BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	03/03/2023
Date of Judgment	26/04/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.A(MD)No.176 of 2017

State represented by
The Public Prosecutor,
High Court,
Madras-104
(Crime No.13 of 2003
of V & A.C., Madurai) : Appellant/Complainant

Vs.

A.Arunagiri
Personal Assistant to R.T.O (Rtd.,)
Madurai North,
Madurai. : Respondent/Complainant

Prayer: Criminal Appeal is filed under section 378(1)(b) of the Criminal Procedure Code, to set aside the judgment of acquittal of the respondent passed by the Special Court for trial of cases under the Prevention of Corruption Act, Madurai, in Special Case No.15 of 2011, dated 17/11/2016.

For Appellant : Mr.S.Ravi
Additional Public Prosecutor

For Respondent : Mr.K.M.Karunakaran

J U D G M E N T

This Criminal Appeal has been preferred to set aside the judgment of acquittal passed by the Special Court for trial of cases under the Prevention of Corruption Act, Madurai, in Special Case No.15 of 2011, dated 17/11/2016.

2.**The case of the prosecution in brief**:-

When the accused was working as Personal Assistant to the Regional Transport Officer, Madurai North, alleged to have acquired and possessed pecuniary resources, movable and immovable properties in his name and his family members, disproportionate to the known source of income to the tune of Rs.8,27,047/- as per schedule VII. The percentage of disproportionate asset is estimated at 57.14%. Upon which, a case in Crime No. 13 of 2003 was registered against the accused for the offence under section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988. After completing the investigation, charge sheet was filed and it was taken cognizance in Special Case No.3 of 2008 by the Special Judge/Chief Judicial Magistrate, Madurai. After completing 207 Cr.P.C proceedings, framed the charge for the offence punishable under section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988.

3.To prove the charges, the prosecution has examined 17 witnesses, exhibited 45 documents and on the defence side 6 documents were exhibited.

4.**The case of the prosecution, as narrated through the evidence as follows**:-

The accused officer was working as PA to RTO between 10/03/2000 to 30/06/2002 at Madurai North Regional Transport Office. He joined service, on 01/01/1995. An information has been received by PW13-Thiru.S.Shanmugavel, who was working as Inspector of Police, Vigilance and Anti-Corruption Department, Madurai that the accused amazed wealth disproportionate to his known source of income of Rs.23,37,561/- in the form of movable, immovable and liquidated assets. The above said information was gathered in pursuance of the search warrant issued against the accused and documents were collected during the raid in the house of the accused.

So, he registered a case in Crime No.13 of 2003 for the offence punishable under section 13(1)(e) r/w 13(2) of the Prevention of Corruption Act. Along with the FIR, Schedule I to VII were annexed.

5.In pursuance of the above said registration of the FIR, PW14-Thiru.Pandiyarajan, who was working as Inspector, Vigilance & Anti-Corruption Department, Sivagangai, applied for search warrant to the Chief Judicial Magistrate, Madurai. Search warrant was issued, on 28/10/2002. He searched the house of the accused and seized 200 grams of gold jewels, 442.848 grams of silver and money of Rs.11,6500/-, apart from the house-hold articles. The house hold articles and cash were returned to the accused. He collected 21 documents. He submitted all the documents before the concerned court.

6.Further investigation was undertaken by PW15-Thiru.E.Vijayakumar, who was working as Inspector of the police during the relevant time, in Madurai Vigilance & Anti-Corruption Department. In pursuance of the order passed by the South Zone Superintendent, on 01/07/2005 as per section 17 of the Act, he made request to various

Departments for furnishing the documents concerning the accused. He received two registered documents from the Sub Registrar, Kumbakonam. He also collected house tax receipts and plan approval for constructing a house and also collected vouchers for the purchase of refrigerator in the name of Rajammal. Apart from that, he has also collected documents for the purchase of a two wheeler in the name of the accused. He collected the bank account statement between 01/04/2000 and 31/03/2004 and from 02/04/2004 to 05/08/2005 from the Indian Bank, TVS Nagar, Madurai branch. He collected the pay particulars of the accused and the policy documents standing in the name of the accused's wife. He also collected the vouchers for the purchase of domestic gas. Vouchers for the payment of college fees, school fees and the income tax statement of the wife of the accused and recorded the statement of the other witnesses and enquired the accused and recorded his statement and issued a show cause notice to the accused. Later, he received the explanation from the accused.

