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STATE REPRESENTED BY
DEPUTY SUPERINTENDENT OF POLICE

v.

K. N. NEHRU ETC.

(Criminal Appeal No. 1222 of 2017)

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JULY 21, 2017

[ARUN MISHRA AND AMITAVA ROY, JJ.]

Code of Criminal Procedure, 1973:

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s.239 – Discharge of accused – During further investigation – Propriety of – FIR by police against respondent No. 1 alleging that while serving as Minister in the State Government, he acquired assets in his name and in the name of his wife (respondent No.2) and his son, disproportionate to his known source of income – During investigation, respondent No.1 stated that he received certain amounts from his son – Police framed charge-sheet u/s. 13(2) r/w. s.13(1)(c) of Prevention of Corruption Act against respondent No.1 and u/s. 109 IPC r/w. s. 13(2) r/w. s.13(1)(c) of the Prevention of Corruption Act against respondent No.2 – Application u/s. 239 seeking discharge – Trial Court directed further investigation to ascertain the genuineness or otherwise of the income of son of the respondents – Revision filed by State seeking direction to frame charges – The respondents prayed for their discharge – High Court directed discharge of the respondents – On appeal, held: The discharge of the respondents before completion of investigation is premature – Therefore, unsustainable.

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Allowing the appeal, the Court

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HELD: 1. Having regard to the First Information Report, the explanation provided by respondent No.1, the charge-sheet submitted as well as the indispensability of the scrutiny of the sources of income of son of the respondents and his assets, the Courts below had rightly directed further investigation to verify the genuineness or otherwise of the source(s) of income of son of the respondents and his assets and the bearing thereof, if any, on the charge leveled against the respondents. [Para 13] [477-D-E]

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2. In this perspective, the High Court having endorsed the direction for further investigation, ought not to have recorded its findings of exoneration of the respondents at this stage. In fact, the discharge of the respondents flies in the face of the direction for further investigation into the affairs of their son in order to verify the lawfulness or otherwise of his source of income and his assets. In view of the correlation of the explanation provided by respondent No.1 to the imputation of disproportionate assets and the probe ordered into the affairs of his son, the discharge of the respondents before the completion of the investigation is visibly prematured. The finding in particular that respondent No.1 had proved that he had received the amount only from his son and that the latter had received remuneration for which he had paid TDS under the Income Tax Act and therefore the question of disproportionateness of his assets did not arise, in the face of the pending investigation, amounts to prejudging the charge against the respondents. Discharging the respondents, pending the investigation against their son, at this stage, is unsustainable in law as well as on facts. [Para 13] [477-F-H; 478-A]

State of M.P. v. Sheetla Sahai and Others (2009) 8 SCC 617 : [2009] 12 SCR 1048; *Randhir Singh Rana v. State (Delhi Administration)* (1997) 1 SCC 361: [1996] 10 Suppl. SCR 880; *Reeta Nag v. State of West Bengal and others* (2009) 9 SCC 129 : [2009] 13 SCR 276 – distinguished.

Case Law Reference

[2009] 12 SCR 1048	distinguished	Para 14
[1996] 10 Suppl. SCR 880	distinguished	Para 14
[2009] 13 SCR 276	distinguished	Para 14

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1222 of 2017.

From the Judgment and Order dated 19.12.2013 of the High Court of Madras at Madurai Bench in CrI. R. C. (MD) Nos.416 and 561 of 2013.

A Mukul Rohtagi, Subramonium Prasad, Sr. Advs., M. Yogesh Kanna, Ms. Nithya, Mrs. Maha Lakshmi, Advs. for the Appellant.

Vivek K. Tankha, Jaideep Gupta, Sr. Advs., D. Kumanan, Satya Mitra Garg, V. G. Pragasam, S. Prabu Ramasubramanian, R. Baskaran, Advs. for the Respondents.

B The Judgment of the Court was delivered by

AMITAVA ROY, J. 1. Leave granted.

