



Crl.R.C.No.766 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	03.07.2024
Delivered on	10.07.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

Crl.R.C.No.766 of 2024
and
Crl.M.P.No.7104 of 2024

Vijayasekar

... Petitioner

Vs.

The State,
rep. by the Additional Superintendent of Police,
Vigilance and Anti-Corruption,
Coimbatore.

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 and 401 of Criminal Procedure Code, 1973, to set aside the order dated 12.03.2024, passed by the learned Special Judge, Special Court for trial of Cases under the Prevention of Corruption Act, Coimbatore in Cr.M.P.No.913 of 2023 in Spl.C.C.No.6 of 2023.

For Petitioner : Mr.Sharath Chandran
for Mr.S.Rajendrakumar

For Respondent : Mr.S.Santhosh, GA



Crl.R.C.No.766 of 2024

ORDER

WEB COPY

Challenging the order passed by the learned Special Judge, Special Court for trial of Cases under the Prevention of Corruption Act, Coimbatore in Cr.M.P.No.913 of 2023 in Spl.C.C.No.6 of 2023 dated 12.03.2024, the present revision has been preferred by the petitioner.

2. The brief facts of the case is as follows:

2.1) The petitioner herein has joined the service as a Divisional Fire Officer in the Fire Rescue Department at Vellore on 12.05.1995 and served there till 20.04.1999. Thereafter, he served in Coimbatore from April 1999 to January 2003 and at Kancheepuram from February 2003 to 18.09.2006. Then he was promoted as Deputy Director of Fire Rescue Services and was posted at Vellore from 19.09.2006 to 17.12.2009 and also holding full additional charge as Joint Director from January 2010 to 03.10.2013. On 03.10.2013, he was appointed as Joint Director of Fire Rescue Services Department on 03.10.2013 and was posted in North Chennai till September 2016 and was transferred to the Western Region at Coimbatore on 26.09.2016. While he was serving in the said office, an FIR in FIR N 02/2020/AC/CB came to



Crl.R.C.No.766 of 2024

be registered against him on 26.03.2020, alleging that the petitioner had committed an offence punishable under Sections 13(1)(e) r/w. Section 13(2) of the Prevention of Corruption Act, 1988 [Hereinafter referred to as "PC Act"]].

2.2)The allegation leveled against the petitioner is that he had acquired assets to the tune of Rs.15,83,793/- which are disproportionate to his source of income. The respondent filed a final report before the learned Special Judge, Special Court for PC Act Cases, Coimbatore and the same was taken on file in Spl.C.C.No.6 of 2023. In lieu of this, the petitioner has filed a discharge petition in Crl.M.P.No.913 of 2023 seeking to discharge him on the ground that the Court had no territorial jurisdiction to try the offence as the petitioner neither hold office nor had acquired assets in Coimbatore during the check period but however, the trial Court has dismissed the petition stating that the petitioner had held office before the check period and that would confer jurisdiction on the Court to try the offence.



Crl.R.C.No.766 of 2024

3. Aggrieved over the same, the petitioner has filed the present revision.

4. Heard Mr.Sarath Chandran, learned counsel for the petitioner and Mr.Santhosh, learned Government Advocate appearing on behalf of the respondent.

5. The learned counsel for the petitioner submitted that it is the case of the prosecution that during check period i.e., from 01.01.2006 to 31.12.2010, the petitioner has allegedly accumulated pecuniary resources to the tune of Rs.15,83,793/- which is disproportionate to the known sources of income and hence, committed the offences under Sections 13 (1) (e) r/w. 13 (2) of the PC Act. He further contended that after investigation, the respondent had filed a final report and the same was taken on file in Spl.C.C.No.6 of 2023 and sanction was granted by the Additional Chief Secretary through G.O. Ms. 171, dated 17.04.2023 to prosecute against the petitioner. Pursuant to receipt of summons, the petitioner had preferred Crl.M.P. 913 of 2023 before the trial Court on the grounds of non-consideration of explanations and absence of concealed property. Further, the learned counsel



