

J. Prem and anr. Vs. State

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Court : Chennai

Decided On : Sep-27-1999

Reported in : 2000CriLJ619

Judge : A. Ramamurthi, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 5(1), 13, 13(1)(3) and 13(2); Benami Transaction (Prohibition) Act, 1988; Evidence Act - Sections 3; Indian Penal Code (IPC) - Sections 107 and 109; Code of Criminal Procedure (CrPC) , 1974 - Sections 173, 207 and 239

Appeal No. : Cri. Revn. Case Nos. 349 and 563 of 1999 and Cri. M. P. Nos. 4251 and 4252 of 1999

Appellant : J. Prem and anr.

Respondent : State

Advocate for Def. : R. Shanmugasumdaram, Public Prosecutor

Advocate for Pet/Ap. : Kulandaivelu, Adv. for ;S. Byravan, ;V. Thiagarajan and ;N.P. Kumar, Advs.

Disposition : Appeal dismissed

Judgement :

ORDER

A. Ramamurthi, J.

1. Petitioners in these revision petitions are husband and wife and they are accused 1 and 2 in Special Case No. 5 of 1998 on the file of learned Chief Judicial Magistrate-Cum-Additional District Judge, Cuddalore. They have filed one petition for discharge in Cri. M. P. No. 289 of 1998 and the same was dismissed by an order dated 5-3-99 and aggrieved against this, the first accused had filed Cri. R. C. 563/99 and the second accused had filed Cri. R.C.No. 349/ 99.

2. The case in brief for the disposal of both the revision petitions is as follows :

The first accused has been charged for an offence under Section 13(2) read with Section 13(1)(3) of the Prevention of Corruption Act (hereinafter referred to as 'P.C. Act') and the second accused was charged for offences under Section 109, IPC read with Section 13(2) read with Section 13(1)(3) of the said Act. The first accused became a Member of Legislative Assembly on 17-6-91 and he became the Minister on 17-5-93. He purchased one Ambassador car bearing registration No. 1234 in 1988 by obtaining loan from TIIIC and the vehicle was used as a taxi. He was able to get not less than Rs. 10,000/- per month from the taxi. Apart from that, he owns a cold drink stall at Cuddalore Bus Stand and he was getting a sum of Rs. 6000/- per month. Items 4 and 5 mentioned in the Annexure II in the charge sheet were purchased by the first accused totally for Rs. 47,000/- with the aid of the income yielded from the taxi and the cool drinks stall. Items 17 and 18 form part of the items 4 and 5. They have been separately shown to boost up the value. There is no farm house as mentioned in the Annexure and it is only a motor shed. Wherein agricultural implements are kept, Item 17 is a bore well and the motor shed was constructed in 1992-93 with the help of his father-in-law as well as the income mentioned above. Since the water in bore well in the item No. 17 was not adequate, another bore well mentioned in the item No. 18 was sunk for better irrigation. The expenses were met out of the agricultural income from items 4 and 5. The valuation given for items 17 and 18 is exaggerated. Item No. 23 S. B. Account was opened by him prior to 1987 and it is a running account. Account No. 5809 shown as item No. 25 was opened in the secretariat so as to enable the authorities concerned to credit his salary and other benefits. Even now, the

pension amount is credited only in the account. Item No. 29 was purchased by him so as to get income-tax exemption as a Minister. Item No. 30 relating to Rs. 89,150 / - belongs to his father-in-law. He is a Government Contractor and gave the money to his daughter for safe custody, which was to be distributed on the next day for the contract work. Another sum of Rs. 39,900/- was also kept by him for family and other expenses.

3. The family expenditure mentioned as items 1 and 2 in the Annexure 4 is baseless. The education expenses were met only by the second accused. He had nothing to do with the item Np. 5. The properties standing in the name of the second accused were purchased only by her through the income given by her father and the petitioner has nothing to do with the same. The first accused is owning telephone connection for the past 15 years. The income through the salary mentioned as item No. 1 and in Annexure 3, is not true and the amount has been minimised wantonly. He has not committed any criminal misconduct and is not owning any property disproportionate to the known source of income and, therefore filed the petitioner for discharge.

