IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.04.2025

DELIVERED ON : 10.09.2025

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1940 of 2024
and
Crl.M.P.No.15916 of 2024

1.D.Devasitham
2.D.Mosas ... Petitioners/A1 and A2

Versus

State rep by
The Inspector of Police,
Vigilance and Anti-Corruption,
Kanchipuram transferred to Chengalpattu.
(Crime No.5/AC/2018) ... Respondent/Complainant

PRAYER : Criminal Revision Case filed under Sections 438 and 442 of BNSS, praying to call for the records in Crl.M.P.No.2121 of 2024 in Spl.C.C.No.4 of 2024 on the file of the learned Chief Judicial Magistrate-cum-Special Judge, Chengalpattu dated 24.09.2024 and to set aside the same.

For Petitioners : Mr.C.Emalias

For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl. Side)

ORDER

The petitioners/A1 & A2, who are accused in Spl.C.C.No.4 of 2024, had filed a discharge petition in Crl.M.P.No.2121 of 2024 and the same dismissed by the order dated 24.09.2024, against which, the present revision is filed.

2.The gist of the case is that the first petitioner served as Village President of Thazhambur Panchayat, Thiruporur during the period 25.10.2011 and 25.10.2016. The second petitioner is the elder brother of the first petitioner. The check period fixed between 01.01.2012 to 25.10.2016. Both the petitioners are residing in the same address but in different portions. The second petitioner has no independent sources of income. The respondent on receipt of information conducted enquiry and based on the materials collected, a case in Crime No.5 of 2018 registered on 13.06.2018 against the first petitioner, his wife and the second petitioner for offences under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act and Section 109 of I.P.C. On completion of investigation, charge sheet filed deleting the first petitioner's wife and arraying the petitioners as A1 and A2. The statement of accounts prepared. The Statement-1 is the Assets held in the name of the first petitioner and his family members at the beginning of the check period, i.e., on 31.12.2011 listing 13 properties, valued around Rs.86,53,810/-. Statement-2 is the Assets that stood to the credit of A1 and A2 at the end of the check period, i.e., on 25.10.2016, wherein 32 properties have been listed to the value around Rs.4,73,23,471/-. Statement-III is the total income during the check period, i.e., between 01.01.2012 to 25.10.2016 listing 12 items to the tune of Rs.2,77,53,451/-. Statement-IV is the expenditure during the check period and listing 30 items, which has been worked out to Rs.90,36,880/-. Thus the disproportionate assets of the petitioners had been found to be around Rs.1,99,53,090/-. Thereafter, listing LW1 to LW46, documents LD1 to LD69, charge sheet filed before the trial Court. At that stage, discharge petition filed and the same dismissed, against which, the present revision is filed.

3.The contention of the learned counsel for petitioners is that since there is no material evidence available against the petitioners, they filed a discharge petition and the trial Court dismissed the discharge petition without perusing the statement of witnesses, documents and without any application of mind. The trial Court failed to appreciate the factum that there is no incriminating material against the petitioners to frame charges against them. The methodology adopted by the Investigating Officer in arraying the total value of the assets in the name of first petitioner at the end of check period is erroneous. He further submitted that the properties in Statement-II at Srl.Nos.28 to 32 ought to be excluded from the charge sheet. These properties acquired by A2 on his own, who is a married man having wife and two children, residing in the second floor of the building and not a dependent to his brother/A1. Since his brother/A1 a Panchayat President a public personality, due to rivalry and animosity, false allegations made, without proper verification of materials and without proper investigation. With an ulterior motive the above case came to be registered. The second petitioner a native of Thazhambur having wide contacts, he is into the real estate business, earning through brokerage and also purchasing vast track of land, plotting out and doing business. This he is doing for a long time. On 13.08.2015, the second petitioner got registered a general power of attorney with interest over the property for a value of Rs.67,65,000/- from one Leethial, W/o.Victor in respect of property in Survey No.50/16 of Thazhambur village as per the registered document in D.No.10212/2015. The second petitioner sold the same property to one Krishnan Kutty on 18.01.2016 for a consideration of Rs.1,30,00,000/-. Through this sale alone, he made profit of Rs.62,35,000/-. This was not considered. Likewise many of the properties which he had bought and sold declared in his income statements not considered. Further the second petitioner is neither a public servant, nor a dependent to his brother/first petitioner. Hence, his brother is not required to explain the assets and properties of the second petitioner.