Crl.R.C.No.766 of 2024

contended that the lower court counsel had emphasized on the lack of territorial jurisdiction on the part of the Special Court, Coimbatore as neither the petitioner worked in Coimbatore nor the assets gathered by him were in Coimbatore and in response to the same, the prosecution had also filed a counter defending the charge sheet on the ground that at the time of framing of charges, the trial Court cannot look into probative value of evidence. Continuing his submissions, he stated that the Special Court through its order dated 12.03.2024 dismissed the petition filed by the petitioner solely on the jurisdictional aspect and it is vital to mention here that the petition was not dismissed on merits. He also stated that the impugned order is passed without application of mind and the same is perverse in law.

6. In support of his contentions, the learned counsel drew the attention of this Court to the following decisions:-

a)V.K.Puri Vs. CBI reported in ***2007 (6)***

SCC 91

b)Mahender Goyal Vs. Kadamba

International reported in ***2013 SCC Online***

Mad 3508.



WEB COPY



Crl.R.C.No.766 of 2024

c)P.Vijayan V. State of Kerala reported

in **2010 (2) SCC 398**

7. In furtherance, the learned counsel submitted that in the impugned order, the learned trial Judge has concluded that as the petitioner has worked in Coimbatore between 2003-2005 that would be sufficient for the Court to have jurisdiction to try the offence. However, the findings of the trial Court stating that the petitioner/accused officer having worked at Coimbatore prior to the check period confers jurisdiction upon the Court is unsustainable and ex-facie perverse for the reasons viz., a) the check period is from 01.01.2006 to 31.12.2010; b) the petitioner neither worked nor acquired any property in Coimbatore during the said period; and c) in the light of the decision of the Hon'ble Supreme Court in **V.K. Puri Vs. CBI [2007 (6) SCC 91]**.

8. Per contra, the learned Government Advocate submitted that FIR was registered against the petitioner when he served as Joint Director of Fire and Rescue Services Department, Western region, Coimbatore. It was ascertained that during the check period i.e., between 01.01.2006 and 31.12.2010, the petitioner



Crl.R.C.No.766 of 2024

being the public servant has acquired and in possession of properties and pecuniary resources in his name which are disproportionate to his known sources of income to the extent of Rs.15,83,793/- for which he could not provide account satisfactorily. On completion of investigation, the charge sheet was filed before the trial Court on 29.05.2023 and the same was taken on file in Spl.C.C.No.6 of 2023.

9. Moreover, he contended that there are two constituent elements to attract Section 13(1)(e) of PC Act, one is the possession of the property and another is at any time during the period of his office, been in possession. He argued that it is sufficient if any one of the element is fulfilled i.e., either possession or the situs of the property. He was in possession of properties and pecuniary resources in his name, which are disproportionate to his known sources of income to the extent of Rs.15,83,793/- during his service including the petitioner's service at Coimbatore from 1999 to 2003 and hence the first element of Section 13(1)(e) of PC Act has been fulfilled. The possession of the property is a continuous event, therefore the jurisdiction of the above case follows the petitioner wherever he does his service. He



Crl.R.C.No.766 of 2024

quoted the judgment of the Hon'ble Full Bench of this Court in the case of *Mahender Goyal* as stated supra and contended that the same does not apply to the facts and circumstances of the present case. He further submitted that as per G.O.Ms.No.963 dated 25.05.1964, the headquarters of the directorate has been notified as the police station with the jurisdiction over the entire State and all police officers in the directorate of a rank above the rank of the Inspector of Police have the powers of the officers in charge of police station under Sec.2 (s) of Cr.P.C. Therefore, the DVAC has got the jurisdiction and has the powers to assign the investigation to the subordinate officers. Based on the orders of the DVAC, the investigating officer has investigated and filed a final report which does not prejudice with the petitioner. Mere taking file of the case is not a ground to discard the entire prosecution case, wherein if at all there is lack of jurisdiction seeking discharge under Sec.239 is not maintainable. The remedy available for the petitioner is to seek order to transfer the case to a competent jurisdiction. He contended that *V.K.Puri's case* as stated supra has been countered by ***Kamal Dev v. State of Haryana***. Moreover, the order of the Special Court for trial of cases under the PC Act is not based on sole ground of jurisdictional point of view but had passed on the



Crl.R.C.No.766 of 2024

basis of *prima facie* material available against the petitioner and by assessing the document submitted along with the final report.

