(2015) 03 KL CK 0082

In the High Court Of Kerala

Case No : Criminal Rev. Pet. No. 255 of 2015

Noble Mathew — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

Citation : (2015) 03 KL CK 0082

Hon'ble Judges : C.T. Ravi Kumar, J.

Bench : Single Bench

Advocate : George Sebastian, for the Appellant; K.P. Dandapani, Advocate General, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

C.T. Ravi Kumar, J.—This revision petition is directed against the order dated 28.11.2014 of the Court of the Enquiry Commissioner and Special Judge, Kottayam in Crl.M.P. No. 958 of 2014. The revision petitioner-complainant filed the said petition viz., Annexure-A praying to entertain the complaint and to issue notice to the accused/the 2nd respondent herein and also to call upon him to explain the disproportionate assets possessed by him and to proceed against him under the Prevention of Corruption Act, 1988 and other provisions of law applicable and also punish him accordingly. A bare perusal of Annexure-A and the impugned order would reveal that various allegations were raised by the revision petitioner in the said complaint as hereunder:--

"(a) The respondent has amassed huge wealth disproportionate to his known source of income from the initial declaration made in the year 1965 before the Election Commission, in which his assets has been stated as on 2.5895 hectares of land in Elakkad and Lalam villages in Meenachil Taluk. In the declaration filed in the year 2006 before the Election Commission the respondent has declared his assets as possessing an Ambassador car having a market value of Rs. 75,000/- only. But in the declaration of the like nature filed by the respondent in the year 2011 he has declared his assets as Rs. 2,65,63,350/-. The properties are described as movables, immovables, residential buildings, commercial buildings, shares of list of companies etc. He owns Mitsubishi Lancer having an amount of Rs. 7,96,884/- and Toyota Innova car having an amount of Rs. 12,20,019/- (Total an amount of Rs. 20,16,930/-). The assets of his wife, Smt. Kuttiamma has been stated as about Rs. 0.82 crores. The respondent is the owner and in possession of more than 70 cents of land in Kottayam town and a huge Bungalow in the name of State Committee Office, Kerala Congress. It was purchased in the personal name of the respondent.

(b) In the year 2014, the assets of Sri. Jose K. Mani, the son of the respondent, a Member of the Parliament has been stated as Rs. 3.12 crores. Before he entering into politics he was an employee of a company. The assets of the wife of Sri. Jose K. Mani has been stated as Rs. 15,95,970/-. At the same time she has no source of income. In the general election 2009 Sri. Jose K. Mani has declared that he has possessed 24 gms. of gold, his wife 200 gms of gold, while in the year 2014 the gold in possession of Sri. Jose K. Mani has been escalated as 48 gms of gold, his wife 400 gms.

(c) The complainant has reason to believe that the respondent had amassed money in the name of Thomson Group dealing in Broiler Chicken through the State of Kerala. The Sales Tax authorities issued notice to them demanding a penalty amount OF Rs. 65 crores pursuant to the tax evasion detected by the Special Investigation Team, of the Government of Kerala. The respondent has stayed the payment of the huge amount by an application filed by them on a condition that the assessee need only to pay a paltry amount. The two Deputy Commissioners, who were dealing with the case were transferred by the respondent solely to suite the interest of the Thomson Group and appointed by Deputy Commissioner at the choice of the respondent in that place, who had allowed the appeal filed by Thomson Group by setting aside the demand of Rs. 65 crores.

(d) In the case of Sreedhareeyam Ayurvedic Medicines (P) Ltd. by misusing the privileged position of the respondent as a Minister gave undue favours to get over a judgment of the Division Bench of the High Court and deliberately reduced the tax amount suffering a loss of Rs. 50 crores to the public exchequer.

(e) The respondent had received illegal gratification of one crore in his residential building at Pala from Sri. Biju Ramesan, an office bearer of the Hotel Owners Association for avoiding closing down of bars. Even though a vigilance enquiry has been ordered by the Government, the Chief Minister, Minister of Vigilance and Industries Minister had publically aired their view that the respondent is innocent and thereby the vigilance enquiry has been reduced as an eye wash.

(f) Rampant corruption was there at the behest of the respondent in the appointment of the Vice Chancellor in the Mahatma Gandhi University, Law officers in the High Court of Kerala and Law Officers of various District courts, the details will be furnished at later stage."

