passport Office in various places. Similarly, it is also not in dispute that A2 is the husband of A1 and is not employed. According to him, he was running a medical shop and apart from that doing other works also.

9.Now the case of the prosecution is very simple to the effect that A1 during the course of her employment, more particularly, during check in period amazed wealth, which was disproportionate to the known source of income. A simple calculation has been made by the prosecution stating that A1's assets at the beginning of the check in period, comes around Rs.1,46,554/-. As per schedule B, the assets at the end of the check in period was estimated at Rs.38,06,105/-. The asset that was acquired by the check in was estimated at Rs.44,96,561/-. The cash was calculated at Rs.51,504/-. Income tax during the check in period was calculated at Rs.7,21,313/-. Total asset was calculated at Rs.27,25,055/- So, deducting the income from the assets held by A1, at the end of the check in period, was estimated to be Rs.20,03,742/-, which according to the prosecution is Rs.27,194/- higher than the income, which was lawful in nature.

10.Now how, the above said calculation was arrived is the only matter for consideration before this court.

11.Before we go into the factual aspects, the proceedings before this court is also required to be stated. Pending this appeal, a petition was filed by the appellants under section 391 Cr.P.C, to adduce further evidence. That petition was heard by me and after hearing both sides, that petition was dismissed by me, on 25/04/2022. Against which, appeal was preferred before the Hon'ble Supreme Court. That also ended in failure. Now the reason for hearing the above said petition was that during the trial process some of the witnesses have been not cross examined by him and according to him, they engaged Senior counsel. But however, he failed and so the defence was taken by some other representing counsel. There was no proper brief by him. So because of their lapse, the witnesses could not be cross examined by the counsel appearing. It was earnestly argued before this court that at the end of the appeal process, the appellant should not fell that justie is denied to him. She was not given due opportunity and failure of justice occurred, because of the lapse committed by the Advocate, who was appearing by chance before the trial court. Moved by this court, this court call for the entire 'B' diary extract and deposition copies. On going through the entire documents this court was of the view that cross was not done not because of the lack of instruction given, but because of the conscious act. With this backdrop, let us go to the evidence on record.

12.Now let us first straightaway go to the search that was made in the locker maintained by A1, from wherein a cash of Rs.10,00,000/- was seized. One of the team members, who conducted search was examined as PW34. He would say that during the course of investigation, locker operation was conducted at Chennai Central Cooperative Bank, Vadapalani, on 23/02/2010. At about 02.30 pm on that day, they met the Assistant Manager, who was in charge of the locker. At that time, both the accused were present. In the search operation, 11 items of gold jewels, Rs.10,00,000/- cash was seized from the locker maintained by Narasimbha Bai. A mahazar was prepared, in which, PW34 was also signed. Regarding the cash amount, it was taken to the office for further investigation and jewels were kept in the locker itself. There is no denial with regard to the above said search operation in the locker, which was maintained by A2 herein.

13.The search and seizure is corroborated by PW29, who was working as Assistant Manager in charge during the relevant time in the Central Cooperative Bank, Vadapalani, Chennai. He would say that the above said locker was maintained jointly by both the accused bearing No.A/26. The above said locker was opened in his presence. The accused were also present. A sum of Rs.10,00,000/- and 486 grams of gold jewels were seized. According to him, only cash amount was taken by the police officials and the jewels were kept in the locker itself.

14.Another search was made in the house of the accused in the presence of the independent witnesses, PW30 was working as Joint Manager in United India Insurance Company, Madurai. He received the information from the Police Department that he must assist CBI team in making search. The above said intimation received only, on 04/02/2010.

15.Similarly, PW36, was working as Manager in the Pandian Grama Bank, Sivagangai. She was also directed to assist the police team in making the search. The first search was conducted in the house of the first accused. At that time, a cash of Rs.1,53,000/- was recovered, apart from certain documents. A search list was prepared, in which, the accused as well as the other witnesses signed. Another cash amount of Rs.33,730/- was stated to be the salary of A1 was returned back to her. The above said search list is marked as Ex.P119. Similarly, search was also made, but in the presence of PW36. At that time also, inventory was taken in respect of the articles available in the house, which was marked as Ex.P128. Search list was marked as Ex.P129. The above said search was made by PW37, who was working as Officer in CBI. So both the searches are not denied by the accused. So from the above said oral and documentary evidence, it is seen that a cash amount of Rs.10,00,000/- from the locker maintained by both the accused and a cash of Rs.33,730/- were recovered from the custody of the accused. No doubt can be raised with regard to the search and seizure and preparation of list, etc.

