



Crl.R.C.No.1757 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.10.2024

Pronounced on : 08.11.2024

CORAM : JUSTICE N.SESHASAYEE

Crl.R.C.No.1757 of 2023
and Crl.M.P.No.16687 of 2023

P.Vijayalakshmi

.... Petitioner / Accused-2

Vs

The State
Rep. By
The Inspector of Police
SPE/CBI/ACB
Chennai.

.... Respondent / Complainant

Prayer : Criminal Revision Petition filed under Section 397(1) of Cr.P..C., praying to call for the records of the order in Crl.M.P.No.7417 of 2023 in C.C.No.10 of 2018 dated 25.09.2023 passed by the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai, and set aside the same and allow this criminal revision petition.



Crl.R.C.No.1757 of 2023

WEB COPY

For Petitioner : Mr.B.Kumar, Senior Counsel
Assisted by Mr.G.Muthukumar

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor [CBI]

ORDER

This revision is filed challenging the order dated 25.09.2023 made in Crl.M.P. No.7417 of 2023 in C.C. No.10 of 2018 by the Special Judge for CBI Cases (VIII Additional City Civil Court, Chennai). The said petition was filed by A2 in C.C. No.10 of 2018 for alteration of the charge under Section 216 of Cr.P.C.

2.1 The facts that lead upto the present revision may be stated as below:

- a) A1 and A2, both spouses are public servants. A2 possessed a house property. The allegation of the prosecution is that the value of this property is disproportionate to the known sources of income of both A1 and A2. The respondent investigated into this offence and filed its final report.
- b) Besides A1 and A2, A3, who is the brother of A2, was also proceeded against by the investigating agency as he too has pumped some money



Crl.R.C.No.1757 of 2023

for the construction of the said house property. But A3 is not a public servant.

- c) Be that as it may, A1 to A3 had filed three separate criminal miscellaneous petitions in Crl.M.P. Nos.2564 of 2020, 6927 of 2019 and 7326 of 2018 seeking their discharge from the case under Sec.239 Cr.P.C. Those petitions came to be dismissed by the trial court and they challenging the Orders passed therein, they preferred separate revisions before this Court in Crl.R.C.Nos.316, 384 and 451 of 2022. These revisions came to be dismissed by a common order of the learned single Judge of this court on 24.05.2023. It may have to be stated that during the pendency of these revisions, the trial court had framed the charges, which in essence has defeated the very purpose of filing the revisions. In paragraph 32 of his order, the learned single Judge of this Court made the following:

"32. The Hon'ble Apex Court in plethora of judgments has pointed that at the stage of framing of charge, the court should not enter upon the process of evaluating the evidence by deciding its worth or credibility. The limited exercise during that stage is to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient



Crl.R.C.No.1757 of 2023

for the court to proceed further. The framing of charge cannot be interfered merely on hypothesis of imagination and far-fetched reasons. In this case, no fundamental defects is found on the charges framed by the trial court. The object of charge is to inform the accused person on the acquisition which he has to meet."

2.2. Turning to the charges whose alteration is now sought, the trial court has framed four independent charges. The first charge is directed against A1, wherein the court alleges that between 23.07.2010 and 09.12.2016, A1 had amassed disproportionate asset in his name and in the name of A2 to an extent of Rs.1,82,26,186.81 which works to 116.67% in excess of their known sources of income. The second charge is a literally copy-paste of the first charge except that it is directed against A2. The third charge is that both A1 and A2 are charged for mutually abetting the commission of crime as between A1 and A2. In other words, even as A1 and A2 figured as principal offenders, the charge also shows that they are abettors as well.

2.3. It is in these circumstances, A2 has taken out the application for alteration of the charges. According to her, the focus of the investigating agency is to



Crl.R.C.No.1757 of 2023

charge A1 of amassing wealth disproportionate to his known source of income and in that context A2 can be charged only as an abettor for the offence that A1 has committed and not as a principal offender. In other words, she requires that the charge 2 as has been framed must be dropped and charge 3 is to be suitably altered.

