(2014) 04 MAD CK 0239

In the Madras High Court

Case No : Crl.A. No. 597/2000

Selvi J. Jayalalitha, N. Sasikala, J. Elavarasi and Master J. Vivek	APPELLANT
Vs	
State	RESPONDENT

Date of Decision : 02-04-2014

Acts Referred:
Prevention of Corruption Act, 1988 — Section 5(6)

Citation : (2014) 3 CTC 639 : (2014) 2 LW 954 : (2014) 1 LW(Cri) 604 : (2014) 2 MLJ(Cri) 269

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aruna Jagadeesan, J.—This Criminal Appeal is filed, challenging the order dated 17.07.2000 made in Cr.MP. No. 419/1998 in Special CC. No. 7/1997, by the learned Special Judge I/XI Additional Judge, Chennai-1, attaching certain properties of the Appellants in pursuance of GO.Ms. No. 574 Public (SC) Department dated 03.04.1998. The properties, set out in Annexure-I, Items 1 to 34, which includes gold and silver wares, vehicles, balance in various Bank Accounts and fixed deposits and Items 1 to 43 in Annexure II, which includes Factory Machines, Vehicles, Bank Balance and Fixed Deposits, were subjected to attachment. In the said GO.MS. No. 574 dated 3.4.1998, the Director of Vigilance and Anti Corruption has furnished a list of properties allegedly acquired by the 1st Appellant/A1 and held jointly by her with her associate Tmt. Sasikala Natarajan, in Annexure I. These are stated to be cumulatively worth about Rs. 8,65,30,373.74/-. A list of properties, allegedly acquired by the 1st Appellant in her name and in the names of her alleged benamies viz. (1) Tmt. Sasikala Natarajan, (2) V.N. Sudhakaran, (3) Tmt. Elavarasi and (4) Selvan J. Vivek and held by them on her behalf stated to be worth of Rs. 3,31,65,757/- is furnished in Annexure-II.

2. The fourth Appellant Master J. Vivek though was a minor at the time of passing of the order of attachment has become major and a memo is filed to that effect and is recorded.

3. In the said GO.Ms. No. 574 dated 3.4.1998, it has been stated that the benamies, in whose names the properties had been purchased, had no known sources of income to purchase the above said properties by themselves and the said properties had been purchased by the first Appellant with the monies obtained by the commission of offence which is a scheduled offence, that is to say an offence mentioned in the Schedule to the Criminal Law (Amendment) Ordinance, 1944 (herein after referred to as the Ordinance 38 of 1944). The State Government authorized the Investigating Officer of this case to make an application for the attachment of the properties specified in the Annexures I and II of the said GO.Ms. No. 574 dated 03.04.1998. Based on the same, u/s 3 of the Ordinance 38 of 1944 read with Section 5(6) of the Prevention of Corruption Act, 1988, a petition has been filed by the Prosecution in Cr.MP. No. 419/1998 in Special CC. No. 7/1997, seeking attachment of the properties. An ex-parte order of interim attachment dated 04.06.1998 in Cr.MP. No. 420/1998 in Cr.MP. No. 419/1998 was passed by the learned Special Judge/XI Additional Sessions Judge, as against which, the Appellants 1 and 2 filed Crl.OP. No. 8625/1998 before this court challenging the said interim order of attachment. It was contended by the Appellants that no opportunity was given to the parties aggrieved and the interim order of attachment has been passed in violation of the principles of natural justice. During the course of arguments of the said Criminal Original Petition, attention of this court was drawn to the various provisions of the Ordinance 38 of 1944 which contemplates notice to be issued to the aggrieved party to show cause against the interim order of attachment and if any cause is shown or objections raised, the learned Special Judge is under a legal obligation to investigate the same and pass a final order as provided for u/s 5 of the Ordinance 38 of 1944. This court, after recording the undertaking given by the Respondent Police that the interim order of attachment will not be put into execution till such time the learned Special Judge decides the claim either way on a cause to be shown by the Appellants, dismissed the petition.