4. The second petitioner on a demurer submitted if he had not disclosed all his properties and income then and there, then it is for the Income Tax department to take action. If the prosecution proceeds on a notion that second petitioner is a name lender/benamithar for his brother/first petitioner, in such case, there should be some positive evidence leading to show that the second petitioner is only a name lender. In this case, none of the witnesses stated anything about the second petitioner acted as name lender/benamithar. In fact, in this case, LW31, LW32, LW33, LW34 and LW35 are the persons, who dealt with the 5 properties, which is projected against the second petitioner. All these properties are registered in Document Nos.1016/2014, 6594/2014, 7728/2015, 8077/2015, which are listed documents in LD58, LD29, LD33, LD34 and LD35. These documents would confirm that the properties purchased by the second petitioner with his own source of income and the vendors to the property, sold to the petitioner, all recorded in the registered documents. On the contrary, now statement recorded from LW31, LW32, LW33, LW34 and LW35 projecting as though

sale consideration paid by the first petitioner but the sale deeds executed in the name of second petitioner, which is contrary to the registered documents.

5. The learned counsel further submitted Sections 91 and 92 of Indian Evidence Act clearly prohibits any evidence contrary to the recitals contained in a document. In such circumstances, the statement of LW31 to LW35 will have significance. The learned counsel further submitted that the family property of the second petitioner was settled in favour of the first petitioner and the first petitioner constructed a house in the said property and the second petitioner is residing in the same building but in a separate portion independently. Further, the second petitioner's wife is from a resourceful family along with wife and children, a portion of her family property acquired by the Government and the compensation amount was given to the second petitioner's wife. Further, he had sold the property to one Surender Pradeep recorded in Doc.No.1816 of 2014 for a sum of Rs.35,00,000/- which is recorded in Statement No.III Sl.No.12. This has not been considered. The second petitioner disclosed his business, property statement, income and

other details to the investigating officer, who recorded his statement on 03.03.2021 but not the true facts and not considered the same, given no reason, explanation and collected materials to justify why it is not considered.

6.The learned counsel on behalf of first petitioner submitted that the first petitioner was previously President of Thazhambur Panchayat. He served the villagers, ensured all are benefited from the Government schemes and there is personally contributed to the infrastructure development of the Panchayat. The first petitioner was in the real estate business and he was holding vast extent of land and from his business income he helped the poor students to study and poor people for marriage and other requirements. The house in which the petitioner is residing is an inherited property from his father, by selling some of his ancestral property, he made profit and invested in the real estate business. Added to it, his wife hails from resourceful family and their in-laws also contributed for petitioner's business. The first petitioner submitted details and the list of the persons to whom, he sold properties in real estate business, from the year 2004 till 2011 and he gave details about the two properties to the investigating officer, which he purchased in the year 2007 and 2010, the same was not considered, nothing is found in the final report. The petitioner purchased vehicles by availing loan from the bank and from private auto financiers. The first petitioner holding housing and commercial property for more than 25 years and receiving income. During the tenure of the first petitioner as Thazhambur Panchayat President, there no complaint of any misdeeds in the Panchayat funds and in any of its scheme. The respondent recorded the statement of first petitioner on 03.03.2021 but though details recorded not given any justifiable reason for non considering the same.