He stated that the petitioner has admitted that the appropriate remedy is available to him under Sec.322 of Cr.P.C., and not under Sec.239 of Cr.P.C. He submitted that the petitioner did not adhere to the GO and the directives of the department since after purchasing the properties, he got ratification from his department and the matter of permission or ratification is not the ground for arriving the disproportionate assets of the accused rather it was arrived on the basis of his known sources of his income. During investigation, final opportunity notice was given to the petitioner on 07.07.2022 and sought his reply with explanation on or before 27.07.2022, for which the petitioner had requested time for 15 days and the time limit was extended till 11.08.2022 and an intimation letter was served to the petitioner on 26.07.2022. The petitioner submitted his reply to the final opportunity notice on 01.08.2022. The final report was filed for acquiring disproportionate asset to his known sources of income to an extent of Rs.15,83,793/- and subsequently, prosecution obtained sanction on 17.04.2023. The statement of L.W.31 reveals that petitioner's father died on 29.08.2007 and the amount sanctioned for his



Crl.R.C.No.766 of 2024

funeral expense cannot be taken into account as petitioner's income.

10. He further submitted that the petitioner has filed his property statement in 2006 and also submitted a copy of sale receipt bill on 02.12.2010 to the tune of Rs.3,92,400/- in his reply to the Final Opportunity Notice, but however, on examination of L.W.32, it came to light that the petitioner had not only disclosed about the new purchase of gold ornaments in his property statements, but was also unable to explain about the facts of the required documents and hence, the claim of the petitioner cannot be accepted. He focused on the investigation which reveals that the claim of Rs.6,00,000/- withdrawn from GPF for property acquisition by the petitioner is false as the final amount received by him was on 24.01.2011, which was after the check period and the sale deed was registered on 02.12.2010. He also contended that the hand loan of Rs.2,50,000/- received by the petitioner on 02.05.2011 is unacceptable, as it was received after the check period. It was also found in the due course of investigation that the entire sale amount of Rs.22,30,270 towards the undivided share of land was received by the vendor and there is no recital



Crl.R.C.No.766 of 2024

regarding the part payment which will be received after the registration of document, which shows that the petitioner was not in a position to pay the entire sale consideration on the registration date and his explanation was not acceptable since the vendor received the entire sale amount towards the undivided share of land of Rs.22,30,270/- at the time of registration whereas the other payments including the GPF Part Final amount of Rs. 6,00,000/-, Rs. 2,50,000/-, Rs. 33,900/-, Rs. 7,00,100/-, and Rs. 3,00,000/- from his Father-in-law as interest-free hand loan are also after registration of the sale consideration which reveals that the petitioner had acquired the property on unknown source of income. The investigating officer accepted his genuine claims offered in his explanations in the final opportunity notice, including a hand loan of Rs.50,000 from his late father-in-law and a final closure amount of Rs.29,683 from his father's pension at State Bank of India, but rejected some explanations as it was unfavorable and not satisfactory.

11. In continuing his submissions, he contended that the investigating officer conducted a thorough investigation and submitted a detailed Final Report, statements and relevant



Crl.R.C.No.766 of 2024

documents to the learned Special Judge, Coimbatore, proving that the petitioner committed the offence under Section 13(2) r/w. 13(1)(e) of the PC Act. After considering the fundamental facts and considering *prima facie* materials and probative value of documents, the case was taken on file by the learned Special Judge. He also cited the decision of *Govind Ram vs. State of Rajasthan*. It is submitted by the learned counsel that if at all, there is an issue of jurisdiction of the Court, the appropriate remedy available to the petitioner is under Section 322 of Cr.P.C. and not to claim for a discharge under Section 239 of Cr.P.C., when *prima facie* offence is made out. At this juncture, he brought it to the notice of this Court that the High Court erroneously equated the initiation of proceedings under Chapter XIV with the commencement of proceedings under Chapter XVI, stating that without initiation under Chapter XIV, the commencement of proceedings before a Magistrate under Chapter XVI cannot occur for which he referred the decision of the Hon'ble Apex Court in Chief ***Enforcement officer V. Videocon International Ltd.,*** reported in ***2008 (2) SCC 492.***

