

Ravi Kumar Vs. The State Represented By

Ravi Kumar Vs. The State Represented By

SooperKanoon Citation : sooperkanoon.com/48597

Court : Chennai

Decided On : Mar-03-2015

Judge : M.Sathyannarayanan

Appellant : Ravi Kumar

Respondent : The State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

03. 03.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Revision Case (MD)No.64 of 2015 and M.P(MD)Nos.1 and 2 of 2015 Ravi Kumar ... Petitioner/Petitioner/ A.2 Vs. The State represented by The Deputy Superintendent of Police, Vigilance and Anti-Corruption Wing, Madurai. ... Respondent/ Respondent/ Complainant Prayer : Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to set aside the order dated 31.12.2014 passed in CrI.M.P.No.1076 of 2013 in Special Case No.3 of 2013 by the learned Special Judge for the Trial of Prevention of Corruption Act Cases, Madurai. !For Petitioner : Mr.Veera Kathiravan ^For Respondent : Mr.C.Ramesh, Additional Public Prosecutor assisted by Mrs.S.Prabha, Govt. Advocate (CrI. Side) Date of reserving the Order :

24. 02.2015 Date of delivering the Order :

03. 03.2015 :

ORDER

The revision petitioner is arrayed as A-2 in Special Case No.3 of 2013, pending on the file of the Special Court for Trial of Prevention of Corruption Act Cases, Madurai and his wife is also arrayed as A-1.

2. The revision petitioner herein is facing prosecution for the alleged commission of the offences punishable under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 (in short "P.C. Act") read with Section 109 I.P.C., for having facilitated his wife/A-1 as per Section 107 I.P.C.

3. A-1, namely, Mrs.A.Tamilarasi, was the former Minister for Adi Dravida Welfare Department, Government of Tamil Nadu, between 13.05.2006 and 13.05.2011 and was a public servant.

4. The charge sheet laid down against both the accused, reads that the revision petitioner/A-2 is the husband of A-1 and his wife is hailing from a poor family at Paramakudi, Ramanathapuram District. The father-in-law of the revision petitioner/A-2 - father of A-1, worked as Accounts Officer in the services of Tamil Nadu Electricity Board, Paramakudi and his wife is a home maker.

5. A-1 married the revision petitioner/A-2 during 1998 and the revision petitioner/A-2 was not having any permanent job and any permanent sources of income and was depending on his wife/A-1, between 2006 and 2011. A-1 and A-2, out of their wedlock, have begotten two female children and are studying at Madurai.

6. A-1 has contested in the General Elections held in the year 2006 and got elected as a Member of Legislative Assembly (in short "MLA") from Samayanallur (Reserve) Assembly Constituency and she held the post of Minister for Adi Dravida Welfare Department between 13.05.2006 and 13.05.2011 and she once again contested in Manamadurai (Reserve) Assembly Constituency in the General Elections held in the year 2011 and got defeated.

7. The prosecution further alleged that during her tenure as Minister for Adi Dravida Welfare Department, the accused were suspected to have indulged in corrupt practices, accumulation of assets, both movable and immovable and on

the basis of the affidavits filed in the General Elections held during 2006 and 2011, the check period was between 13.05.2006 and 13.05.2011. The accused was in possession of pecuniary resources and properties worth about Rs.4,09,376/- as on 13.05.2006 (Annexure - I) and as on 13.05.2011, had acquired and was in possession of pecuniary resources and properties worth about Rs.50,88,432/- (Annexure - II). Thus, during the period between 13.05.2006 and 13.05.2011 (check period), the accused has acquired and was in possession of the properties and pecuniary resources worth about Rs.46,79,056/- (Annexure - V).

8. The prosecution alleged that during the check period, the total income of the accused from their known sources was Rs.31,51,458/- (Annexure - III). During the same period, they incurred the expenditure of Rs.19,09,191/- (Annexure - IV) and the likely savings of the accused was Rs.12,42,267/- (Annexure - VI) and thus, the accused were found to have acquired and in possession of pecuniary resources and properties, which are disproportionate to their known sources of income, to the extent of Rs.34,36,789/-, as on 13.05.2011 and the percentage of disproportionate assets, is 109.05% and both the accused were not able to account satisfactorily for the possession of the said assets to the said value. Though an opportunity was extended to them, they failed to offer any plausible or tenable explanation.

9. The Special Court for Trial of Prevention of Corruption Cases, Madurai, took cognizance of the charge sheet and issued summons to both the accused.