7.He further submitted that in the case of ***K.Veerasamy vs. Union of India,*** the Hon'ble Apex Court had observed that accused persons to be put on notice and to seek explanation for the properties held by them be it they are public servant or not. The investigating officer after receipt of explanation for final opportunity notice, is to form an opinion on the basis of the materials. In this case, the investigating officer failed to follow the established procedure in investigating a case of disproportionate asset, wherein the duty is cast on the investigating officer to enquire the accused persons and to verify the details and also to give reason whether the details submitted and the details furnished are acceptable or not. In this case, petitioners explanation not considered. Second petitioner's properties clubbed and projected as though it is of the first petitioner without any iota of materials. The first petitioner, no doubt is a public servant and he was not called upon to submit property details of himself and family or others. Further, there is no material to show that there was any misconduct as public servant.

8.The learned Government Advocate (Crl. Side) filed his counter and submitted that the respondent filed a case in Crime No.5 of 2008 for offence under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act and Section 109 of I.P.C. against the first petitioner, his wife Banupriya and the second petitioner on 13.06.2018, after investigation taken on file in Spl.C.C.No.4 of 2024 by the learned Chief Judicial Magistrate/Special Judge, Chengalpattu on 10.05.2024 against the petitioners. In the final report, the first petitioner's wife Banupriya name deleted and dropped. The case was posted for framing of charges on 24.12.2024. At that time, discharge petition in Crl.M.P.No.2121 of 2024, filed and dismissed, against which, the present revision is filed. The respondent received reliable information through source that the first petitioner amassed wealth in his name and in his wife name Banupriya and his elder brother/second petitioner, Moses. The first petitioner was serving as Panchayat President of Thazhambur Panchayat, Thiruporur during 15.10.2011 to 25.10.2016 and he was a public servant within the meaning of Section 2(c) of the Prevention of Corruption Act. The second petitioner/elder brother assisting the first petitioner in all matters as though residing in the same house as joint family.

9.On conclusion of investigation it was found petitioners were in possession of disproportionate assets to the tune of Rs.1,99,53,090/-. In the final report, in Statement-II, serial numbers 28, 29 to 32 are the bank statements of A2 and properties purchased in the name of A2 during the check period. The final opportunity notice dated 02.04.2022 served to the first petitioner, with regard to the disproportionate assets, he failed to furnish any supportive documents for his claim. The second petitioner, a dependent on the first petitioner and residing in the same building. The second petitioner failed to produce any Income Tax Returns for the check period. From the oral and documentary evidences of LW16 and D38 it was confirmed the Income Tax returns does not reflect the true and correct particulars. The first petitioner and his wife availed housing loan from Punjab and Sind Bank, Navalur Branch to the tune of Rs.37,00,000/- for construction of the house at Karanai village. With regard to the valuation of the building, it was conducted by LW6, LW7 and LW8 and construction value arrived as Rs.1,29,65,277/-. The construction of the building commenced in the year 2012 and completed in the year 2014. After service of final opportunity notice on 02.04.2022, the first petitioner gave his explanation on 23.04.2022, including for his brother/second petitioner. The statement of second petitioner is recorded by the investigating officer on 03.03.2021. Though the second petitioner attempted to give explanation for his source of income and properties the same is without any supporting materials. Hence, it was not considered by the investigating officer.

10.In this case, the public servant is unable to give any satisfactory explanation. The Constitutional Bench of the Hon'ble Apex Court in the case of **K.Veerasamy vs. Union of India,** held that the investigating officer is not the authority to arrive at a conclusion that the accused had rebutted the presumption. He is required to collect documents, statements and place it before the Court. Otherwise, it would amount to elevating the investigating officer to the position of enquiry officer or a Judge. The investigating officer is not holding an enquiry against the conduct of public servant or determining the disputed issues regarding the dis-proportionality between the assets and the income of the accused. He further submitted that petitioners during trial can produce all documents and evidence before the learned trial Judge, in their defence to substantiate and satisfactorily account the income and probabilise they have no accumulation of disproportionate assets. In the case of ***State of Tamil Nadu v. N.Suresh Ragan and others*** reported in ***(2014) 11 SCC 709***, the Hon'ble Apex Court held that the probative value of the material has to be taken on its face value and the Court is not expected to go deep into the matter. Further held that based on the materials produced it is to be seen that the accused might have committed the offence and the Court shall not delve deep further and the law does not permit a mini trial at this stage. The Hon'ble Apex Court in ***Sheroj Singh Ahalwat v. State of U.P & another*** reported in ***AIR 2013 SC 52*** and in ***Rajesh Bajaj v. State NCT Delhi & others*** reported in ***(1991) 31 SCC 259*** had held that the Magistrate are not supposed to adopt a strict hyper technical approach to sieve the complaint through colander of finest guazes for testing the ingredients of offence with which the accused is charged, while entertaining discharge or quash petition at the initial stage. In ***Sajjan Kumar v. Central Bureau of Investigation*** reported in ***(2010) 9 SCC 368,*** the Hon'ble Apex Court had held that where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceedings with the trial. In view of the above, the points raised by the learned counsel for the petitioners are all factual and their defence, which has to be decided only during trial and not in a quash petition. Hence, he sought for dismissal.