2. Evidently, in respect of the allegations in (c) and (d) therein a report was called for and thereupon Annexure-B report was filed by the Additional Legal Advisor attached to the Vigilance and Anti-Corruption Bureau, Kottayam. Thereupon, the Legal Advisor as also the revision petitioner himself were heard by the learned Special Judge and the impugned order was passed. A perusal of the impugned order would reveal that the learned Special Judge had entered into findings with respect to the allegations in (a), (b), (e) and (f), as well. Nonetheless, the learned counsel for the revision petitioner submitted that the petitioner is not pressing into service the challenge against those findings and the petitioner may be permitted to challenge the aforesaid order only to the extent it pertains to the allegations in (c) and (d) of Annexure-A. Recording the said submission the parties are permitted to confine the arguments only on the aforesaid point.

3. The contention of the revision petitioner is that the learned Special Judge has committed an illegality in making observations touching the merits of the allegations in (c) and (d) and entering into a finding of non-existence of prima facie case for ordering an enquiry in the vigilance angle in the case of allegations thereunder, as well, after arriving at a conclusion that it lacks territorial jurisdiction in respect of those allegations. In the said circumstances, the learned counsel for the revision petitioner contended that the impugned order is liable to be interfered with in exercise of revisional jurisdiction.

4. I have heard the learned counsel for the revision petitioner and also the learned Advocate General.

5. In view of the submissions made across the bar and on perusal of the impugned order I am of the considered view that the question posed for consideration is whether an illegality, as contended by the revision petitioner, infects the impugned order and if so, whether it invites an interference on that count ? It will not be malapropos to note the submissions of the learned counsel for the revision petitioner as also the learned Advocate General on the question as to whether the Enquiry Commissioner and Special Judge is correct in holding that the said Court lacks territorial jurisdiction. They would submit that the learned Special Judge erred in entering into a negative finding with respect to its territorial jurisdiction and that, in fact, that court is having territorial jurisdiction to consider the allegations in (c) and (d), in accordance with law. The learned Advocate General further went on to submit that the learned Special Judge has rightly made observation regarding non-existence of a prima facie case in the said matter, as well. At the same time, it is discernible from the impugned order itself that the question of territorial jurisdiction was not actually raised by the Legal Advisor and at any rate, it is evident that the petitioner as also the Legal Advisor were not called upon to address on that question and they were not afforded with ample opportunity to address on that question. In this context, it is also to be noted that the parties cannot confer jurisdiction and call upon the court to maintain the petition if that court actually lacks territorial jurisdiction in

this matter and when that fact was duly taken note of by the court concerned. To canvass the point that the Enquiry Commissioner and Special Judge, Kottayam is having territorial jurisdiction the learned Advocate General submitted that the petitioner is a resident within the jurisdiction of the Court of the Enquiry Commissioner and Special Judge, Kottayam and that it was after perusing the relevant files made available that the learned Special Judge entered into the definite finding of non-existence of a prima facie case. Even if it was taken that the court was having territorial jurisdiction, for argument sake, then also a question would arise as to whether any consideration was bestowed by the learned Special Judge on the allegations in (c) and (d) for entering into such a specific finding and whether there is any manifest illegality in the order that invites interference in exercise of revisional jurisdiction ? In this context, it is to be noted that the core contention of the revision petitioner is that after entering into the conclusion that Vigilance Court, Kottayam lacks territorial jurisdiction the Enquiry Commissioner and Special Judge, Kottayam virtually considered the matter on merits and ultimately found that no prima case exists for ordering enquiry in the vigilance angle. Bearing in mind the said contention I have scanned the impugned order to see whether the said contention is correct or not. For the purpose of considering the said issue it is only appropriate to refer to paragraph 10 of the impugned order. It reads thus:--

"Then coming to the allegations in (c) and (d) connecting Thomson Group and Sreedhareeyam Ayurvedic Medicines, this Court is of the firm opinion that even if any substance is there in those allegations the proper Vigilance Court to dealt with (sic. deal with) is the Vigilance Court, Thiruvananthapuram or Thrissur as the alleged decision for reducing the tax has been taken at Thiruvananthapuram and those institutions are situated within the territorial jurisdiction of the Thrissur court. As the file pertaining to that has been made available, and on perusing the same it is seen that such benefits have been given to those institution by the Kerala Government and even the Public Accounts Committee (sic. the Subject Committee) had also involved in it. Hence, there is no justification in dragging the respondent alone in it.