10. The revision petitioner/A-2, who is the husband of A-1, filed CrI.M.P.No.1076 of 2013 under Section 239 Cr.P.C., praying for discharge, contending that the Court taking cognizance, must consider the police report and documents submitted under Section 173 Cr.P.C. and if need arises, can examine any one of the witnesses. The prosecution to sustain their case, has cited 46 witnesses and 52 items of documents and out of the said documents, item No.7 is the receipt issued by TNEB in the name of the revision petitioner/A-2; item No.17 is the statement of accounts issued by Bank of India, in his name; item Nos.20 and 22 are sale deeds in the name of the revision petitioner; item No.25 is the attested copy of the Income Tax Returns in the name of the revision petitioner for the

assessment period, between 2006-07 and 2011-12 and item Nos.35 to 43 are the documents in the name of the revision petitioner, evidencing the income as well as expenditure.

11. According to the revision petitioner/A-2, the above said documents would show that he is having a separate source of income and acquired the properties in his own name and it is also not disputed by the prosecution and they have also not substantiated that purchases made by the revision petitioner/A-2 as benami in the name of his wife/A-1 and if the said properties are left out, no property is disproportionate to the known sources of income of A-1.

12. The revision petitioner would further state that the statements of witnesses recorded under Section 161(3) Cr.P.C., would not show any iota of evidence or incriminating circumstances to substantiate the case of the prosecution that he has abetted or acted as benami of his wife/A-1. The petitioner also challenged the authorisation given to the complainant, namely, L.W.43 - Mrs.C.Kalavathy, Deputy Superintendent of Police, Vigilance and Anti-Corruption, Madurai, as it is not in consonance with Sections 17 and 18 of the P.C. Act.

13. The Income Tax Returns were also filed and accepted and hence, it is the contention of the revision petitioner that it cannot be reassessed or reopened in the collateral proceedings and also placed reliance upon number of judgments of the Honourable Supreme Court as well as this Court.

14. It was also contended by the revision petitioner/A-2 that a false case has been foisted on account of political motive due to the fact that A- 1/wife of the revision petitioner/A-2, belongs to Dravida Munnetra Kazhagam Party (in short 'DMK') and hence, the entire prosecution is tainted with mala fides and therefore, prayed for his discharge.

15. The respondent/prosecution filed it's objections, giving out the following details of assets, income and expenditure, which discloses the accumulation of assets disproportionate to the known sources of income of A-1 and A-2: I. Assets stood to the credit of the accused A1 & A2 as on 13.05.2006 at the beginning of the check period. Rs. 4,09,376/- II. Assets stood to the credit of the accused A1 & A2 as on

13.05.2011 at the end of the check period. Rs.50,88,432/- III. Income from 13.05.2006 to 13.05.2011 of the accused A1 & A2. Rs.31,51,458/- IV. Expenditure from 13.05.2006 to 13.05.2011 of the accused A1 & A2. Rs.19,09,191/- V. Assets acquired by the accused A1 & A2 during the check period (II-I). Rs.46,79,056/- VI. Likely savings of the accused A1 & A2 during the check period (III-IV). Rs.12,42,267/- VII. Value of D.P. Assets (V-VI) Rs.34,36,789/- Percentage of Disproportionate Assets 109.05% 16. The prosecution would contend that the affidavits filed by A-1 coupled with other materials collected during the investigation, had clearly disclosed the fact that A-1 and A-2 had accumulated the assets to the tune of Rs.34,36,789/-, during the check period and the revision petitioner/A-2 has received the rental income from the properties purchased from the ill-gotten money of his wife/A-1 and that he did not have any sufficient sources of income to purchase the properties.

17. Both the accused were also issued with final opportunity of notice and they have also sent their reply and the Investigating Officer has taken into consideration the contents of the reply and the materials collected during the investigation and rightly came to the conclusion and filed the final report charging the accused for the commission of the above said offences.

18. Insofar as the competency of L.W.43 - Deputy Superintendent of Police, to conduct the investigation, it is stated in the counter that the Superintendent of Police, Southern Range, Vigilance and Anti-Corruption, Chennai, has given an authorisation letter under Sections 17 and 18 of the P.C. Act, 1988, for investigation on the same day after registration of the case and Mrs.C.Kalavathy, Deputy Superintendent of Police, was transferred from Vigilance and Anti-Corruption, Madurai, on 20.02.2012 and thereafter, the Superintendent of Police has given an authorisation to Mr.R.Tamilselvan, Inspector of Police, Vigilance and Anti-Corruption, Madurai, on 21.02.2012, to continue with the investigation. Hence, it cannot be cited as reasons to stall the case.