11.Considering the submissions made and on perusal of the material it is seen that it is not in dispute that the first petitioner Past President of Thazhambur Panchayat from 25.10.2011 and 25.10.2016 and he is a public servant within the meaning of Section 2(c) of the Prevention of Corruption Act. The respondent received reliable information through sources that first petitioner amassed wealth in his name, his wife's name and his brother's name. Preliminary enquiry conducted and thereafter finding prima-facie case, F.I.R. registered by the respondent against the petitioners and the wife of first petitioner. During investigation, materials collected, the check period was fixed between 01.01.2012 and 25.10.2016. Statement-I is the Assets held in the name of first petitioner and his family members at the beginning of the check period, in which, 13 properties listed to the value of Rs.86,53,810/-. Statement-II is the Assets held in the name of first petitioner and his family members at the end of the check period, in which, 32 properties listed to the value of Rs.4,73,23,471/-. Statement-III is the income of first petitioner and his family members during the check period, in which, 12 items listed to the tune of Rs.2,77,53,451/-. Statement-IV is the Expenditure of the first petitioner and his family members during the check period, in which, 30 items listed to the value of Rs.90,36,880/-. Thereafter, giving due credit to the income, expenditure, savings and acquiring of properties, the respondent had arrived that the petitioners are holding disproportionate assets to the value of Rs.1,99,53,090/-. Thereafter, filed charge sheet listing LW1 to LW46 and documents LD1 to LD69. The trial Court on perusal of the materials took cognizance of the offence, issued summons to the petitioners, thereafter the petitioners filed discharge petition. It is seen that in this case, initially the first petitioner's wife was also shown as accused in the F.I.R. In the final report, her name was deleted and dropped.

12.The contention of the first petitioner is that the first petitioner was the President of Thazambur Panchayat and he was not come under any adverse notice during his tenure as President of the Panchayat. In fact, he helped the villagers by providing them with educational support and helped the needy and marginalised people in the Panchayat. He inherited some assets from his ancestral property and acquired further property from real estate business. He ensured all government beneficiary schemes reach the poor and needy people. His further contention is that he disclosed his income and expenditure and his properties to the Income Tax department. Hence, the primary consideration is that whether he is able to give proper explanation for his properties and income he has derived. Admittedly, in this case the disproportionate amount projected against the petitioners is to the tune of Rs.1,99,53,090/-. A cursory look at the Statement-I-Assets at the beginning of the check period, it is seen that there is no property of second petitioner lsited except for the ancestral property of second petitioner, which he settled in favour of his brother/first petitioner.