12. The learned counsel also relied upon various judgments



Crl.R.C.No.766 of 2024

in supporting his contentions which are as follows:

a)Trisuns Chemical Industry V. Rajesh

Agarwal reported in 1999 (8) SCC 686

b)Omkarnath Misra & Ors. V. State

(NCT Delhi) & Anr., reported in 2008 (8)

SCC 561

c)Sheroj Singh Ahalwat V. State of U.P

& Anr. , reported in AIR 2013 SC P.52

d)Rajesh Bajaj V. State NCT Delhi &

Ors. Reported in 1999 (31) SCC 259

e)Dr. J.Muralidhar Goud V. State of

A.P, in Crl.R.C.1606 of 2013 dated

09.11.2018

f)State of T.N V. N.Suresh Rajan

reported in 2014 (11) SCC 709; and

g)Sajjan Kumar V. CBI

Thus, the learned Government Advocate opposed the revision as prima case was made out by the petitioner and prayed that the order of the trial Court warrants no interference.

13. In response to the contentions of the respondent, the



Crl.R.C.No.766 of 2024

learned counsel for the petitioner contended that the prosecution has failed to distinguish *VK Puri's* case as stated supra on what grounds the said decision would not apply to the present case on hand. He further highlighted the decision of the respondent in the case of ***Kamal Dev V. State of Haryana, ILR (1987) 1 P & H 346*** and stated that the same is in favour of the petitioner and the relevant paragraph of the said decision is as follows:

"4. The commission of the offence of criminal misconduct has nexus to the period of his office. It is so intimately interlinked that it is the place of office which would determine the place of commission of his misconduct. It is through his office alone that one can determine his known source of income and if his property which is presently in his possession or in possession of someone on his behalf, or has at any time during the period of his office been in his possession or of someone on his behalf, then it is relatively to be viewed with the period of his office. In this context, the place of office assumes importance, for that would determine the jurisdiction in which the offence of criminal misconduct would be triable. Thus, in the instant case, I am of the view that it was the Special Judge at Chandigarh who had the jurisdiction to try the offence against the petitioner."



WEB COPY



Crl.R.C.No.766 of 2024

14. The aforesaid extract is self explanatory. Thus, the offence of criminal misconduct under Section 13(1)(e) of the P.C Act has a nexus with the period of office. In the present case on hand, the petitioner neither worked nor acquired properties in Coimbatore during the check period. Hence, the Court at Coimbatore would have absolutely no jurisdiction to try the instant case.

15. Moreover, he urged that the prosecution has contended that instead of discharge petition, the petitioner ought to have filed transfer petition of the case to the jurisdictional Court under Section 322 Cr.P.C., but however, Section 322 does not apply for the three reasons namely, firstly to invoke Section 322 Cr.P.C., the Court must have initially had jurisdiction over the case. In the instant case, the charge sheet has been filed in a Court which had no jurisdiction over the case. In the case of ***Rakesh v. State of Rajasthan, 1987 Cri L.J 1342***, it was held as under:

"It will be clear from the perusal of Section



Crl.R.C.No.766 of 2024

322 and Section 201 of the Code of Criminal Procedure, 1973, that the former section will only apply when the Magistrate has initially jurisdiction and in the course of an inquiry into an offence or trial from the evidence it appears to him to warrant a presumption that he has either no jurisdiction or the case is one which should not be tried by him or should be committed for trial or should be tried by the Chief Judicial Magistrate that he has to stay the proceedings and submit the case with his report explaining its nature to the Chief Judicial Magistrate. The Chief Judicial Magistrate either should try the case himself or should send the case to any Magistrate subordinate to him having jurisdiction. In case the Magistrate has initially no jurisdiction or is not competent to take cognizance of the offence, s.322 of the Code of Criminal Procedure will not be attracted and in such a case the only course open will be to return the complaint under s. 201 Cr. P.C. to the complainant for presentation to the proper court."