4. Thereafter, the Appellants, who were arrayed as the Respondents in the petition for attachment, had filed their respective counters before the Special Court. In the counter filed by the 1st Appellant, she has stated that the 1st Appellant owned only one vehicle, which is shown as item (4) in the Annexure-I and there could never be an application to attach a property not belonging to the 1st Appellant and therefore, the petition seeking to attach various other vehicles not belonging to her is unsustainable. She further stated that the Respondent Police had not stated in the Annexures as to whom the properties listed therein belong to and therefore, there could never be a reasonable opportunity to contest an application for attachment, unless the interest of the person concerned in the property is made apparent in the application. It has been specifically stated that without the said essential indispensable detail, there could

not be an attachment by way of omnibus order. Similarly, in the counters filed by the other Appellants, similar objections have been made disputing the claim made by the Respondent Police.

5. After hearing the parties, the learned Special Judge had passed the impugned order holding that the Respondent Police is entitled for an order of attachment u/s 3 of the Ordinance 38 of 1944 and accordingly, made the ad-interim attachment already granted as absolute, except for the movable properties of the 1st Appellant, for which cash security by way of fixed deposit was directed to be deposited. The present appeal has been preferred by the Appellants against the said decision of the learned Special Judge.

6. Pending appeal, this court has granted interim stay of the order, in so far as the properties mentioned in Annexure I, items 4 to 14, excepting item 6 and in Annexure II, items 3 to 15, excepting item 9 and 10 are concerned on condition that the Appellants 1 to 3 and the 3rd Appellant on behalf of the 4th Appellant (who was then a minor) shall execute a bond for a sum of Rs. 50,00,000/- (Rupees Fifty Lakhs Only) with one surety for a like sum to the satisfaction of the Special Judge, subject to certain conditions.

7. Mr. C. Manishankar, the learned counsel for the Appellants strenuously contended that the finding of the learned Special Judge was erroneous, inasmuch as he ignored unreasonably the mandatory provisions of the Ordinance 38 of 1944. The learned counsel contended that the learned Special Judge failed to follow the procedures contemplated in Section 5(2) and (3) of the Ordinance 38 of 1944 which clearly mandates that the CPC has to be followed, once any cause is shown or any objections are made as provided in sub section (3) and (4) of Section 4. The learned counsel submitted that the learned Special Judge ought to have framed issues and directed the parties to adduce evidence and produce the relevant exhibits on either side. The learned counsel contended that without following such procedure and without arriving at a subjective satisfaction, the order of attachment passed by the learned Special Judge in a mechanical manner is unreasonable and unsustainable in law.

8. This court heard Mr. A.N. Thambidurai, the learned Additional Public Prosecutor for the State on the points canvassed by the learned counsel for the Appellants.

9. Section 3(1) of the Ordinance 38 of 1944 provides for an application for attachment of property being made and authorizes the State Government to direct filing of an application to the District Judge/Special Judge, if it has reasons to believe that any person has committed any scheduled offence. "Scheduled Offence" is defined in Section 2 of the Ordinance as an offence specified in the Schedule to the Ordinance. The property includes money and the State Government must have reasons to believe that the accused procured the said property by means of the offence. Section 4 of the Ordinance provides for ad-interim attachment of the property. The learned District Judge/Special Judge is

empowered to entertain and investigate any objections to the attachment. Sub section (2) of Section 5 of the Ordinance provides that if cause is shown or any objections are made as contemplated under sub sections (3) and (4) of Section 4, the District Judge shall investigate the same and in doing so as regards the examination of the parties and in all other respects, he shall follow the procedure and exercise all the powers of a court in hearing a suit under the CPC 1908 and any person making an objection u/s 4 shall be required to adduce evidence to show that on the date of the attachment, he had some interest in the property attached. After investigation as aforesaid, the learned Special Judge is empowered to pass appropriate order depending on the facts and circumstances of the case and the evidence adduced by the parties.