13.In Assets at the end of check period, Statement-II Serial Nos.28 to 32 are projected as the Assets held by the second petitioner of which, Serial No.28 is the Syndicate Bank balance to the tune of Rs.4,06,878/-, Serial No.29 is the vacant land property to an extent of 8 cents at Thazhambur village purchased for a sum of Rs.16,00,000/- registered in Doc.No.5845/2013 on 15.04.2013. This property was purchased through Power of Agent S.Lakshmanan. LW31/I.Vempuli is the principal to the Power Agent. The statement of LW31 recorded on 18.08.2022, in which it is stated that an amount of Rs.16,00,000/- received on 12.04.2013 from the first petitioner and executed the sale deed document in favour of second petitioner. Likewise the property in Serial No.30 was purchased on 07.05.2014 and registered in Doc.No.6594/2014 for a sum of Rs.68,88,800/-. This property has been executed by one Ganapathy. The said Ganapathy statement dated 25.08.2022 recorded by the Investigating Officer that the sale consideration amount was received by him on 07.05.2014 from the first petitioner and a sale deed executed in the name of second petitioner. Serial No.31 is the vacant land property registered in Doc.No.7728/2015 dated 12.06.2015 purchased for the value of Rs.29,60,000/- from the legal heirs of one Ramakrishnan and LW34/R.Kalaiselvi confirms receipt of Rs.29,60,000/- In her statement dated 25.08.2022 it is recorded that the first petitioner paid the amount and the property was registered in the name of second petitioner. Likewise, Serial No.32 is the agricultural land property registered in Doc.No.8077/2015 dated 22.06.2015 purchased from one Muthulakshmi for a sum of Rs.73,50,000/-. Her husband R.M.Chithambaram examined as LW35 and his statement recorded on 05.09.2022. It is again recorded that the amount was paid by the first petitioner and the document was executed in the name of second petitioner. It is further seen that a property, which was purchased in Doc.No.1016/2014 from one M.Thangaraj for a sum of Rs.8,75,000/- and the same was sold on 17.12.2014 by a registered Doc.No.18196/2014 for a sum of Rs.35,00,000/- and income of Rs.26,25,000/- considered and taken in Statement-III, Serial No.12, as income of the second petitioner during the check period. The above referred documents are Listed Document Nos.58 and 62.

14. It is seen that the sale deed of these documents are the relied upon documents, which were listed in Doc.Nos.57, 58, 59, 60 and 61. The documentary evidence are in support of the explanation of second petitioner. The value of Serial Nos.28 to 32 in Statement-II is to the tune of Rs.1,92,05,678/-. The disproportionate asset is to the tune of Rs.1,99,53,090/- Thus, considering second petitioner's explanation along with the relied upon documents by the prosecution in list of document Nos.57 to 61, there is only difference amount of Rs.7,47,412/-. Now looking at the statement of LW31, LW32, LW33, LW34 and LW35, they are recorded in the year 2022 but the sale deeds executed 10 to 12 years prior. The legal principal is that witnesses may lie but not the documents. Further as per Sections 91 and 92 of the Indian Evidence Act, there is clear prohibition of evidence contrary to the recitals contained in a document. Further, the investigating officer recorded the statement of both the petitioners on 03.03.2021. For the reply to the final

opportunity notice dated 02.04.2022 reply submitted on 23.04.2022 by the first petitioner is not denied. The submission of first petitioner is that for details given in reply, not considered.

15.The admitted position of the respondent is that from the statement of witnesses LW31, LW32, LW33 and documents LD57, 58, 59, 60 and 61, the property shown against the second petitioner were purchased by him on his own. On contra, oral evidence recorded by the investigating officer after 12 years from LWs.31 to 35 is projected against the petitioners is without justification contra to Sections 91 and 92 of The Indian Evidence Act. When parties have deliberately put their agreement into writing, it is conclusively presumed between themselves and their privies, that they intended the writing to form a full and final statement of their intentions, and one which should be placed beyond the reach of future controversy, bad faith and treacherous memory. Further the oral evidence is admissible to show that document executed was never intended to operate as an agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties and the oral evidence of a written agreement is excluded except when it is sought to be alleged the document as a sham transaction. The purpose of final opportunity notice incorporated and followed after the **Veerasamy case** is to give an opportunity for public servant and others to give explanation that the properties held by them is proportionate to their income. As per Sections 13(1)(e) of PC Act, holding of property is not an offence, it is only when the person is unable to give proper explanation.