19. The prosecution also contended that the Income Tax Returns submitted by A-2 were also taken into consideration and merely because, the Income Tax Returns have been accepted, it does not mean that the revision petitioner is not guilty of

the charges framed against him and in any event, the Income Tax Department is always entitled to reopen the assessment by selecting the Income Tax Returns on random.

20. Reliance was also placed upon the decisions of the Honourable Supreme Court in State represented by the Anti-Corruption Bureau v. Surya Prakash reported in 1999 SCC (CrI) 373 and in Hemachand v. Jharkand reported in 2008 MLJ (CrI) 1641 (SC), wherein it has been laid down that at the time of framing the charge, the trial Court is required to and can consider only the police reports referred to under Section 173 Cr.P.C. and the documents sent along with it and the only right available to the accused is of being heard and nothing beyond that and hence, prayed for the dismissal of the petition for discharge.

21. The trial Court has gone into the merits and demerits of the petition for discharge filed by A-2 in extenso and also relied upon very many judgments rendered by this Court as well as the Honourable Supreme Court and held that the documents enclosed along with the final report as well as the statements of witnesses recorded under Section 161(3) Cr.P.C., and other materials are sufficient to frame the charges against the revision petitioner/A-2 and dismissed the petition for discharge, vide impugned order dated 31.12.2014 and challenging the legality of the same, the present revision is filed.

22. Mr.Veera Karthiravan, learned Counsel for the revision petitioner/A-2 has vehemently contended that even for the sake of argument that the materials placed by the prosecution before the trial Court are sustainable or tenable or worth of credence, still the ingredients of the offences have not at all been made out against the revision petitioner/A-2 and on account of ill-will and mala fide motive, a false case has been foisted upon the revision petitioner/A-2 as well as his wife/A-1, only to cause harassment to them.

23. The learned Counsel for the revision petitioner/A-2, on the merits of the case, would contend that the revision petitioner/A-2 is having his own sources of income and the same is reflected in the Income Tax Returns filed by him which were accepted by the Income Tax Department and hence, it is not open to the respondent to form their own opinion and indirectly, they are testing the vires of

the said Returns in a collateral proceedings in the form of the present criminal prosecution. In response to the final notice issued on 29.06.2012, a detailed and exhaustive reply was sent on 01.08.2012 and the Investigating Officer has failed to take into consideration the contents of the reply and filed the final report within a short span of time on 28.08.2012.

24. It is the primordial submission of the learned Counsel for the revision petitioner/A-2 that the affidavits filed by A-1 at the time of contesting the General Elections cannot be taken as a source of income for the purpose of the prosecution under the P.C. Act and the investigation has been conducted in a shabby and mala fide manner and no tenable materials have been collected during the investigation to prosecute the accused for the commission of the offences.

25. He would further submit that the trial Court in a routine and mechanical manner, without applying it's mind to the contents of the discharge petition and the arguments advanced, has erroneously dismissed the petition for discharge and prays for interference.

26. The learned Counsel for the revision petitioner/A-2, in support of his submissions placed reliance upon the following decisions: (i) State, Inspector of Police v. Surya Sankaram Karri reported in (2006) 2 MLJ (Cri) 1244. (ii) P.Vijayan v. State of Kerala reported in (2010) 2 Supreme Court Cases 398. (iii) CBI v. K.Narayana Rao reported in (2012) 9 Supreme Court Cases 512.

27. Per contra, Mr.C.Ramesh, learned Additional Public Prosecutor for the respondent has submitted that the revision petitioner/A-2 under the guise of filing the discharge petition, has called upon the trial Court to conduct a mini trial and the same is impermissible in law. The respondent, during investigation, has given opportunity to both the accused by supplying them the questions and elicited their response and also issued the final opportunity notice and after considering their reply to the said notice, has found that there are materials available against them and accordingly, filed the final report charging them for the commission of the above said offences.

28. It is further submission of the learned Additional Public Prosecutor for the respondent that proper authorisation has been given to the Investigating Officers by the jurisdictional Superintendent of Police in terms of Sections 17 and 18 of the P.C. Act and the Court, while framing the charge, has to go by the materials collected during the investigation and the defence to be projected by the accused can be gone only during the course of the trial and the trial Court, taking note of the said legal position, has dismissed the petition for discharge.

29. It is further contended by the learned Additional Public Prosecutor that there is no political motive, ill-will or malice involved and it is preposterous to contend that since the wife of the revision petitioner/A-2 belongs to DMK Party, he has been prosecuted and also invited the attention of this Court to the contents of the charge sheet and would submit that the materials collected during the investigation in the form of witnesses and documents, would clearly disclose the fact that the revision petitioner/A-2 is not a man of means and without any independent source of income, had acquired the assets disproportionate to his known sources of income.