4. The second accused acquired movable and Immovable properties with the help of the amount provided by her father. She is the eldest daughter and her father is a Government Contractor assessed to income-tax. They are not ill-gotten properties and the first accused has nothing to do with the properties standing in her name. The value for items 4 to 14 and 31 have been exaggerated and boosted up. Item 28 was also purchased by her out of the income from the other properties. She used to meet the expenses relating to items 3, 4, 7 to 9, 14, 19, 20, 22 and 23. They were met periodically and not in one lump sum. She also used to spend money for the maintenance of the family. In the eye of law, the husband and wife are entirely different. After the introduction of the Benami Transaction (Prohibition) Act, 1988, the prosecution cannot plead that the properties in her name are benami in character and they were acquired by the first accused. She is not a public servant and, as such, the provisions of P. C. Act cannot be used against her. There are absolutely no ingredients to come to the conclusion that she had aided or abetted first accused in the commission of offences under P. C. Act. The check period chosen by the investigation officer is

arbitrary. Moreover, no opportunity was also given to her prior to the filing of the charge sheet and as such, it amounts to violation of natural justice also.

5. The learned Special Judge after hearing the prosecution as well as the accused, dismissed the application and aggrieved against this, the present revision petitions have been filed separately. Although the revisions have been filed separately, the point in issue is identical and, as such, a common order is pronounced. The parties will be hereinafter referred to as they are described in the order of the trial Court.

6. Heard the submissions of the learned counsel of all the parties.

7. The petitioners are husband and wife. It is admitted that the first accused was elected as Member of Tamil Nadu Legislative Assembly in 1991 General Elections and he was sworn in as Minister in the Government of Tamil Nadu Milk and Dairy Development and Animal Husbandry from 17-5-93. He continued as a Minister in the Government of Tamil Nadu till 13-5-96. He was a public servant within the meaning of Section 2(c) of P. C. Act from 17-6-91 till 13-5-96. According to the prosecution, the second accused has no independent source of income and she is a dependent of the first accused. According to the charge sheet, the father of the first accused was a Bill Collector in Cuddalore Municipality and the family was running in a rented house. The first accused was initially running a laundry, newspaper and cool drinks stall at Cuddalore, Bus Stand. The check, period was from 17-6-91 to 13-5-96. Annexure I of the charge sheet relates to assets at the beginning of the check period and it was calculated at Rs. 1,78,281/- Annexure II relates to statement of assets that were in the possession of the first accused and his family members at the end of the check period and there are about 31 items. Items 1 to 3 are movable properties and rest are immovable properties Annexure III relates to the income of the first accused during the check period comes to Rs. 5,29,249/- Annexure IV relates to the expenditure for the check period and it comes to Rs. 13,97,651/-. Annexure V relates to the assets during the check period was worked out at Rs. 49,23,308/- the assets acquired during the period is Rs. 47,45,027/- Annexure VI relates to the excess expenditure over the income and it worked out to Rs. 8,68,402/- Annexure VI is a calculation showing that

assets acquired during the check period was Rs. 47,45,027/- and the excess expenditure over the income was taken as Rs. 8,68,402/- and as, such disproportionate asset was fixed at Rs.56,13,429/-.

8. Learned counsel for the first accused mainly contended that items 5 to 15 are only standing in the name of the second accused and this was also unnecessarily clubbed as the property of the first accused. On the other hand, they were purchased only out of her money. He had been getting monthly income from the taxi as well as cool drinks stall and they were not taken into consideration. Learned counsel for the first accused further contended that if proper account was taken, it will clearly disclose that the income during the check period would be Rs. 24,89,249/- and the expenditure is only Rs. 11,61,892/- and the balance amount available will be Rs. 13,17,357/-.