16.The explanation appended to Section 13(1)(e) is that no source of income that means income received from any lawful resources and receipt of said income intimated in accordance with the provisions of Law, Rules or Orders for time being applicable to a public servant. The second petitioner is a private individual not a dependent of first petitioner. If the contention of the prosecution that the second petitioner abetted the first petitioner by holding the properties in his name on behalf of first petitioner and the second petitioner acted as name lender/benamithar, in such circumstances mere averments would not suffice. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. There must be some materials to show that the second petitioner is a man of no means and in fact abetted the first petitioner to acquire properties in the name of second petitioner and there is no materials to draw any inference on the other hand. The respondent admit in Statement-III/Income statement, Serial No.12 that the second petitioner sold the vacant land of 1750 sq. feet at Kanagapattu village in Old Survey No.13/1 and New Survey No.270/2H6 vide Doc.No.18196/2014 of Thiruporur Sub Registrar office on 17.12.2014 and derived income of Rs.26,25,000, the confirming document listed as Listed Document No.62. The Court is only required to consider judicially whether the material warrants framing of charges without blindly accepting the decision of the prosecution. At this stage, the Court has to only look into the prima facie case and decide whether the case put up by the prosecution is groundless.

17.Thus, from the charge sheet annexed with the statement of witnesses and documents, it is seen that majority of the witnesses and documents collected are focused against A1/first petitioner. As regards the second petitioner/A2, except for the witnesses and statements referred above, there is no other materials. In view of the above, keeping away the properties acquired by second petitioner/A2 during the check period in Statement-II in Sl.Nos.28 to 32, the value of the property projected against A2 is Rs.1,92,05,678/- which is almost the disproportionate asset projected in the case. The Investigating Officer in Statement-III Sl.No.12 considered the income of Rs.26,25,000/- which was derived by sale of a property in Document No.18196/2014/Listed Document No.62. As regards the expenditure/Statement-IV Sl.Nos.26 to 30 are the Stamp duty and registration charges for the properties listed in Sl.Nos.29 to 32 in Statement-II. This expenditure is to the tune of Rs.14,74,010/- and no property in Statement-I at the beginning of check period is given to A2. Further there is nothing to infer that the second petitioner had abetted the first petitioner. Thus, by giving credit to these calculations which is based on the materials produced by the prosecution, now deducting the same from the composite Statements I to VII produced by the respondent, the statement of assets, income and expenditure of A1 will be as follows:

Statement No.I

Assets at the beginning of Cheque period is Rs.86,53,810/-,

Statement No.II

Assets at the end of Cheque period is Rs.2,81,17,793/-,

Statement No.III

Income is Rs.2,51,28,451/-

Statement No.IV

Expenditure is Rs.75,62,870/-

Statement No.V

Assets acquired by A1 between 01.01.2012 and 25.10.2016 (Statement No.II - Statement No.I) is Rs.1,94,63,983/-, Statement No.VI

Likely Savings of A1 between 01.01.2012 and 25.10.2016 (Statement No.III – Statement No.IV) is Rs.1,75,65,581/-

Statement No.VII

Disproportionate Asset (Statement No.V – Statement No.VI) is Rs.18,98,402/-.

Thus the percentage of Disproportionate Asset (Disproportionate Asset*100/Total Income) works out is 7.5% which is less than 10%. In view of the above, this Court finds the charges against the petitioners are groundless.

18.In the result, this Criminal Revision Case is allowed. The order passed in Crl.M.P.No.2121 of 2024 dated 24.09.2024 by the learned Special Judge/Chief Judicial Magistrate, Chengalpattu is set aside and the revision petitioners/A1 and A2 are discharged from all charges. Consequently, the connected Criminal Miscellaneous Petition is closed.

10.09.2025

Index : Yes / No
Neutral citation : Yes / No
Speaking / Non-speaking order
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To

1.The Chief Judicial Magistrate-cum-Special Judge,
Chengalpattu.

2.The Inspector of Police,
Vigilance and Anti-Corruption,
Kanchipuram transferred to Chengalpattu.

3.The Public Prosecutor
High Court, Madras.

M.NIRMAL KUMAR, J.

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Pre-delivery judgment in

Crl.R.C.No.1940 of 2024

10.09.2025