30. Lastly, it is submitted by the learned Additional Public Prosecutor for the respondent that the trial Court has done an elaborate exercise and rightly dismissed the petition for discharge and hence, prays for the dismissal of this revision.

31. This Court paid it's anxious consideration and best attention to the rival submissions and also perused the typed set of documents and the decisions relied on by the learned Counsel for the revision petitioner/ A-2.

32. A perusal of the petition filed for discharge would reveal that the revision petitioner/A-2 has not disclosed his occupation during the check period and when this Court pointed out the same to the learned Counsel for the revision petitioner/A-2, he replied it by saying that he was engaged in real estates business.

33. The learned Counsel for the revision petitioner/A-2 has invited the attention of this Court to the contents of the charge sheet and made a vehement submission that some of the items shown in the charge sheet as well as documents, would

disclose that the revision petitioner/A-2 is having an independent source of income and acquired movable properties in his own name and also filed the Income Tax Returns for the period between 2006 and 2012 and it was also accepted and if those properties are deleted from the statements, there cannot be any assets disproportionate to the known sources of income.

34. In sum and substance, the learned Counsel for the revision petitioner/A-2 requires this Court to test the tenability or otherwise of the materials collected during the investigation.

35. In the considered opinion of this Court, such a kind of exercise cannot be done in exercise of the revisional jurisdiction under Section 397 read with Section 401 Cr.P.C., as it is for the trial Court to adjudicate on the merits of the case based on the oral and documentary evidence, especially, with regard to the quality of the evidence tendered before it. If this Court gives any finding, it may either affect the case of the prosecution or the defence to be projected by the accused and hence, this Court is not prepared to venture into the same.

36. A perusal of the counter affidavit coupled with the submissions made by the learned Additional Public Prosecutor for the respondent would prima facie disclose that the authorisation was given by the jurisdictional Superintendent of Police to both the Investigating Officers under Sections 17 and 18 of the P.C. Act and it is always open to the revision petitioner/A-2 to confront them as and when they enter into the witness box as to their competency to investigate the matter.

37. It is also the submission of the learned Counsel for the revision petitioner/A-2 that once the Income Tax Department accepted the Returns, the legality or otherwise of the same cannot be gone into by the investigating agency and the trial Court while dealing with the same, has referred to the decision reported in 2011 (4) RCT (CrI.) 844, wherein it has been held that merely because, the properties held by the Government servant had been disclosed in Income Tax Returns and in property statements, does not itself provide any legal inference that the same were lawfully acquired and it requires evidence.

38. The revision petitioner/A-2 also alleged mala fides and the trial Court has placed reliance upon the decision of the Honourable Supreme Court in State of Maharashtra v. I.P.Kalpatri reported in AIR 1996 SC722 wherein it has been held that the ingredients which established the commission of the offence or misconduct, the prosecution cannot fail merely because there is an animus of the complainant or the prosecution against the accused and the allegations of mala fides may be relevant while judging the correctness of the allegations or while examining the evidence.

39. A faint attempt was also made before the trial Court stating that the officer who registered the F.I.R has investigated the case and in this regard, the trial Court has placed reliance upon the decision of the Honourable Supreme Court in State v. V.Jayapaul reported in 2004 Cri.L.J.

1819, wherein it has been held that the officer who registered the F.I.R is competent to take up the investigation and submit the final report and the question of bias depends on facts and circumstances of each case.

40. The trial Court has also considered the scope of Section 239 Cr.P.C., by placing reliance upon a catena of decisions rendered by the Honourable Supreme Court, wherein it has been uniformly held that 'At the stage of consideration of an application for discharge, the Court has to proceed with an assumption that material brought on record by prosecution are true and evaluate the said materials to find out whether a prima facie case is made out or not and it is not expected to go into deep into the matter and the law does not permit a mini trial at this stage.'

41. The revision petitioner under the guise of filing the discharge petition, requires the trial Court to conduct a mini trial and in the considered opinion of this Court, it has rightly refused to do so.

42. The decision relied on by the learned Counsel for the revision petitioner/A-2, in P.Vijayan v. State of Kerala reported in (2010) 2 Supreme Court Cases 398, deals with scope and object of Section 227 Cr.P.C. The decision in State, Inspector of Police v. Surya Sankaram karri reported in (2006) 2 MLJ (Cri) 1244, deals with the merits of the conviction recorded by the trial Court under Section 13(1)(e) of the

P.C. Act. The decision in CBI v. K.Narayana Rao reported in (2012) 9 Supreme Court Cases 512, deals with the scope of Sections 227, 228 and 209 Cr.P.C.