2.4 The prosecution has filed its counter wherein it states that the charges might have to be altered. After hearing both sides, the trial court chose to reject the plea of A2/revision petitioner to alter the charges on two grounds:

- a) that inasmuch as the learned single Judge has held in paragraph 32 of the order in the batch of criminal revision cases extracted above in Crl.R.C. Nos.316, 384 and 451 of 2022 that the charges as framed cannot be faulted, it would be inappropriate for the trial court to alter the charges so framed.
- b) Relying on the authority of the Hon'ble Supreme Court in ***Ratilal Bhanji Mithani Vs State of Maharashtra*** [AIR 1979 SC 94] once a charge is made it is not permissible for the court to alter the charges.

This order is now under challenge.



Crl.R.C.No.1757 of 2023

WEB COPY

3. Introducing the case of the prosecution, Mr.B.Kumar, the learned senior counsel for the revision petitioner submitted that according to the prosecution, a certain plot of property was purchased in the name of A2 for Rs.30 lakhs, that A1 to A3 had borrowed a sum of Rs.87 lakhs for construction of a building, but CBI had valued it at Rs.1.29 crores and the differential sum is the issue here. According to CBI, A1 had contributed a bare Rs.50,000/-. The prayer for alteration of charges must have to be seen in the backdrop of these broad accusation. Developing his arguments, the learned Senior Counsel made the following submissions:

- a) The charges must be specific and cannot be confusing. When the focal point for prosecution is A1, then the role of A2, at the best can be, an abettor. Here is a situation where A2 owns certain piece of property and both A1 and A2 are stated to have amassed wealth to the tune about 116.67% of their respective known sources of income. There is obviously an error in that.
- b) If both A1 and A2 were charged under Section 13(1)(d) then there must be two separate cases in terms of Section 218 Cr.P.C as they constitute independent offences.



Crl.R.C.No.1757 of 2023

- c) The same principal offender cannot be an abettor for another principal offender when the offence as alleged against both of them constitute separate offences.
- d) So far as the observation of the learned single Judge of this court in paragraph 32 of his order in Crl.R.C. Nos.316, 384 and 451 of 2022 is concerned, what was under challenge before the learned single Judge was only the entitlement of A1 to A3 to have them discharged from the case, and not on the correctness or otherwise of the charges actually framed by the court. Therefore, the trial court ought not have considered the said observation of the learned single Judge as if it is a finding on the correctness of the charges as framed by the trial court when it is not even under challenge there.
- e) Turning to the other line of reasoning of the trial court that once charges are framed it could not be altered or amended, it defeats the very purpose of Section 216 Cr.P.C. Indeed this line of reasoning renders Section 216 Cr.P.C. otiose.

4. Refuting the submissions of the learned senior counsel for the petitioner, Mr.K.Srinivasan, the learned Public Prosecutor for CBI cases made the following



CrI.R.C.No.1757 of 2023

submissions:

- (a) The quintessence of the accusations levelled against A1 and A2 is that, A2 owns a certain piece of land worth around Rs.93.00 lakhs, in which a four storeyed building was constructed at a cost of Rs.1.29 crores, and the investigation disclosed that even though the plot is in the name of A2 and the building is built on the said plot, yet for the construction of this building, both A1 and A2 have contributed, besides contribution from A3. Besides these three, there were contributions from certain other sources. Both A1 and A2 are public servants and whatever that they had contributed to the construction of the said building exceeded their known source of respective income.
- (b) It is true that all the three accused had taken out separate applications under Section 239 Cr.P.C. for their discharge from the case and that matter ultimately landed in filing a batch of criminal revision cases before this court in CrI.R.C.Nos.316, 384 and 451 of 2022. During the pendency of these petitions, on 04.03.2022 charges came to be framed by the trial court. It is in this setting, the learned single Judge heard and reserved his orders in the above batch of criminal revisions on 10.11.2022.
- (c) While it may be true that those revisions were filed for discharge of the