9. Learned Counsel for the second accused contended that there is absolutely no material to come to the conclusion that she had aided or abetted the commission of offence to attract Section 109, IPC. She alone had purchased items 5 to 15 out of the funds given by her father since she happens to be the eldest daughter. There was no intentional aid or abetment on her part and no chance or opportunity was given to her to explain her sources. She is not holding any property for and on behalf of her husband. The denial of opportunity amounts to violation of principles of natural justice.

10. Learned Public Prosecutor contended that according to the provisions of the Prevention of Corruption Act, the income acquired should be from a lawful source and they should intimate about the same to the concerned authority in accordance with the Rules. There is no record to show that these petitioners have filed income-tax returns pointing out the acquisition of so much income during the check period. Preliminary enquiry would be conducted and only if there is prima facie material the case would be registered against the persons. The first accused was a public servant during the relevant period and the second accused happened to be the wife of the first accused and the properties would be purchased by the first accused in her name and she had intentionally aided or abetted in the commission of the offences and in view of the decisions of the Apex Court, she

can be prosecuted for an offence under Section 109, IPC read with provisions of P.C. Act. Moreover, for the purpose of framing a charge, it is sufficient that there are prima facie materials to proceed further and only if the Court comes to the conclusion that the charge is groundless, then alone, the petitioners are entitled to get an order of discharge.

There is prima facie material to frame charge against these petitioners. There is absolutely no force in the contention of the petitioners. Annexures I to VII given along with the charge sheet, give a clear picture during the check period viz. 17-6-91 to 13-5-96. Now, the learned counsel for the first accused mainly contended that he had acquired lot of income from the taxi as well as cool drinks shop. Similarly, the second accused contended that she had acquired properties viz., items 5 to 15 out of her own funds as well as the funds given by her father. There is absolutely no scrap of paper to support and substantiate the same.

12. Section 13 of P.C. Act relates to criminal misconduct by a public servant. It is clear from Section 13(1)(e) of the said Act, '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, the public servant, is said to have committed the offences of criminal misconduct. The explanation given under the very same section is also relevant to be kept in mind.

Explanation : For the purpose of this section, 'known 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.

It is, therefore, evidently clear that the income received should be from a lawful source and such receipts ought to have been intimated to the authorities concerned also. Admittedly, the petitioners herein have not filed any income-tax returns relating to the check period in question including the income now proposed by them. Under the circumstance, the only conclusion that can be drawn is that there is a prima facie material to proceed further against these petitioners and it cannot be said that the charge is groundless against them.

13. Learned counsel for the first accused relied on *M. Krishna Reddy v. State Deputy Supdt. of Police, Hyderabad* : 1993 CriLJ308 for the proposition that only after the prosecution has proved the required ingredients, the burden of satisfactorily accounting for the possession of MUCH resources of property shifts to the ac-BUSed. In prosecution of a public servant form offence under Section 5(l)(a) of the P;C. Act, it is not the mere acquisition of property that constitutes an offence but it is the failure to satisfactorily account for such possession that makes the possession objectionable as offending, the law.

14. Learned counsel also relied on *Man Singh v. Delhi Administration* : 1979 CriLJ1118 , wherein it is observed that 'the accused is not required to prove his defence by the strict standard of proof beyond reasonable doubt but it is sufficient if he offers an explanation or defence which is probable and once this is done. In the instant case, from the evidence referred to above, the defence of the appellant has been clearly proved under Section 3 of the Evidence Act'. Learned counsel also relied upon another decision in *Union of India v. Prafulla Kumar* : 1979 CriLJ154 , wherein it is observed 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 proceeding with the trial. The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application.- In exercising his jurisdiction under Section 227 the Judge which under the present Code is a Senior and experienced Court cannot, act merely as a post office or a mouth-piece of a prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and sons This, however, does not mean that the Judge should make a proving enquiry in the pros and cons of the matter and weigh the evidence as if he was conducting a trial'. This decision is applicable to the case on hand.