16. Secondly, Section 322 can apply only if a transfer is to be made to the Chief Judicial Magistrate to whom the Magistrate is administratively subordinate. A Full Bench of this Hon'ble Court in



Crl.R.C.No.766 of 2024

the case of ***Mahender Goyal V. Kadamba International*** reported in 2013 SCC OnLine Mad 3508 has considered the scope of Section 322 Cr.P.C and has held as follows:

"14. It is to be noticed that transfer by a Magistrate to a Magistrate without instructions of the Chief Judicial Magistrate or a Chief Judicial Magistrate outside the District is not envisaged in the Section.

15. The words any Magistrate to whom he is subordinate have been substituted by the words the Chief Judicial Magistrate. There need be no doubt that the words the Chief Judicial Magistrate would mean only the Chief Judicial Magistrate to whom the Magistrate is subordinate as the 41st Report of the Law Commission takes note of the fact that the purpose of Section 346 of the old Code is to enable the Magistrate to report the case to his superior.

16. We may safely presume that if the legislative intent was to widen the scope of Section 322, Cr.P.C. to include the submission of a Report by a Magistrate to a Chief Judicial Magistrate to whom he is not subordinate, the same expressly would have been stated."

In view of the aforesaid decision, the Special Court at Coimbatore



Crl.R.C.No.766 of 2024

has no jurisdiction to transfer the case to service places of the petitioner viz., Vellore or Kancheepuram in exercise of its powers under Section 322 Cr.P.C.

17. Finally, it is submitted that while the prosecution has adverted to Section 461(k), it has conveniently omitted a reference to Section 461(1) which reads as follows:

"461. Irregularities which vitiate proceedings. If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely: (1) tries an offender;"

Thus, the trial Court at Coimbatore has no jurisdiction to try the case of the petitioner and it is crystal clear that the proceedings before it is a nullity in law.

18. Concluding his submissions, the learned counsel pleaded that the impugned order of the Court below has to be set aside and to discharge the petitioner from the charges levelled against him by allowing the revision.

19. Considered the rival submissions made by the respective



Crl.R.C.No.766 of 2024

counsels and also perused the materials available on record.

WEB COPY

20. The learned counsel for the petitioner submitted that there is no *prima facie* material made out as against the petitioner herein for the charges under Sections 13(2) r/w. 13(1)(e) of PC Act as the petitioner neither served in Coimbatore nor acquired the property in Coimbatore during the check period as alleged by the respondent. The trial Judge without application of mind has dismissed the discharge petition stating that it confers jurisdiction to try the case as the petitioner had worked prior to the check period at Coimbatore, which cannot be acceptable as per the dictum laid by the Hon'ble Supreme Court in the case of ***V.K. Puri Vs. Central Bureau of Investigation*** reported in ***2007 SCC OnLine SC 590***, wherein the Hon'ble Apex Court has held that one of the ingredients of the offences, therefore, is known sources of income. What is material therefore is that the criminal misconduct had been committed during the period the accused held office and not the places where he had held offices. The relevant paragraph of the order read as follows:

"15. One of the ingredients of offences, therefore, is known sources of income. What is



Crl.R.C.No.766 of 2024

material therefore is that the criminal misconduct had been committed during the period he held office and not the places where he had held offices. The fact that the appellant had bank accounts within the jurisdiction of the Delhi Courts as also immovable properties is not in dispute. Respondent in the charge sheet has clearly pointed out that one of his known sources of income was the rental received by him from his Delhi flat. The same had been given due credit for the purpose of arriving at a prima facie satisfaction that the assets possessed of by him are disproportionate to his known source of income.”

21. In yet another decision of the Punjab and Haryana High Court in Kamal Dev's case, wherein it has stated that the commission of the offence of criminal misconduct has connection to the period of his office. The place of office assumes importance, for that would determine the jurisdiction in which the offence of criminal misconduct would be triable.