43. The decisions in P.Vijayan v. State of Kerala (cited supra) and in CBI v. K.Narayana Rao (cited supra), deal with the scope of Section 227 Cr.P.C, which is almost parimateria with Section 239 Cr.P.C and there cannot be any difficulty in accepting the proposition laid down by the Honourable Supreme Court which stood test of times.

44. In fact, the trial Court placed reliance on very many decisions dealing with the scope of Section 239 Cr.P.C. and held that the points urged by the revision petitioner/A-2 for discharge cannot be gone into at this stage.

45. The decision in State, Inspector of Police v. Surya Sankaram karri (cited supra) came to be rendered after a full-fledged trial and therefore, the said decision has been no application to the facts of the present case.

46. In DSP v. K.Inbasakaran reported in (2006) 1 Supreme Court Cases 420, the scope of joint possession and the effect of other party claiming ownership/contribution came up for consideration and the said decision arose out of the appeal against acquittal passed by the trial Court and before the Honourable Supreme Court, the materials were available in the form of oral and documentary evidence and taking into consideration the same, the Honourable Supreme Court upheld the order of acquittal passed by the trial Court, but, in the case on hand, the charges are yet to be framed and therefore, the said decision has no application at this stage.

47. In State of T.N. v. N.Suresh Rajan reported in (2014) 11 Supreme Court Cases 709, the facts of the case would disclose that the respondent during the period between 13.05.1996 and 14.05.2001, was a Member of the Tamil Nadu Legislative Assembly and also a State Minister of Tourism and he and his close relatives were prosecuted for the commission of the offences under Section 109 I.P.C. and Sections 13(2) read with 13(1)(e) of the P.C. Act and filed a petition for discharge under Section 239 Cr.P.C., before the trial Court and the petition for discharge was rejected by the trial Court and on revision, this Court, vide impugned judgment

dated 10.12.2010, has allowed the revision and discharged the accused and the State has preferred the Special Leave Petition(s) with delay and the delay was condoned and the Special Leave Petitions were taken on file and numbered as Crl.A.Nos.22-23 of 2014 and the Honourable Supreme Court has elaborately considered the scope of Sections 227, 228, 239, 244 and 245 Cr.P.C. and also its earlier decisions and observed and held as follows:

"9. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage. ***** 32.2. Similarly, accused N.Suresh Rajan has acquired properties disproportionate to his known sources of income in the names of his father and mother. 32.3. While passing the order of discharge, the fact that the accused other than the two Ministers have been assessed to income tax and paid income tax cannot be relied upon to discharge the accused persons particularly in view of the allegation made by the prosecution that there was no separate income to amass such huge properties. The property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to

disastrous consequences. It will give opportunity to the corrupt public servants to amass property in the name of known persons, pay income tax on their behalf and then be out from the mischief of law. 32.4. While passing the impugned orders, the court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned suffers from grave error and calls for rectification."

48. In the considered opinion of this Court, the revision petitioner/A- 2 also stands on the similar footing as that of the respondent in the above cited decision and accordingly, the decision in State of T.N. v. N.Suresh Rajan (cited supra), is squarely applicable to the facts of the present case.

49. This Court, on an independent appraisal of the entire materials placed before it and upon considering the submissions made by the learned Counsel for the revision petitioner/A-2 and the decisions relied on by him, is of the considered opinion that the present revision lacks merit and there is no infirmity or error apparent, in the impugned order passed by the trial Court in dismissing the petition for discharge filed by the revision petitioner/A-2.

50. Therefore, this Criminal Revision Case is dismissed, confirming the order dated 31.12.2014 passed in CrI.M.P.No.1076 of 2013 in Special Case No.3 of 2013 by the learned Special Judge for the Trial of Prevention of Corruption Act Cases, Madurai. It is made clear that the findings/observations made hereinabove are for the purpose of disposal of this revision and this Court has not touched upon the merits of the case of the prosecution or the defence to be projected by the accused and the trial Court has to adjudicate the case on its own merits based on quality of evidence tendered before it. Consequently, the connected miscellaneous petitions are dismissed. Index :No 03.03.2015 Internet :Yes rsb To 1.The Court of Special Judge for the Trial of Prevention of Corruption Act Cases, Madurai. 2.The Deputy Superintendent of Police, Vigilance and Anti-Corruption Wing,

Madurai. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. M.SATHYANARAYANAN,J.

rsb PRE-DELIVERY

ORDER

MADE IN Criminal Revision Case (MD)No.64 of 2015 and M.P(MD)Nos.1 and 2 of 2015 03.03.2015

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com