10. It is pertinent to note that power of attachment under the Ordinance is given to the Special Judge and the procedure contemplated is not of criminal procedure, but a civil procedure. The purposes of the Ordinance was to give power of attachment, a court other than a criminal court which is dealing with the crime even though it is connected with a criminal case. Therefore, the question whether the District Court/Special Court acts as a civil court or a criminal court is of not much consequence, but it is clear that the District Court is vested with special powers and procedures in dealing with attachment. Right of appeal is also provided separately. When the words of a statute are clear, plain and unambiguous and capable of one meaning only, the courts are bound to give effect to that meaning irrespective of consequences.

11. It has been dealt with in Section 3 of the Ordinance as to how to deal with the properties allegedly acquired by the accused who is accused of commission of scheduled offence. To attach a property, an application accompanied by one or more affidavits stating the grounds on which the properties are sought to be attached, should be given. Further, it enumerates that any information available as to the location of the property/money with full particulars including estimated value should be given. It also mandates that the names and addresses of any other person/persons believed to have or likely to claim any interest or title in the property should be given.

12. Though in the GO.Ms. No. 574 dated 3.4.1998, Selvi J. Jayalalitha and the names of her suspected benamies are shown as (1) Tmt. Sasikala Natarajan, (2) V.N. Sudhakaran, (3) Tmt. J. Elevarasi and (4) Selvam J. Vivek, in Annexure-I and II, apart from the properties owned by the 1st Appellant and suspected benamies, the properties owned by independent entities, like, (1) M/s. Jaya Publications, (2) M/s. Sasi Enterprises, (3) M/s. Namadhu MGR, (4) M/s. Metal King, (5) M/s. Anjaneya Printers, (6) M/s. J. Farm House, (7) M/s. J.J. Leasing and Maintenance, (8) M/s. J.S. Housing Development, (9) M/s. J. Real Estate, (10) M/s. Jay Finance (P) Limited, (11) M/s. Jaya Contractors and Builders, (12) M/s. J. Jay TV (P) Limited, (13) M/s. Lex Property Development (P) Limited, (14) M/s. Meadow Agro Farms (P) Limited, (15) M/s. Riverway Agro Products, (16) M/s. Sastri Nuts, Plates Manufacturers (P) Limited, (17) M/s. Signora Business

Enterprises, (18) M/s. Super Duper TV (P) Limited, (19) M/s. Fax Universal, (20) M/s. Vinod Video Vision, (21) Fresh Mushrooms and (22) Green Farm House, were also shown.

13. Though for M/s. Jaya Publications, M/s. Sasi Enterprises, M/s. Namadhu MGR, M/s. Metal King and M/s. Fax Universal, the Appellants 1 and 2 are shown to be partners and in M/s. J Farm House, M/s. JJ Leasing and Maintenance, M/s. Housing Development, M/s. J. Real Estate, M/s. Jaya Contractors and Builders and Green Farm House, the 2nd Appellant, 3rd Appellant and 4th Appellant are shown to be partners, but in M/s. Anjaneya Partners, M/s. Jaya Finance (P) Limited, M/s. Lex Property Development (P) Limited, M/s. Medow Agro Farms (P) Limited, M/s. River way Agro Products, Sastri Nuts and Plates, M/s. Signora Business Enterprises and M/s. Super Duper TV (P) Limited, none of the Appellants are either shown as Directors or shareholders at any point of time. Those firms and companies are not arrayed as Respondents in the application for attachment. In the said GO.Ms. No. 574 also the names of those firms and companies are not shown as suspected benamies. It is pertinent to state that in GO.Ms. No. 1183 dated 25.9.1997 which is the subject matter of Cr.OP. No. 11/1997, the above said companies/Firms have been shown as parties and also impleaded as Respondents 7 to 11. It has to be pointed out here that the address given for those firms/companies are different from that of the address given to the Appellants.

14. There is also a discrepancy in describing the companies/firms in the said GO.MS. No. 574 dated 3.4.1998. In GO.Ms. No. 1183 dated 25.9.1997, those companies are shown as private limited companies. Whereas in the GO.Ms. No. 574 dated 3.4.1998, the same are shown as firms and the Appellants 2 to 4 are shown are partners. In the said circumstances, a reasonable doubt arises whether the owners of assets mentioned in annexures enclosed in GO.Ms. No. 574 dated 3.4.1998 are partnership firms or a private limited companies.

