

(2011) 11 MAD CK 0018

In the Madras High Court

Case No : Criminal A. No. 1330 of 2004

State by Inspector of Police Vigilance and Anti Corruption
Erode Division, Erode

APPELLANT

Vs

P. Eswaramurthy, E. Sujatha, Tamilselvi and R. Sathasivam

RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 109

Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 5(1)

Citation : (2011) 11 MAD CK 0018

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : R. Prathapkumar, GA Crl.Side, for the Appellant; K.M. Subramaniam, for the Respondent

Final Decision : Dismissed

Judgement

The Honourable Mrs. Justice Aruna Jagadeesan

1. This Criminal Appeal is filed by the State represented by the Inspector of Police, Vigilance and Anti Corruption, Erode Division, Erode, against

the judgement dated 23.07.2004 passed in CC.No.7/1999 by the learned Chief Judicial Magistrate Cum Special Judge, Erode, acquitting the

Respondent/A1 u/s 13(2) read with 13(1)(e) and the Respondents/A2, A4 and A5 u/s 13(2) read with 13(1)(e) of the Prevention of Corruption

Act read with Section 109 of IPC.

2. The brief facts, which are necessary for disposal of this Criminal Appeal are that the 1st Respondent/A1 P. Eswaramoorthy belonged to Erode

District and a resident of Ammapettai in Bhavani Taluk and the 2nd Respondent/A2 is his wife and the 3rd accused is his father; that the 3rd

accused died pending trial and so the charge as against him stood abated; that the 3rd Respondent/A4 is the sister of A1 and the 4th

Respondent/A5 is the brother-in-law of A1 and husband of A4; that according to Prosecution, A2 to A5 were depending on A1, who was the

Member of Legislative Assembly of Dharapuram from the year 1991 to 16.5.1993 and thereafter, from 17.5.1993 to May 1996, he was the

Minister of Khadi and Village Industries Department; that prior to 1991, A1 has neither possessed any ancestral properties nor any other income

by any other sources; that from 16.6.1991, A1 possessed properties worth about Rs.55,300/- including the poramboke land in Ammapettai A-

Village and the tiled house in name of A3 in Ammapettai B-Village; that A1, after getting the post of MLA and Minister as stated above, there

were properties such as agricultural lands, MIG and HIG Houses, Cars and other investments and other immovable properties in the name of A1

to A5 and the value of the said properties was Rs.32,72,626/- as on 9.5.1996; that from 16.06.1991 to 09.05.1996, the income of the A1 was

Rs.2,07,456/- and after deducting the expenses of Rs.1,25,169/-, the savings would have been Rs.82,287/- and thus, from 16.6.1991 to

9.5.1996, A1 to A5 acquired properties to the tune of Rs.31,35,039/- illegally; that though sufficient opportunity was given to them to account the

same, they failed to do so and A1 allowed A2 to A5 to acquire the said properties in their name and hence, charge sheet has been filed against the

Respondent//A1 for the offence u/s 13(2) read with 13(1)(e) and the Respondents/A2 to A5 for the offence u/s 13(2) read with 13(1)(e) of the

Prevention of Corruption Act read with Section 109 of IPC.

3. The case was taken on file in CC.No.7/1999 by the learned Chief Judicial Magistrate Cum Special Judge, Erode and necessary charges were

framed. In order to substantiate the charges levelled against the accused, the prosecution examined as many as 44 witnesses (PW.1 to PW.44)

and also relied on Exs.P1 to P56. On side of the defence, Ex.D1 and D2 were marked.

4. On completion of the evidence on the side of the prosecution, the accused were questioned u/s 313 Cr.PC as to the incriminating circumstances

found in the evidence of prosecution witnesses and the accused denied the same as totally false.

5. The 3rd accused died pending trial and so, the charge as against him stood abated. The court below, after hearing the arguments advanced on

either side and looking into the materials available on record, found the Respondents/A1, A2, A4 and A5 not guilty and accordingly acquitted them

as referred to above, which is challenged in this Criminal Appeal.

6. This court heard the submissions of the learned counsel on either side and also perused the material records placed.

7. Mr. Prathap Kumar, the learned Government Advocate for the Appellant contended that the evidence on record proved that the properties,

standing in the name of A2, A3 (since died), A4 and A5, had been purchased from the money derived by A1 through unknown sources and there

was no need to prove on the side of the Prosecution that A2 to A5 were holding the said properties as benamies of A1. The learned Government

Advocate would contend that the Trial Court erred in holding that A2 to A5 had individual income to purchase those properties, when no

independent evidence was adduced by the defence either by oral or documentary evidence to substantiate the same. The learned Government

Advocate took this court to the evidence placed on record and contended that A2 to A5 had no sources of income to purchase those properties

standing in their respective names.