Crl.R.C.No.1757 of 2023

WEB COPY

accused persons, which included the present revision petitioner, for discharge from the case, ultimately arguments were advanced before the learned single Judge on the merit of the charges framed by the trial court and the learned single Judge has recorded the arguments so advanced in paragraphs 4 to 8 of his Order, and proceeded to discuss the same in rest of the order. In particular, in paragraph Nos.24 to 26, the learned single Judge forms an opinion as to why the charges as framed cannot be considered as bad in law. Therefore, what essentially started as a proceeding seeking discharge of the accused persons from the case literally was made into one for ascertaining the correctness of the charges as framed, but all at the instance of the counsel for the accused persons, and they invited the opinion of the Court which the learned Single Judge has expressed in paragraph 32 of his order. Having invited an Order from the court, it is not correct for the present revision petitioner to approach the trial court even with a prayer to alter the charges on grounds which have already passed the scrutiny of the Court. The petition is now filed under Sec.216 Cr.P.C. which in effect seeks to review the earlier Order of this Court, and it cannot be entertained under Section 362 Cr.P.C.

(d) The opinion of the learned single Judge is not an accidental observation,



Crl.R.C.No.1757 of 2023

but an invited opinion.

(e) It is a peculiar case where A1 and A2, both public servants have contributed to the construction of certain building in question whose valuation defies to reconcile with the known source of money accounted by the accused persons.

(f) This apart, in view of the ratio in *P.Karthikalashmi Vs Sriganesh and another* [(2017) 3 SCC 347], the revision cannot be entertained.

5. Rival submissions are weighed carefully, and this court holds that the petitioner cannot succeed. And, the reasons are:

a) Notwithstanding the fact that the petitioner had moved this Court with Crl.R.C.No.384 of 2022, where the challenge was that the final report did not provide any materials for the Court to frame charges, the fact remained that when this revision was disposed of by the learned Single Judge along with two other revisions filed by A1 and A3, he chose to dismiss them, not because the charges had eventually been framed by the trial court, but because he found that the charges so framed were proper. If the entire order of the learned Single Judge is read carefully, even the petitioner



Crl.R.C.No.1757 of 2023

WEB COPY

herein along with A1 and A3 have chosen to expand the scope of the petition that they had filed and tested the correctness of the charges so framed. And, as rightly argued by the prosecutor, they volunteered to argue on the correctness of the charges framed and invited the view of the Court on the same. The Judge had held:

' 24. Further submission is that the charge Nos.1 and 2 are primary charges against A1 and A2 respectively for offence under Sections 13(2) r/w 13(1)(e) of PC Act. In both charges, the period of acquisition is from 23.07.2010 to 09.12.2016 and the value arrived is Rs.1,82,26,186.81/- for the same property. The charge No.3 is the charge for abetment against each other. Charge Nos. 1 and 2 cannot be framed against both A1 and A2 as principal offenders. The Trial Court resorting to Section 221 Cr.P.C is not proper. Further, in the impugned order, it is recorded that the Investigating Officer admits his difficulty in fixing the principal offender, giving approval to the same, is not proper and appropriate on the facts and circumstances of the case. Section 13 of the PC Act is that 'A public servant is said to commit the offence of criminal misconduct, if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation.-'For the purposes of this section, "known



WEB COPY



Crl.R.C.No.1757 of 2023

sources of income"? means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant?. Though the property registered in A2's name, A1 makes application to the municipal authorities for plan approval and construction of residential building for ground floor, first floor and terrace. Simultaneously, A2 informs her superior about purchase of CIT Nagar property and the cost of building. It was later found that the building has been constructed in violation of the building permission and presently four floors of commercial~cum~residential building constructed. The valuation of the property by the Senior Executive Engineer, CPWD is fixed at Rs.1,29,74,825/-. On the contrary, the information/permission sought by A2 with AGs Office is of much lesser value. A3, brother of A1 paid around Rs.36 lakhs to the vendors through bank and cheques which is reflected in the Income Tax Returns. Prior to issuance of the cheques, corresponding cash deposits made, the statement of LW63 & LW64, Employees of A3, confirm in their statements. The corresponding bank vouchers and other documents collected and seized.

25.

26. The only contention is that there cannot be alternate offenders. As per Section 221 of Cr.P.C, there can only be alternate charge and hence, charging A1 and A2 for the



WEB COPY



Crl.R.C.No.1757 of 2023

*same property and for the same period and same value, is not proper. The purpose of framing of charge is for the accused to know for what reason he is prosecuted and details to be given, namely, contents of the charge, particulars as to time, place and reason, manner of committing the offence, and under which offence is punishable. **The primary contention that the charge Nos.1 and 2 cannot be framed against both A1 and A2 and both cannot be required to answer for the same disproportionate assets, will not hold good on the facts and circumstances of the case.***

27.