15. The purpose for which a requirement is made in Section 3(b) of the Ordinance to give the names and addresses of the person interested in the property to be attached is to ascertain as to who is the real owner and whether there is any other claim in regard to those properties. Sub sections (3) and (4) of Section 4 of the Ordinance aforesaid provide for lodging claim on the ground that the claimant has an interest in the property attached or portion thereof. Sub section (2) of Section 5 provides inter alia that any person making an objection u/s 4 shall be required to adduce evidence to show that on the date of the attachment, he had some interest in the property attached. The entire scheme of the Ordinance shows that opportunity has to be given to the party, who claims an interest in the property attached in support of his claim that he has interest in the property attached and when such evidence is adduced, it is for the court to consider whether that evidence is sufficient to establish his claim.

16. In this case, no notice has been sent to those companies/firms in order to find out as to whether any person has interest in the property attached. In the

absence of any such notice to those companies/firms, it cannot be said that sub sections (3) and (4) of Section 4 of the Ordinance have been complied with. The purpose of furnishing the names and addresses of the companies/firms is to afford an occasion to the court to peruse it and issue notice to those companies calling upon them to appear and make their objections to the attachment of the property. In fact, sub section 3 of Section 4 is very clear and requires the District Judge/Special Judge to issue notice to all persons represented to him as having or being likely to claim, any interest or title in the property of the person to whom notice is issued under the said sub section to appear and make their objections to the attachment. It has to be mentioned here that in the counter filed by the Appellants as respondents in the application, it has been stated that there could never be a reasonable opportunity to contest the application unless the interested persons are put on notice and without the essential details of those persons there could not be an attachment by way of omnibus order.

17. The learned Special Judge has observed in the impugned order that claim of ownership is made apart from the accused and no third party has come forward with any application claiming ownership to the property shown in the Annexures; forgetting for a moment that no notice has been issued to those companies/firms mentioned in the Annexures I and II to GO.Ms. No. 574/1998. Hence, there was no occasion for any person to raise objection or claim interest in the property attached. The investigating agency ought to have separately arrayed the said firms and companies as Respondents in the application filed under Sections 3 and 4 of the Ordinance, since Firms and Companies are independent juristic persons as held by the Constitution Bench of the Honourable Supreme Court in the case of Electronics Corporation of India and others Vs. Secretary, Revenue Department, Government of Andhra Pradesh and others reported in (1994-4-SCC-458).

In paragraphs 15 to 18, it is held as below:-

15. A clear distinction must be drawn between a company and its shareholder, even though that shareholder may be only one and that the Central or a State Government. In the eye of the law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares.

18. In Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another, , this Court reviewed earlier judgments on the point. It held that even though the entire share capital of the appellant before it had been subscribed by the Government of India, it could not be predicated that the appellant itself was owned by the Government of India. Companies, it was said, which are incorporated under the Companies Act, have a corporate personality of their own, distinct from that of the Government of India. The lands and the buildings in question in that matter were vested in and owned by the appellant. The Government of India only owned the share capital.

19. In Rustom Cavasjee Cooper Vs. Union of India (UOI), , it was held:-11. A company registered under the Companies Act is a legal person, separate and distinct from its individual members. Property of the company is not the property of the shareholders. A shareholder has merely an interest in the company arising under its Articles of Association, measured by a sum of money for the purpose of liability, and by a share in the distributed profit.

20. In Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, , this Court held that an incorporated company has a separate existence and the law recognises it as a juristic person, separate and distinct from its members.

18. Therefore, any Company incorporated under the Companies Act has a separate existence and the law recognizes it as a juristic person, separate and distinct from its members. It appears that the properties owned by the Companies in which the Appellants were not Directors or shareholders are included in the value of disproportionate assets of the accused. There is every force in the submission made by the learned counsel for the Appellants that the Appellants are placed in a disadvantageous position to explain the source of purchase for the properties not owned by them, but owned by third party/ companies.