7.After scrutinizing the documents, the explanation offered by the accused, finding that the accused has amazed the wealth disproportionate to the known source of income as Rs.12,42,084/- and made recommendation to the Director of Vigilance & Anti Corruption Department, for giving orders. Later, he was transferred and so, PW17 became the successor of him. He went through the documents, finding that the above disproportionate is Rs.57.14% in excess of the known source of income and after collecting other documents, filed a final report, on 05/08/2002.

8.After the examination of the prosecution side evidence, the accused was subjected to section 313 Cr.P.C questioning. He denied the facts, stated by the prosecution witnesses. On his side, none was examined, but six documents were marked.

9.At the conclusion of the trial, trial court acquitted the accused stating that no offence has been made out against him and so, the judgment of acquittal.

10.Against which, this criminal appeal has been preferred by the State.

11.Heard both sides.

12.The charge reads that the check in period is between 01/01/1995 and 30/06/2002 ranging about 7 years. During that period, he was working as PA to Regional Transport Officer, which fact is not denied by the accused. As per the evidence of PW15, it is seen that in Statement No.I mentioned as Rs.2,29,456/-. Statement No.II is 16,22,435/-, Statement No.III is 14,47,310/-, Statement No.IV is Rs.9,01,222/-, Statement No.V is Rs.13,92,979/- and Statement No.VI is Rs. 1,50,895/-.

13.As per statement No.VII, excess asset was estimated at Rs.12,42,084/-, which according to PW17 is 15.14% in excess of the known source of income of the accused.

14.The trial court has assessed the statement and the explanation offered by the accused in the light of the prosecution case and rendered the following findings:-

> *"The assets of the accused was estimated to be at Rs.2,29,456/-, as on 01/01/1995, the date of his joining*

service. That was admitted by the accused. So, that was taken as such, as per statement No.I.

Statement No.II was estimated by the Investigating Officer at the end of the check in period 30/06/2002 as Rs.16,22,435/-.

Statement No.III in this aspect, the Investigating Officer took 15 items for assessment. The house property, which was constructed in 2000-2001 was valued at Rs.8,36,000/-. In whose name, the property was standing is not stated by the prosecution. But however, it was admitted by the accused himself stating that it is standing in the name of his family members. So from the value of Rs.66,000/-, the value of the sanitary fittings, water supply and electrical fittings were deducted by the trial court and this deduction, according to

> *the prosecution, is not permissible under law. On what ground, the above said amount was deducted has been stated by the trial court that as per the evidence of PW8, the above said deductions was permitted.*

15.Now let us go to the evidence of PW8 on this aspect. He was the Executive Engineer during the relevant time in the Public Works Department in the construction area. He retired as Chief Engineer, Public Works Department. So, it is seen that he is a knowledgeable person in the above said field. Even though, he has no role for taking the above said costs of sanitary, electrical fittings, the prosecution is not able to produce any guidelines for supporting the case. In the absence of any such document from the prosecution side, the above said deduction is not permissible. The expert opinion on that field must be accepted. So, the deduction made by the trial court cannot be found fault and the prosecution side argument on this score is rejected. So, the valuation has been taken by the trial court was Rs.7,70,000/-.

16.Item No.9 in the schedule II is the money standing in the name of Rajammal, in Canara Bank, Ramanagar Branch. But it does not tally with that of the final figure. An amount of Rs.1,78,436/- was deleted from the valuation.

17.The 11th item namely the moped purchased, after proper permission from the department, on installment basis. So, that was included in the assessment. By that process, the total valuation in the statement No.II was arrived at Rs.1,37,803/-.