22. Section 322 Cr.P.C., reads as under:

322. Procedure in cases which Magistrate cannot dispose of. -



Crl.R.C.No.766 of 2024

(1) If, in the course of any inquiry into an offence or a trial before a Magistrate in any district, the evidence appears to him to Warrant a presumption-

a) that he has no jurisdiction to try the case or commit it for trial, or

b) that the case is one which should be tried or committed for trial by some other Magistrate in the district, or

c) that the case should be tried by the Chief Judicial Magistrate, he shall stay the proceedings and submit the case, with a brief report explaining its nature, to the Chief Judicial Magistrate or to such other Magistrate, having jurisdiction, as the Chief Judicial Magistrate directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

23. Likewise, in regard to the provision of Section 322 Cr.P.C., the learned counsel referred to the decision of this Court in *Mahender Goyal's case* as stated supra, wherein it has held that transfer by a Magistrate to a Magistrate without instructions of the



Crl.R.C.No.766 of 2024

CJM or a CJM outside the District, is not envisaged in the section.

WEB COPY

24. The High Court of Orissa in ***Janaki Ballav Patnaik v. State of Orissa*** reported in ***1995 Cri.L.J. 1110***, in which the petitioner was facing charges u/s 13(2) r/w S-13(1)(e) of the PC Act on the allegation that he was in possession of assets disproportionate to his known sources of income, to the tune of Rs. 5,49,060.31. He filed an application u/s 227 of Cr.P.C. for discharge, on the ground that there was no sufficient ground to proceed against him, which was rejected. The entire basis of the petitioner's case in the application for discharge was that the prosecution has not taken into consideration one of the known sources of income, namely the income of the petitioner's wife, which would have covered the alleged disproportionate assets. The accused thereafter, invoked the writ jurisdiction of the Orissa High Court. The issue before the Orissa High Court was "if the Court comes to the conclusion that prosecution has deliberately not taken into consideration a particular item of evidence, which if taken into account will have a vital bearing even in the matter of evaluation and finding out a prima facie case, would the Court be justified in refusing to frame charge and in calling upon the



Crl.R.C.No.766 of 2024

prosecution to further investigate into the matter, or to frame the charge on the materials as they stood leaving the matter for trial".

The Court had observed:-

"... But at the same time, in a case coming under Section 13(1)(e) of the Act, if the prosecution ignores a material source of income of the accused which the prosecution was aware of and that income would have a vital bearing in the matter of framing of charge, then the evaluation made by the Court for satisfying itself that all the ingredients constituting the alleged offence exist becomes vitiated and in such a case, calling upon the accused to face trial would be a travesty of justice. In such a case framing a charge and calling upon the accused to go through the entire gamut of trial would tantamount to abuse of the process of Court and, therefore, this Court would be justified in interfering with the same. When charges are



Crl.R.C.No.766 of 2024

framed on the materials produced by the prosecution, in which case the High Court would be justified in interfering, no inflexible guidelines or rigid formula can be set out and it depends upon the facts and circumstances of each case. But the position is beyond pale of controversy that the High Court would be fully justified in interfering either to prevent the abuse of the process of court or to secure the ends of justice."

25. In the case of ***State Vs. R. Soundirarasu*** reported in ***2022 Live Law (SC) 741 in Cr.A.Nos.1452 & 1453 of 2022 dated 05.09.2022***, wherein the Hon'ble Court had held that the explanation to Section 13(1)(e) is a procedural Section which seeks to define the expression "known sources of income" as sources known to the prosecution and not to the accused. The explanation applies and relates to the mode and manner of investigation to be conducted by the prosecution, it does away with the requirement and necessity of the prosecution to have an open, wide and rowing investigation and enquire into the alleged