19. The reasonings given by the learned Special Judge for non compliance of the mandatory provision of Section 5 of the Ordinance is unacceptable. The word ''shall'' in Section 5(2) of the Ordinance casts an imperative obligation on the court and it must be strictly complied with. There is every force in the contention made by the learned counsel for the Appellants that non compliance of the provisions in Sections 4 and 5 of the Ordinance had caused prejudice and injustice to the Appellants, as vital rules going to the root of the matter cannot be broken nor can their breach be overlooked.

20. At this juncture, it is relevant to refer to the observations made by the Honourable Supreme Court in Ajit Singh and Others Vs. State of Punjab and Another, , as below:-

It is the duty of the court to try to get at the real intention of the Legislative by carefully attending to the whole scope of the Statute to be construed. This intention can be gathered from the object of the Statute, the purpose for which the provision has been inserted, the setting in which it appears and the consequences which would follow by adopting a construction by one way or the other.

21. In the instant case, the learned Special Judge, by not following the procedure which has been laid down by Sections 4 and 5 of the Ordinance 38 of 1944, has indirectly deprived the Appellants of their right which has been provided by Sections 3 to 5 of the Ordinance. Therefore, on the facts and circumstances of the case, I am of the view that the order passed by the learned Special Judge is not in accordance with the procedural law and the same is not sustainable.

22. It would not be out of place to mention here about the order passed by this court in Cr.OP. No. 27211/2011 dated 14.12.2011 and the clarificatory order passed in MP. No. 1/2014 in Cr.OP. No. 27211/2011 directing, the Special Court at Bangalore to which the trial of Special CC. No. 208/2004 is held, to take the application in IA. No. 6 of 2014 in Crl.Mis. No. 768/2014 filed by one of the Company, namely, M/s. Lex Property Development (P) Limited at first instance.

23. A special Judge, while trying an offence punishable for the scheduled offence, shall exercise all powers and functions exercisable by a District Judge. Section 5(6) of the Prevention of Corruption Act, 1988 reads as follows:-

A Special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944.

24. Therefore, the Special Judge performs a dual role while trying an offence punishable under the Prevention of Corruption Act, 1988. Hence, the Special Judge is legally bound to dispose of the application filed under the Ordinance 38 of 1944, while trying the offence before proceeding to decide the criminal case. Section 12 of the Ordinance effectuates the steps to be taken pursuant to the earlier sections. Under this section if the criminal case ends up in conviction, the criminal court concerned should record a finding as to the amount of money or value of other property procured by the accused by means of the offence. For this purpose, a representation has to be made to the court that an order of attachment to property has been passed under this Ordinance.

25. Section 13 deals with the disposal of attached property upon the termination of the criminal proceedings. The information regarding the termination shall be given by the agent of the State Government along with a copy of the judgment. If the accused is acquitted, the attachment should be withdrawn and/or any security given, should be returned. If there is conviction, the District Judge can direct forfeiture to the Government of such amount or value as is found in the final judgment or order of criminal court together with the cost of attachment.

26. In view of the aforesaid provisions, it has to be decided as to the ownership of the attached properties and in the event that the third party claimants succeeds in establishing their ownership, then the value of assets held by them will have to be deducted from the account of the accused. As this goes to the root of the matter, the interest of justice requires that a decision has to be arrived at by disposing of the claim application before proceeding to hear the arguments in the main case in order to give fair trial to the accused.

27. In view of the reasons stated above, I am of the view that the impugned order of attachment passed by the learned Special Judge has to be set aside. In the result, this Criminal Appeal is allowed, by setting aside the impugned order made in Cr.MP. No. 419/1998 in Special CC. No. 7/1997 dated 17.7.2000 by the learned Special Judge I/XI Additional Judge, Chennai-1. The application in Cr.MP. No. 419/1998 in Special CC. No. 7/1997 is remitted back to the learned Special

Judge at Bangalore for fresh disposal by directing the Prosecution to implead all the Firms and Companies mentioned in the Annexures I and II attached to the petition as Respondents and dispose of the said applications at the first instance by strictly following the procedures contemplated in Section 5(2) and (3) of the Criminal Law (Amendment) Ordinance, 1944 and pass orders in accordance with law.