In the light of the above discussed evidence as borne out from the records produced by the petitioner himself, I find that no prima facie case has been made out against the respondent for ordering an enquiry in the vigilance angle. The petitioner has purposefully suppressed the facts and figures borne out from the documents produced by the petitioner himself to bolster up a case that the respondent has amassed disproportionate assets to the crores of rupees. Hence, the petition is only to be dismissed "

(emphasis added)

A scanning of the aforequoted paragraph viz., paragraph 10 of the impugned order would reveal that there is substance in the contention raised by the revision petitioner inasmuch as, it would reveal the fact that the learned Special Judge found that the Vigilance Court, Kottayam lacks territorial jurisdiction and the territorial jurisdiction lies either with Vigilance Court, Thiruvananthapuram or Vigilance Court, Thrissur. Indisputably, this finding was entered in respect of the allegations in (c) and (d) in Annexure-A complaint. After entering into such a finding with respect to the jurisdiction evidently, the learned Special Judge went on to consider the matter after perusing the records lest how could a finding regarding the non-existence of a prima facie case could be made. Admittedly, the files were made available before the Court and the court perused the same and it is after perusing them that the learned Special Judge held that no prima case has been made out against the 2nd respondent for ordering an enquiry in the vigilance angle. The tenor of the order would undoubtedly reveal that the said finding would apply in the case of allegations in (c) and (d) of Annexure-A, as well. If the learned Special Judge is of the view that Vigilance Court, Kottayam lacks territorial jurisdiction in respect of the said allegations the learned Special Judge could not have and would not have gone into the merits or made any observation touching the merits. I am afraid, the submissions made by the learned Advocate General raised to justify the action of the learned Special Judge in arriving at such a finding in respect of allegations in (c) and (d) as well, cannot be accepted in the circumstances. The finding that no prima facie case was made out for ordering for an enquiry in vigilance angle is definitely a finding touching the merits of the case relating the allegations in (c) and (d), as well. Such findings could be arrived at only by a court which is having the competent jurisdiction. Though it is stated that the learned Special Judge perused the records a bare perusal of the order impugned would reveal that there is nothing indicating that the learned Special Judge has ''perused'' the records and also reflecting their consideration. In the decision in Central Bureau of Investigation v. Ashok Kumar Aggarwal ((2015) 1 SCC Crl. 344), the Hon''ble Apex Court held that consideration of materials would imply application of mind. The Hon''ble Apex Court in Shyam Deo Pandey and Others Vs. The State of Bihar, considered the meaning and scope of the word ''perused'' and held that the mere employing of the word ''perused'' or a recital ''on perusing the files'' would not satisfy the requirement in law. It is to be noted that the word ''perused'' in its ordinary dictionary meaning connotes ''examined in detail'' and obviously, the proper meaning of the word, in law, would be ''to go through critically'', viz., to read attentively and examine critically in detail one by one. In this case, it was held:--

"As the file pertaining to that has been made available, and on perusing the same it is seen that such benefits have been given to those institution by the Kerala Government and even the Public Accounts Committee (sic. the Subject Committee) had also involved in it. Hence, there is no justification in dragging the respondent alone in it.

In the light of the above discussed evidence as borne out from the records produced by the petitioner himself, I find that no prima facie case has been made out against the respondent for ordering an enquiry in the vigilance angle."

A scanning of the impugned order would reveal that as relates the allegations in (c) and (d) apart from the aforesaid recital there was no consideration in accordance with law. In Shyam Deo Pandey''s case (supra) the Hon''ble Apex Court held that the requirement regarding the ''perusal of the record'' that has been sent for and received in the court before disposing of an appeal could not be treated as an empty formality and a mere recital of the expression ''perusal of the record'' without giving any indication of such perusal in the order in a routine manner would not and could not satisfy the exercise of power by a court. Thus, the aforequoted portion from the impugned order would reveal that it will not satisfy the legal requirement of perusing the records and considering the matter in accordance with law. Evidently, the aforesaid observation touching their merits was made without perusing the records in the manner required. In such circumstances, I have no hesitation to say that there was no consideration of the allegations in (c) and (d), in accordance with law, for the purpose of deciding the entitlement to the relief sought for. Thus, consideration of the impugned order, on any angle would reveal that there is a manifest illegality as relates the allegations in (c) and (d) in Annexure-A. I may hasten to add that I shall not be understood to have made this observation with respect to the merits of the said allegations and it, indeed is made only with respect to the aspects discussed in detail, hereinbefore. In the said circumstances, without making any observation whatsoever as to the merits of the allegations made in (c) and (d) the impugned order is set aside only to the extent it pertains to the allegations in (c) and (d). There will be a direction to the learned Special Judge to restore Crl.M.P. No. 958 of 2014 solely for the purpose to consider the question of territorial jurisdiction after affording an opportunity of being heard to the Legal Advisor as also to the petitioner. Needless to say, if ultimately it is found that the court is having territorial jurisdiction, then, the Vigilance Court shall consider the allegations in (c) and (d) in accordance with law. In short, subject to the decision on the allegation of territorial jurisdiction, the allegations thereunder shall be considered, in accordance with law and bearing in mind the observations made hereinbefore.

The revision petition is allowed only to the above extent.

