IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.12.2024

Pronounced on : 18.12.2024

CORAM : JUSTICE N.SESHASAYEE

Crl.R.C.No.1933 of 2024
and Crl.M.P.No.15827 of 2024

K.Vamadevan .... Petitioner / Accused No.4

Vs

The State
Additional Superintendent of Police
Vigilance and Anti-Corruption
City Special Unit-I
Chennai – 16. .... Respondent / Complainant

**Prayer :** Criminal Revision Petition filed under Section 438 & 442 of BNSS praying to set aside the order dated 03.10.2024 passed in Crl.M.P.No.1575 of 2023 by the learned Special Judge for Prevention and Corruption Act Cases, Chennai in C.C.No.14 of 2021 and allow this revision petition.

For Petitioner : Mr.L.V.Rohit

For Respondent : Mr.K.M.D.Muhilan
Government Advocate (Crl. Side)

**ORDER**

This revision is directed against an order passed by the trial Court in Crl.M.P.No.1575 of 2023, which the petitioner herein had filed U/s.239 Cr.P.C. for discharging him from the case.

2. A case came to be registered by the respondent in Crime No.2 of 2016 for offences U/s.13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 r/w 109 I.P.C. In the F.I.R there are four accused persons of whom the petitioner was arrayed as A4.

3. After investigation, the respondent had laid its final report. The quintessencial allegations which the investigating agency explained with its multiple Statements (Statement I to Statement VII) is that between 01.01.2007 to 31.01.2016 (the check-period) the four accused persons have

amassed assets worth Rs.2,28,04,824/- in excess of their combined known sources of income during the said period. The details of the statements are as below:

| Statement No. | Statement what it deals with | Total Value (Rs.) |
|---|---|---|
| Statement - I | The combined value of the assets of A1 to A4 at the beginning of the check period (**as on 31.12.2006**) | 65,64,033.00 |
| Statement - II | The combined value of the assets of A1 to A4 at the closing of the check period (**as on 31.01.2016**) | 14,99,55,323.00 |
| Statement - V | Statement II – Statement I (**value of the assets acquired during the check period**) | 14,33,91,290.00 |
| Statement - III | The combined income of A1 to A4 during the check period (**from 01.01.2007 to 31.01.2016)** | 18,81,56,287.00 |
| Statement - IV | Expenditure during the check period | 6,75,69,821.00 |
| Statement - VI | Differential sum between Statement III & IV (**likely savings during the check period**) | 12,05,86,466.00 |
| Statement - VII | Statement V - VI (the difference between the value of assets acquired during the check period minus a likely savings made by A1 to A4 during the check period. | 2,28,04,824.00 |

Since it is judicially settled that 10% tolerance is allowable between the value of the assets acquired during the check period and the income during the same period, the prosecution proceeds to determine the percentage of difference between Statement-III and Statement-VII. Its calculation in terms of the final report runs as below:

$$\frac{\text{Statement-VII}}{\text{Statement-III}} \times 100 = \frac{\text{Rs. } 2{,}28{,}04{,}824}{\text{Rs. } 18{,}81{,}56{,}287} \times 100 = 12.12\%$$

Apparently the value of the asset acquired during the check period is in excess by 2.12% beyond the tolerance level of 10%, the prosecution alleges that the accused persons, including the petitioner herein of acquiring wealth beyond the known sources of income to the extent of 2.12%.

4. The endeavour of the petitioner before the trial Court has been that even in terms of the final report, atleast two entries in Statement III, on the face of it, are erroneous. These entries relate to the cash-inflow into the account of the petitioner during the check period pursuant to sale of two items of immovable properties described as Items 86 and 87 in Statement III (the Statement of Income of the accused persons during the check-period). Instead of showing the actuals as declared and brought into account by the petitioner, the investigating agency has shown only the profit earned by the

sale of these two items of properties by reducing the cost of acquisition of these properties as is done by the Income Tax Department for ascertaining the taxable income on capital gains. This is explained:

| **Item No.** | **Date & cost of acquisition** | | **Date & sale consideration received** | | **Difference (4) – (2)** |
|---|---|---|---|---|---|
| | Date (1) | Amount (2) | Date (3) | Amount (4) | |
| III (86) Detailed in Staement I (2) and (3) | 16.09.1992 | Rs.22,46,265 | 16.05.2013 | Rs. 2,25,00,000 | Rs.2,02,53,535 |
| III (87) Detailed in Statement I (7) | 06.05.2004 | Rs.17,97,405 | 12.06.2009 | Rs. 29,00,000 | Rs. 11,02,595 |

5. Per contra, the learned prosecutor explained that when an asset at the opening of the check period (Statement I) is not sold and is retained by the accused at the closing of the check period (Statement II) then the value addition during the check period will be nil. If however, a property is sold during the check period, the entire sale proceeds cannot be brought in but it must be reduced by the cost of acquistion of the asset, since what is required to be reckoned is not the sale consideration obtained, but the net income that

was obtained. This net income is but the profit made by an accused from the sale of asset during the check period, and this precisely has been done by the investigators in this case, and indeed, it is always done.

**Discussion & Decision**

6. Howsoever, this Court tries to persuade itself to appreciate the argument of the learned prosecutor, it still struggles to reconcile with the unreality of its content.

7. What is the core issue in any case involving an accusation that an accused has acquired wealth disproportionate to the known sources of income during a specific perific period – the check period, computing the legitimate accountable cash inflow in the hands of the accused during the check period is critical. To make it clear, it is not the net income that matters but the legitimate cash-inflow. Therefore, it cannot be confined to salary, or earning through one's physical labour, or rental incomes, or profits from business etc., but also any inflow of money through loan or gift. To this may have to be added sale consideration brought into account by the sale of any assets:

movable or immovable.