16.Now let us go to the other assets in the form of bank deposits.

17.PW3 was working as Executive Director of the Jayabarath Benefit Funds Limited. According to him, both the accused were maintaining the fixed deposits. As per the request made by the CBI officials, he supplied the relevant documents. The deposit receipt is marked as Ex.P6. The deposit No.8075, dated 25/08/2009. The accrued interest was Rs.14,221/-. Upto 24/05/2010, subsequent interest was calculated at Rs.7,267/- for the period June' 2008 to May 2010.

18.PW4 was working as Assistant General Manager, Chennai Central Cooperative Bank, Head Office, Nungambakkam, Chennai, from 02/08/2010 to for about 2-1/2 years. According to him, various deposits were maintained by both the accused and all the deposit receipts were marked as Exs.P10 to P16. Each deposit is carrying different amount and interest. These deposit receipts are not denied by the accused.

19.In respect of other deposits, PW5 was examined, who was working as Chief Manager in Central Cooperative Bank, Chennai, from 2010 to 2012 June in Vadapalani Branch. According to him, various deposits were maintained by both the accused and all the deposit receipts were marked as Exs.P20 to P23. He has also spoken about the savings account maintained by the accused and they were also present, when Ex.P26 locker was opened by the Investigating Officer. PW7 was examined regarding the fixed deposit maintained by both the accused. But maturity value was mentioned as Rs.58,867/-.

20.PW14 was examined to show the savings banks account of A2. He has also spoken about the deposit maintained by A2 as well as his son called 'Prasanth' and maintenance of the above said deposit was also not denied by the accused.

21.PW15 has spoken about the Insurance Policy standing in the name of the accused and their son Prasanth. The policy standing in the name of A1 was marked as Exs.P64, P65 and P66. Ex.P67 was standing in the name of Prasanth, now in the name of A2, marked as Ex.P69. He has also spoken about the amount of policy that was paid.

22.PW16 has spoken about the fixed deposit standing in the name of the accused in the company called ' Manipal Housing Finance Corporation and Manipal Sowbagya Nithi Limited. The fixed deposit receipts standing in the name of the accused were marked as Exs.P75, P76 and P77.

23.PW17 has spoken about the accounts standing in the name of the accused as well as the fixed deposit receipts. According to him, after the maturity period was over, the amount was also disbursed in cash.

24.PW20 has spoken about the monthly interest scheme deposit made by the accused. The ledger copy is marked as Ex.P91 series. Similarly, PW21 has spoken about the disbursement of the maturity amount to A1. PW22 has spoken about the savings bank account maintained by A1. According to him, as on 31/01/2010, a sum of Rs. 1,03,914-35/- was standing in her name.

25.PW23 has spoken about the fixed deposit maintained by the accused in the name of A2. According to him, neither A1 nor, their son were having any account in their company.

26.PW30 has spoken about the accounts maintained by A1 and A22 and the amount available in both the accounts. So these are the documents as well as the oral evidence available with regard to the assets held by the accused during the relevant period. All these fixed deposits and insurance policies and other deposits are not denied and disputed by the accused.

27.Now coming to the independent income of their son namely Prasanth, he was employed and maintaining separate transactions in the Bank as well as in the Income Tax Department. So his income cannot be included in the assets by the accused persons. He was also not shown as an accused. So we need not concentrate much upon the accounts maintained by Prasanth.

28.Now from the accounts stated above, it is seen that *prima facie* the accused were in possession of assets disproportionate to their known source of income. It is for them to explain as to how the above said assets were acquired.

29.Now a simple defence has been taken that A2 was already doing independent business, through which he is earning money.

30.Whether the above said defence has been successfully probabilised by them is the next point for consideration.

31.A2 was examined as DW1. He would say that after the death of his father, in 1972, he continued his father's business called 'Book binding and press' and apart from that, he was also engaged in travels and tour business in the name of Jeya Tours and Travels, so also running two pharmaceutical from the house in Ernakulam. Apart that, he was also engaged in dealing old vehicles purchase and sales. He was travelling between Kodaikanal and Chennai to look after the above said business. Not only that he was also engaged in making arrangements to send the people abroad and he was doing the above said business for about 3 years, thereby he was earning not less than Rs.5,00,000/- per year. During the course of investigation, his independent income was totally excluded from the statement.