18.Now coming to the statement No.III regarding the agricultural income, it was admitted by the prosecution as well as the defence that the accused was owning properties in Nathanpatti and Soundarpandian villages. As per the income certificate issued by the Tashildar, it was estimated at Rs.5,00,441/-. The trial court has pointed out that a sum of Rs.1,98,200/-, a part final withdrawn amount from the GPF Account was omitted. So, that was included in the income.

19.The accused claimed Rs.1,00,000/- as income derived by selling of the property through the unregistered sale deed, dated 09/06/1999 through Ex.P7. Since, it was unregistered sale deed, the income was not given effect. So, the request made by the accused was rejected.

20.Rs.2,00,000/- was claimed by the accused as loan amount borrowed by the wife namely Rajammal from one Veerammal, on 18/06/1998 through Ex.D3. That amount was repaid, on 24/08/2002, after check in period was over. But that amount has been taken as income of the accused. The correctness of this finding requires to be addressed. It was also found that Rajammal was having independent and separate business of tailoring. She was also produced the income tax returns. As per the income tax returns, her independent income was fixed at Rs.2,17,580/-. By that process, the trial court has arrived the final figure as Rs.22,72,570.75/- in respect of the statement No.III.

21.Statement No.IV is with regard to the expenses of house-hold articles expenses, etc. In that, the educations expenses and domestic expenses were taken and it was fixed and the final figure was arrived at Rs.7,53,102.52/- in respect of the statement No.IV. Finally, the following finding has been rendered by the trial court:-

> *"The value in Statement No.I was deducted from the value mentioned in Statement No.II. The final figure is Rs.19,48,547/-."*

22.So, this was the property acquired by the accused during the relevant period. Savings during the check in period was calculated as evaluation in statement No.III and the value in statement No.IV, which comes around Rs. 15,19,468.23/-.

23.Now the final calculation with regard to the excess income was arrived by deducting the value in statement No.V from the statement No.VI and it was arrived at Rs.3,70,921-23/-. So, the trial court found that the above said amount is the excess amount, which was found at the hands of the accused at the time check in period. But however, the trial court thought it fit to acquit the accused. Absolutely, no reasoning has been mentioned in the judgment.

24.Para 36 of the trial court judgment is extracted herein under for better appreciation:-

> *"36.On considering the evidence of witnesses and documents filed, it is clear and cogent to point out that the accused is a Public Servant during check period is not found to have acquired and possessed properties and pecuniary resources in his name and in the name of his wife and children which are disproportionate to his known source of income. From the evidence, it is clear that he is having the excess income of Rs.3,70,921.23 during the check period. Hence, there is no disproportionate assets and the accused is not found guilty of any offences charged under Sec.13(1)(e) r/w 13(2) of Prevention of Corruption Act, 1988."*

25.So, even if we accept the calculation that has been arrived by the trial court is correct in all aspects, R15.14% was found to be excess to the known source of income. How the trial court has come to the conclusion to acquit the accused, absolutely, no reason has been mentioned. So, this judgment lcaks fundamental compliance of the principles. On that score, the learned Additional Public Prosecutor wants this matter to remit back to the trial court for consideration the issue.

26.Since, it is the case of acquittal, unless a reasoning is given by the trial court in making the acquittal, absolutely, there is no chance or choice for this court to see the correctness of the finding. When the reasoning itself is lacking, there is no chance for this court to discuss about the finding. On that score, as requested by the learned Additional Public Prosecutor, I am of the considered view that the matter can be remitted back to the trial court for fresh consideration from the stage of 313 Cr.P.C questioning. It is further clarified that no permission shall be granted to either of the parties to adduce further evidence. Only fresh argument must be permitted and the judgment is to be pronounced within a period of two months from the date of receipt of the copy of the judgment.

27.With the above said observation, this criminal appeal is **allowed**, by setting the judgment of the trial court.

26/**04/2023**

Index:Yes/No
Internet:Yes/No
er

To,

1.The Special Court for trial
of cases under the Prevention
of Corruption Act cases,
Madurai.

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

G.ILANGOVAN, J

er

Crl.A(MD)No.176 of 2017

26.04.2023