8. It is needless to say that the Honourable Supreme Court in a series of decisions has laid down the guidelines in finding out the benami nature of a

transaction. Though it is not necessary to cite all those decisions, it will suffice to refer to the rule laid down in the case of Krishnanand Vs. The

State of Madhya Pradesh, . In that case, it was contended that the amounts lying in the fixed deposit in the name of one Shanthi Devi was an asset

belonging to the Appellant and that Shanthi Devi was a benamidar of the Appellant. The Honourable Supreme Court had disposed of that

contention holding thus:

It is well settled that the burden of showing that a particular transaction is benami and the owner is not the real owner always rests on the person

asserting it to be so and 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 essence of benami is the

intention of the parties and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But, such difficulties do not relieve the person asserting the transaction to be benami of the serious onus that rests on him nor justify the acceptance of mere conjectures or surmises as a substitute for proof.

9. As laid down by the Honourable Supreme Court, the initial burden lies on the Prosecution to prove that the alleged transactions were benami

and the funds required for the purchase of properties in the name of A2 to A5 were provided by A1. In K. Veeraswami Vs. Union of India (UOI)

and Others, , the Honourable Supreme Court has considered Section 5(1)(e) which corresponds to Section 13(1)(e) of the Prevention of

Corruption Act in great deal. The Honourable Supreme Court held that Clause (e) of Section 5(1) creates a statutory offence and it is for the

Prosecution to prove all the facts necessary in regard to the allegation that the accused was in possession of pecuniary resources or property

disproportionate to the known sources of income. Then, it is for the accused to account satisfactorily for the disproportion vis-a-vis his income and

assets. The section provides a statutory defence, which must be proved by the accused. It is a restricted defence that is accorded to the accused

to account for the disproportion of the assets over the income. But, the legal burden of proof placed on the accused is not so onerous as that of the

Prosecution. The accused could discharge that burden of proof on the balance of probabilities either from the evidence of the Prosecution and/or

evidence from the evidence.

10. Such being the law, the question, whether or not the 1st Respondent/A1 has established a preponderance of probability is a matter relating to

appreciation of evidence placed on record. The evidence discloses that A3 Perumal (since died), who is the father of A1, was a fish contractor, a

pandal contractor and an agriculturist. PW.1 Chinnasamy, Village Administrative Officer of Ammapettai from which place Ex.A3 hailed has stated

that A3 was cultivating poramboke land, thus it is admitted that he was an agriculturist. In his cross examination, he admitted that A3 had obtained

fishing rights from the Government and also was running Rattinam (,uhl;odk;) during village festivals. From his evidence, it can be deduced that A3

was deriving income not only from agriculture, but also from other sources, like,

fishing in tanks and operating Rattinam during Village Festivals.

PW.15, Village Administrative Officer, Ammapettai, has also spoken to the said fact.

11. The Prosecution relied upon the testimony of PW.2, a document writer, PW.31, a close friend of A1 who is said to have arranged the sale

transaction, PW.34, the seller of the land mentioned in item 26 to substantiate their version that PW.30, Vasu @ Varanavasi who served as

Personal Assistant to A1 during the check period and PW.31 extended their help for the purchase of about 20 acres of land. The learned

Government Advocate for the Appellant pointed out to the admission made by PW.30 that he had also signed certain documents as a witness.

12. At the outset, merely on the ground that PW.30 Personal Assistant to A1 had signed the sale deeds as a witness cannot impute any knowledge

that those transactions were on behalf of A1. PW.2, in his cross examination, has admitted that he did not tell the police during investigation that

PW.30 Varanavasi came to him in September 1994 and gave the names of the seller and purchaser and also the details of lands being purchased

and on that basis, he prepared the documents. There is nothing to indicate from his evidence that at the instance of A1, PW.30 approached him

and prepared the documents. Though PW.31 deposed that he arranged for the sale transaction of A3, but, his evidence does not indicate that he

arranged for those transactions at the instance of A1. It is pertinent to point that PW.30 Vasu @ Varanavasi turned hostile and no material was

elicited from his cross examination in support of the Prosecution.