15. Learned counsel for the second accused relied on *Krishnanand v. The State of Madhya Pradesh* : 1977 CriLJ566 for the proposition that the conclusion of the trial Court proceeded more on distrust and suspicion than an appreciation of evidence.

It is necessary to state that the decisions relied on by the petitioners are based only after conviction in the case. None of the decisions cited by them is a case relating to the framing of charge. The analogy given in the aforesaid decisions cannot be made applicable to the case on hands.

16. Learned Public Prosecutor relied on a decision of this Court in M.S. Kuppaswamy v. State, 1990 MLW (Cri) 384 wherein it is observed that 'Selection of check period, objected as arbitrary and unfair and offending Article 21, and that after introduction of Benami Prohibition Act, accused; cannot be asked to account for property in the name of another person, as it be oppressive - Objections overruled. . . Benami Act, cannot be taken advantage of, by a person, to take advantage of his own wrong. At the stage of Section 239, Cr. P.C. there is no question of adding or subtracting anything or considering any extraneous matter other than the documents forwarded to the Court as contemplated under Section 173, Cr! P.C. and furnished to the accused under Section 207, Cr. P.C. besides examining the accused and affording an opportunity both to the prosecution and the accused of being heard. Therefore, either in the exercise of inherent powers or the revisional power at this stage, the documents sought to be brought on record by the defence cannot be looked into'.

17. The prosecution also relied on State of Anti Corruption Bureau v. P. Suryaprakash, 1999 SCC 373 wherein it is held that 'At the time affirming of a charge, what the trial Court is required to, and can consider are only the police report referred to under Section 173, Cr. P.C. and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that. Of course, at that stage the accused may be examined but that is a prerogative of the Court only'.

18. Learned Public Prosecutor also relied upon another decision of the Apex Court in P. Malliammal v. State Rep. by Inspector of Police, (1999) 5 JT 41, wherein it is held that 'Sections 107, 109. Charges of corruption for amassing wealth disproportionate to known sources of income - Non-public servants - If can be tried with public servants for abetting. Held that they can be tried for abetting the offence under Section 13(1)(e). The legislative intent is manifest that abettors of all

the different offences under Section 13(1)(e) of the P. C. Act should also be dealt with along with the public servant in the same trial held by the Special Judge. There is no force in the contention that the offences under Section 13(1)(e) cannot be abetted by another person. Sections 5(l)(e) of the old P.C. Act did not contain an 'Explanation' as Section 13(1)(e) now contains. As per the Explanation the 'Known source of income' of the public servant, for the purpose of satisfying the Court, should be 'any lawful source'. Besides being the lawful source of explanation further enjoins that receipt of such income should have been intimated by the public servant in accordance with the provisions of any 'law applicable to such public servant' at the relevant time. So a public servant cannot now escape from the tentacles of Section 13(1)(e) of the P.C. Act by showing the legally forbidden sources, albeit such sources are outside the purview of clauses (a) to (b) of the sub-section'. This decision is exactly applicable to the case in all fours. There is no difficulty in coming to the conclusion that the trial Court has appreciated the rival contentions of the parties and there is absolutely no illegality of infirmity. No doubt, the learned Public Prosecutor raised another objection also to show that the revision is not maintainable since the framing of charge is only an interlocutory order and no revision lies. Now, the petitioners have filed petition for discharge invoking Section 239 of the Code of Criminal Procedure and invited a finding against them. Under the circumstance, the present revision petitions filed by them are maintainable under law and, as such, there is no force in the contention of the prosecution. As adverted, to there is an accusing finger pointing out against both the petitioners and, as such, I am of the view that no interference is called for in the order passed by the trial Court.

19. For this reasons mentioned above, the revision fails and, accordingly, it is dismissed. Consequently, Cri.M.Ps. 4251 and 4252 of 1999 are also dismissed. The trial Court is directed to frame the charges against the accused within a period of two weeks from the date of receipt of a copy of this order and expedite the trial of the case as early as possible since the trial has to be conducted on day-to-day basis in accordance with the provisions of the Prevention of Corruption Act.