Crl.R.C.No.766 of 2024

sources of income which the accused may have. It curtails the need and necessity of the prosecution to go into the alleged sources of income which a public servant may or possibly have but are not legal or have not been declared. The undeclared alleged sources are by their very nature are expected to be known to the accused only and are within his special knowledge. The effect of the explanation is to clarify and reinforce the existing position and understanding of the expression "known sources of income" i.e. the expression refers to sources known to the prosecution and not sources known to the accused. The second part of the explanation does away with the need and requirement for the prosecution to conduct an open ended or roving enquiry or investigation to find out all alleged/claimed known sources of income of an accused who is investigated under the PC Act, 1988. The prosecution can rely upon the information furnished by the accused to the authorities under law, rules and orders for the time being applicable to a public servant. No further investigation is required by the prosecution to find out the known sources of income of the accused public servant. As noticed above, the first part of the explanation refers to income received from legal/lawful sources.



Crl.R.C.No.766 of 2024

26. A distinction exists between a case filed under Sections 13(1)(c) and 13(1)(d) of the 1988 Act, on the one hand, and Section 13(1)(e) thereof, on the other. Ingredients of the offence under Section 13(1)(e) of the 1988 Act are:

(i)The accused is a public servant;

(ii)The nature and extent of the pecuniary resources of property found in his possession;

(iii)His known sources of income, i.e., known to the prosecution.

(iv)Such resources or properties found in possession of the accused were disproportionate to his known sources of income.

Once, however, the aforementioned ingredients are established by the prosecution, the burden of proof would shift on the accused to show that the prosecution case is not correct.

27. In a case involving Section 13(1)(e) of the 1988 Act, what is necessary is as to whether keeping in view the period in question, commonly known as check period, the public servant has acquired wealth which is disproportionate to his known sources of income. It has nothing to do with individual case of bribery. It has nothing to do with a series of acts culminated into an offence. Each



Crl.R.C.No.766 of 2024

Court, where a part of the offence has been committed, would, therefore, be entitled to try an accused.

28. The learned counsel also relied on the decision of the Hon'ble Supreme Court in *Vijayan's case* wherein it has observed by quoting that Section 227 of Cr.P.C. shall be kept in mind while disposing of the discharge petition but the trial Court in the present case has virtually absolved its duty under the said provision.

29. At this point of time, it is relevant to note that in a case under Section 13(1)(e) PC Act, once the ingredients of the offence are established by the prosecution, the burden of proof, shifts on the accused person to account for the pecuniary resources and properties found in his possession in the relevant check period. However, in cases where the public servant is alleged to have taken illegal gratification, the burden of proof to prove the offence under Section 13(1)(d) of the PC Act is on the prosecution and not on the accused. On a bare perusal, it is seen that the trial Court has no jurisdiction to try the offence as the petitioner neither worked nor acquired assets at Coimbatore during the check period



Crl.R.C.No.766 of 2024

as per the final report filed by the respondent. Hence, the order passed by the Special Court is erroneous and contrary to the decision of the Hon'ble Supreme Court in V.K. Puri's case stated supra and non est in the eye of law and therefore, is liable to be set aside.

30. For the foregoing reasons and in the light of the decisions of the Hon'ble Supreme Court and this Court as stated supra, the order passed by the learned Special Judge, Special Court for trial of Cases under the Prevention of Corruption Act, Coimbatore in Cr.M.P.No.913 of 2023 in Spl.C.C.No.6 of 2023 dated 12.03.2024, is set aside. Consequently, the Criminal Revision Petition stands allowed. Connected Miscellaneous Petition is closed.

10.07.2024

Index: Yes/No
NCC : Yes/No
Order: Speaking/Non Speaking

28/31



Crl.R.C.No.766 of 2024



WEB COPY



Crl.R.C.No.766 of 2024

To

- 1.The Special Judge,
Special Court for PC Cases,
Coimbatore.
- 2.The Additional Superintendent of Police,
Vigilance and Anti-Corruption,
Coimbatore.
- 3.The Public Prosecutor,
Madras High Court, Chennai.



WEB COPY



Crl.R.C.No.766 of 2024

VIVEK KUMAR SINGH, J.

DP

Crl.R.C.No.766 of 2024
and
Crl.M.P.No.7104 of 2024

10.07.2024