28. with the aid of Section 109 IPC, even a non-public servant can be prosecuted along with the public servant for offence under Section 13(e) of the PC Act. In the case of ?DSP, Chennai Versus K.Inbasagaran reported in (2006) 1 Supreme Court Cases 420?, the public servant and his wife therein was holding joint possession of certain properties, further the wife of the public servant was not prosecuted in that case and the Hon-ble Apex Court held that the wife has fully owned the entire money and the other wealth. Further, it was very difficult to segregate how much of wealth belong to the husband and how much belong to the wife. In the absence of wife not being an accused and not prosecuted, the Apex Court held that it would not be proper to hold the husband-s guilty."



Crl.R.C.No.1757 of 2023

WEB COPY

The learned Judge thus has held that no fundamental defects are found on the charges framed by the Trial Court. Therefore, contrary to the submissions of the learned counsel for the petitioner, the learned single Judge has not made a passing reference to the quality of the charges, but summed up his impression after discussing the correctness of the charges framed. Once a single Judge has gone into the correctness of the charges framed, it is impermissible for another Single Judge to overturn what has already been decided. Judicial discipline is but a compendious expression for the ethical fidelity and the propriety associated with the office.

- b) Framing of charges and alteration of charges, purely fall within the domain of judicial power. It does not depend on the concession given by the prosecutor that the charges may be altered.
- c) On merits, this court finds a peculiar situation. If the prosecution's case is analysed, its case is that there is plot of land which belonged to A2, the petitioner herein, in which a substantial construction has been made, to which both A2 and her husband A1 have contributed certain amounts which they could not account for. In other words, both A1 and A2 were alleged to have made money which is disproportionate to their known of respective income and this money is diverted for the construction of the



CrI.R.C.No.1757 of 2023

WEB COPY

building. Therefore, the value of this building becomes necessary to ascertain if any portion of its value is in excess of the combined known sources of income of both A1 and A2. Therefore the crime, according to the prosecution, converges on one building. The burden is on the prosecution to establish whether both have amassed wealth disproportionate to the known of sources of their respective income and invested it in a building, and what is the contribution of each of them. The prosecution can establish both or any of the two, and whatever charge which is not proved will eventually fail. It is a matter of proof.

d) Turning to the possibility of A1 and A2 becoming mutual abettors for each other when they, though are spouses and are also public servants but from different institutions is concerned, since the correctness of this charge is upheld by the Single Judge in CrI.R.C.Nos.316, 384 and 451 of 2022 batch of cases, this Court cannot go into the question de novo.

6. This Court does not consider that once charges are framed it cannot be altered. That would be an interference with the working of a statutory provision. The issue here however, is the space for its applicability in this case. As stated earlier, the petitioner now seeks alteration of charges on the same grounds which



CrI.R.C.No.1757 of 2023

she had earlier raised before the learned single Judge, and merely because they were made in a revision against an order under Sec.239 Cr.P.C, it does not give a fresh cause to agitate the same under Sec.216 Cr.P.C.

7. In conclusion, this petition is dismissed. It is underscored that the trial court needs to remember only the correctness of the charges alone has been held and views expressed on the correctness of the charges framed should not be construed as Court's opinion on the merit of the accusation. That has to be decided by the trial court after proper appreciation of evidence. Consequently, connected miscellaneous petition is closed.

08.11.2024

Index : Yes / No

Neutral Citation : Yes / No

anu/ds

To:

1.The Principal Special Judge for CBI Cases

16/18

<https://www.mhc.tn.gov.in/judis>



CrI.R.C.No.1757 of 2023

VIII Additional City Civil Court
Chennai,

2.The Public Prosecutor
High Court, Madras.



WEB COPY



Crl.R.C.No.1757 of 2023

N.SESHASAYEE.J.,

ds

Pre-delivery order in
Crl.R.C.No.1757 of 2023

08.11.2024