32.With regard to the deposits, he would say that he sold his wife's 60 sovereigns of gold for Rs.6,00,000/- in 1996. That amount was deposited under various schemes in various Banks. During the search, some of the account books have been seized, but no voucher was properly given by the CBI officials. He would further say that statement A, item Nos.1, 2, 5, 6, 8, 10, 11, 12, 15, 20, 21, 25, 26, 27 to 34 belongs to her. Statement B, item Nos.1, 5, 6, 9, 10, 11, 12, 13, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 32, 33, 34, 35, 38, 48 and 49 belonging to him.

33.So according to him, those items were wrongly included in the assets of A1. He would also produced the documents showing the balance sheet, an unregistered sale deed pertaining to the purchase of the two houses and the certificate issued by the Anna Institute of Management and the vouchers showing the sale of the old vehicles and the account books maintained by him. By producing those documents, he wanted to probabilise their defence.

34.Now let us go to the documents. Ex.B1 is the balance sheet of July along with the documents. The recommendation made by the Anna Institute is also enclosed, wherein it has been stated that the above said Firm is functioning from 10/10/1990, in which A2 is the proprietor. An unregistered sale deed, dated 24/11/1977 for sale of the scheduled two houses in favour of A2 is also enclosed. So these documents shows that A2 was owning and conducting Jaya Tours and Travels and also a drug shop. But whether it continued during the check in period, absolutely there is no evidence. The balance sheet, except for the year 1981, no other document showing the balance sheet as well as payment of Income Tax are produced. So from these documents, no inference can be drawn to the effect that the assets, which were available in the house of the accused were acquired from the private business of A2.

35.Similarly, the defence with regard to the dealing of the old vehicle, some receipts were produced. But none of the persons concerning with the above said transactions were examined to prove the document. Mere production of the documents will not prove the contents.

When seriously creation of disproportionate income is made, those documents ought to have been properly proved by examining the parties to the documents. So those documents cannot also be taken into account to show that the income derived by doing other business only all the deposits, cash amount and other properties were acquired by A2. So this contention cannot also be accepted.

36.With regard to the amount and Plot No.117/8 Manali, Solaimedu, Chennai, was purchased in the name of A2. The date is 12/07/1996. The amount mentioned is Rs.3,26,000/-. For this also, there is no proper explanation on the side of the accused that the entire sale consideration was paid only by A2 out of his own independent income and PW2 was the seller. He would say that both the accused only purchased land along with building. Absolutely, no cross examination was made to him as to the payment of sale consideration by A2 independently. So the non cross examination by the accused on the important aspect is also relied by the prosecution to draw adverse inference. No doubt that the document is standing in the name of A2. But absolutely, there is no evidence on record that it was purchased by his independent income. But the brother of A2 was examined as PW31. He would say that he was owning ancestral property, which is still undivided and he was not having contact with A2 for quite sometime. He also admitted that statement was filed by A2 against them. But he would admit that he was doing the business of sending people abroad. In the above said business, A2 was indebted to some persons for Rs. 12,00,000/-. That amount was settled by him and his brothers only. So his evidence is also not helpful either to the prosecution or to the defence. But one thing is clear to the effect A2 did not earn profit out of the above said manpower consulting company. So the above said evidence would clearly indicate that the accused failed to probabilse their defence. Naturally, the assets that was held by A1 is proved to be disproportionate to the known source of income. Therefore, the finding of the trial court requires no interference.

37.With regard to A2, the allegation is that he made the abetment. The records indicate that A2 also having number of deposits and cash amount, which would clearly indicate that the assets, which was acquired by A1 through illegal means. Sharing profit of crime would clearly indicate the intention of abetment. So this has been clearly established by the prosecution that A2 abetted A1 to do the illegal activities and acquiring assets. So, I find that the judgment, which was rendered by the trial court requires no interference. With regard to the sentence, I find no reason to interfere, since the assets, which were acquired was found to be excessive, compared to their known source of income. On that score, I find no reason to differ from the view of the trial court.

38.In the result, this criminal appeal fails and the same is **dismissed**.

06/06/2023

Index:Yes/No
Internet:Yes/No

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To,

1.The Additional Superintendent of Police,
CBI/SPE:ACB, Chennai.

2.The Special Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN,J.,

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Crl.A(MD)No.79 of 2016

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