8. It is here the investigator has blundered, and blundered egregiously. The investigator at all times needs into probe just a solitary fact: "*has the accused legitimate and accounted money in his hand during the check period to acquire assets during the check period*?

9. Turning to the two specific entries Statement III (86) and (87), the investigator has brought in the profits made by the sale of immovable properties and not the actual cash inflow into the account of the accused during the chek period due to the sale of these assets. He is not an Income Tax Officer to assess the gain obtained due to sale of a capital asset for taxation purposes.

10. Similarly unless an asset is purchased and sold during the check period, capital gain obtained may not be relevant to reckon the actual cash-inflow during the check period.

11. The investigator needs to realise value accretion of assets happen in different ways:

a) In case of actual cash in hand, ordinarily it cannot enlarge without the knowledge of the person holding it. In case of bank deposits, except the interest component which the bank gives, there may not be a possibility for accretion to the deposits made.

b) In the case of investments made in stocks and shares, gold, or immoveable properties, the current value of the past investment – read it as the value of these assets during the check period on which investments were made prior to the check period, depends on market conditions. In otherwords the market decides what their value is, and the accused will not have any control over the value fluctuations, more so in cases of stocks and shares and immoveable properties since gold has not shown tendencies to fluctuate vastly or as violently as the other two.

c) Another aspect that determines the value of gold or immovable property is how desperate one is keen to sell. Such distress-sales generally does not fetch value addition. Alternatively, if a purchaser is desperate to buy a property for his own purposes, then a property may even fetch a premium.

But broadly it is the market that decides. In the context of a case where the prosecution alleges that the accused possesses assets disproportionate to his known sources of income, for an accused to make a windfall through a sale of an immoveable property acquired before the check period but sold during the check period, all that he is required to do is to preserve the property over a period of time. He needs to do nothing more than preserving it. The investigators of this class of crime needs to realise it.

12. Let it be understood in the factual context of the case, with reference to the table in paragraph 4. The cost of acquisition of Item III(86) in 1992 was Rs.22,46,265 and the cash inflow through its sale in 2013 is Rs.2.25 crores. What is the contribution of the petitioner to the value accretion? A building was constructed prior to check period and it stops there. And, if a windfall was made only because he preserved the property. The investigator need not worry about the profits he had made. It is plainly not his job. He needs to ascertain as to whether the petitioner had the money in his hand – legitimate

and accounted, to acquire assets during the check period. If so considered, then the respondent has reduced the total cash-inflow by Rs.40,43,870/- which represents the combined cost of acquisition of item 86 and 87 in Statement III without any justification. His poor knowledge on accounting cannot trouble the petitioner. This amount must now be added to the income statement, and if so added, then the total income (total cash-inflow is a better expression) during the check period as disclosed in Statement III has to be adjusted. It will now read Rs.18,81,56,287/- + Rs.40,43,870/-, and accordingly, the total income of the petitioner during the check period must be reckoned at Rs.19,22,00,157/-.

13. Now, if the asset to income ratio during the check period is reworked, it will be as follows: First to the numerator part. It is Statement VII. But Statement VII is (Statement V – Statement VI). And Statement VI is Statement III – Statement IV. Due to the change in value of Statement III, Statement VI has to be reworked.

(a) Arriving at the corrected value of Statement VI

| **Statement** | **III** | **IV** | **VI** |
|---|---|---|---|
| **Value** | Rs.19,22,00,157* | Rs. 6,75,69,821 | Rs. 12,46,30,336** |

| Statement | III | IV | VI |
|---|---|---|---|
| | (Change in value) | (No change in value) | (Change in value) |

** Statement III (Rs.18,81,56,287 + Rs.40,43,870). See: Para 12 above.*
*** Since Rs.40,43,870 is added to Statement III, Statement VI will also have a value addition by said sum.*

(b) Arriving at the corected value of Statement VII

| Statement | V | IV | VII |
|---|---|---|---|
| **Value** | Rs.14,33,91,290 (No Change in value) | Rs.12, 46,30,336 (change in value) | Rs. 1,87,60,954* (Change in value) |

** Since value of Statement VI has increased by Rs. 40,43,870, necessarily the value of Statement VII will be reduced by the like sum.*

(c) Calculation of DPA based on corrected value:

$$\frac{\text{Statement-VII}}{\text{Statement-III}} \times 100 = \frac{\text{Rs. } 1{,}87{,}60{,}954}{\text{Rs. } 19{,}22{,}00{,}157} \times 100 = 9.76\ \%$$

Now it is very obvious that due to a error in reckoning the cash-inflow due to the sale of immoveable proerties for the purpose of preparation of Statement III, the petitioner is exposed to the possibility of being proceeded against for charges under Sec.13(1)(e) of the Act. And, inasmuch as the differenttial percentage of the value of the asset acquired falls below the 10% value vis-a-vis the cash-inflow during the check-period, no useful purpose would be done by trying the petitioner for the said offence.

14. In conclusion, this revision is allowed, and the order of the learned Special Judge in Crl.M.P.1575 of 2023 in C.C.No.14 of 2021, dated 03.10.2024, is set aside.

18.12.2024

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
kas / ds

To:

1.The Special Judge for Prevention and Corruption Act Cases
Chennai.

2.The Public Prosecutor
High Court, Madras.

N.SESHASAYEE.J.,

ds

Pre-delivery order
in Crl.R.C.No.1933 of 2024

18.12.2024