13. Another witness, whose evidence was heavily relied upon by the Prosecution, namely, PW.34 one Thalavai Nagarajan, who had sold the land

to A2, has categorically stated that the sale consideration was paid by the father of A2. It is no doubt true that PW.34 has stated that PW.30

Varanavasi arranged for the transaction, but that cannot lead to a conclusion that it was purchased on behalf of A1. The learned Government

Advocate for the Appellant pointed out to the evidence of PW.32 Muralidharan, who is a Cotton Mill owner, that the Mill was started in the name

of A1's son Jeyasimhan and the value of shares held by A3 and A4 in the said Mill.

14. On a perusal of evidence of PW.32, it is clear that he along with one

Ramalingam and Vallatharasu started the Cotton Mill in the year 1994-95

and the said Cotton Mill was named after Jeyasimhan, only because it was lucky name. He has further stated that the said Cotton Mill was started

in Jallipatti Village, in the site belonging to his father-in-law. His evidence indicated that he had invested a sum of Rs.6 lakhs and another Rs.4 lakhs

was invested by one Ramalingam. The investment is not made by A1 or any other members of his family. The evidence of PW.39 Vallatharasu and

PW.33 Ramalingam is of no avail to the Prosecution, as they did not support the Prosecution. The evidence of PW.32 indicated that A4 Sister of

A1 had 500 shares and A3 Perumal had 900 shares, but the value of each share is very meagre, that is, only Rs.10 per share. Even regarding the

said aspect, PW.32 has denied the suggestion made to him that A1 provided money for A3 and A4 to purchase those shares. PW.33, who was

examined by the Prosecution to speak to the fact of receiving Rs.1 lakh each from A3 and A4 for the construction of building in Jeyasimhan

Cotton Mills, turned hostile and nothing was elicited from his cross examination in support of the case of the Prosecution.

15. In so far as the property, namely, item 21, 2.04 acres standing in the name of A4, sister of A1 is concerned, the Trial Court has arrived at a

conclusion on analysing the evidence that A4 was having separate income to purchase the said property. It is the defence case that A4 has got a

diploma in tailoring and was getting income from the tailoring profession. Likewise, the evidence placed on record shows that A5 was running lorry

booking office.

16. At this juncture, it is relevant to refer to the findings of the Trial Judge, who after analysing the evidence on this aspect, more particularly, the

evidence of PW.44, the Investigating Officer, has concluded thus:

Vernacular (Tamil) Portion Deleted

17. The Trial Court has accepted the ownership in respect of those items standing in the name of A2 to A5 based on sound appreciation of

evidence. There is no material or evidence brought out from the evidence of Prosecution witnesses to make an inference that A2 to A5 were

holding those properties standing in their name as benami of A1. On analyse of evidence, it cannot be said that the finding reached by the Trial

Court is either manifestly wrong or perverse. There are no compelling reasons to

interfere with the order of acquittal, particularly, where the evidence placed on record shows that A2 to A5 had their own independent income.

18. At this juncture, it is relevant to refer to the observations made by the Honourable Supreme Court in Ramesh Babulal Doshi Vs. State of

Gujarat, that it would not be justified in interfering with an order of acquittal and the rule of prudence requires that the High Court should give

proper weight and consideration to the views of the trial judge unless the judgement of the Trial Court was absolutely perverse, legally erroneous

and based on a wrong appreciation of the evidence. The Honourable Supreme Court observed as follows:

7. Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong

for it did not at all address itself to the question as to whether the reasons which weighed with the Trial Court for recording the order of acquittal

were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above quoted

conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the Trial Court can be legitimately

arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal

unless it comes to the conclusion that the entire approach of the Trial Court in dealing with the evidence was patently illegal or the conclusions

arrived at by it were wholly untenable. While sitting in judgement over an acquittal the appellate court is first required to seek an answer to the

question whether the findings of the Trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court

answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be

recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then- and then only-reappraise the

evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the Trial

Court are sustainable or not.

19. On the face of totality of the above evidence and the cumulative effect

thereof, the Prosecution cannot be said to have successfully proved its case. The Trial Court on analysing the evidence on record arrived at the right conclusion that the Respondents/accused were entitled to acquittal.

Hence, the impugned judgement does not call for any interference by this court.

20. In the wake of aforesaid, this Criminal Appeal is devoid of merits and is dismissed.