C 2. In impugment, is the judgment and order dated 19.12.2013 of the Madras High Court, Madurai Bench whereby the assail to the order dated 05.04.2013 passed by the Special Court for Trial of Cases under Prevention of Corruption Act, Tiruchirappalli made by the appellant/ State has been dismissed and the prayer by the respondents for their discharge from the Special Case No.92 of 2012 under Sections 13(2) r/ w 13(1)(e) of the Prevention of Corruption Act, 1988 (for short, hereinafter to be referred to as the "Act") and Section 109 of the Indian Penal Code (for short hereinafter to be referred to as the "IPC") has been allowed.

D 3. We have heard Mr. Mukul Rohtagi, learned Senior Counsel for the appellant and M/s. Jaideep Gupta and Vivek K. Tankha, learned Senior Counsel for the respondent Nos. 1 and 2 respectively.

E 4. The genesis of the present discord is traceable to the first information report being FIR No.25/2011 dated 15.09.2011 lodged by the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Kajamalai, Trichy alleging that the respondent No.1 while serving as the Minister of Transport, Government of Tamil Nadu from May, 2006 to F March 2011 had acquired assets in his name and in the names of his wife Shanta (respondent No.2) and son Arun, far beyond their known sources of income. The check period was mentioned therein to be from 13.05.2006 to 24.03.2011. It was imputed that the respondents and their son on the date of commencement of the check period were in possession of pecuniary resources and assets worth Rs.2,83,87,518.58 which swelled G to Rs.18,52,99,420.40 on 24.03.2011 i.e. at the end of the check period. Further details being unnecessary at this stage, it would be suffice to state that on the basis of these allegations the aforementioned case was registered and was taken up for investigation.

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5. In course of the investigation that followed, the respondent No.1, in writing was offered an opportunity to explain the allegation of possession by him and his family members, of pecuniary resources and assets disproportionate to his known source of income, to which he responded in writing on 09.07.2012, in substance referring to the remuneration from M/s. True Value Homes (India) Private Limited, Chennai received by his son Arun, income tax by way of TDS paid by his said son for the remuneration so received, loan availed by his son from M/s. True Value Homes (India) Private Limited, Chennai for purchase of house property and repayment of loan by him and mentioned the amounts corresponding to each head.

6. On the completion of the investigation, charge-sheet was laid against the respondents herein under Section 13(2) r/w Section 13(1)(e) of the Act against respondent No.1 and under Section 109 IPC r/w Section 13(2) r/w Section 13(1)(e) of the Act against the respondent No.2, his wife. The charge-sheet mentioned the amount which according to the prosecution represented assets disproportionate to the known sources of income of the respondents. However, it was recorded that in working out the quantum of disproportionate assets in the FIR, the properties of Arun had also been accounted for as he was shown to be a dependent of respondent No.1. It further mentioned that the investigation disclosed that Arun had not filed any Income Tax Return during the check period and therefore his exact income could not be ascertained and thus his name was deleted from the case and his properties were not clubbed with that of the public servant i.e. the respondent No.1.

7. At this juncture, the respondents herein filed an application under Section 239 of the Criminal Procedure Code before the Trial Court, seeking their discharge. Sans the inessential details, enough it would be to mention that the Trial Court on a consideration of the materials placed before it, was of the opinion that in view of the explanation offered by the respondent No.1, it was necessary to get the genuineness or otherwise of the income of Arun inquired into for which further investigation was called for. Being so satisfied that such a probe was indispensable to appropriately comprehend the charge of disproportionate assets as laid, the Trial Court by order dated 05.04.2013 directed such investigation into the income and properties of Arun. As it was perceived that the exercise so ordered would consume some time, the Trial Court dispensed

A with the personal appearance of the respondents herein till the completion thereof.

8. Being aggrieved by this order, the State/Prosecution filed a revision petition before the High Court for a direction to frame charge against the respondents, who in turn prayed for their discharge.

B 9. By the impugned order, to reiterate, the respondents have been discharged. However, the direction for further investigation vis-à-vis Arun has been affirmed.

C 10. The High Court in substance concurred with the Trial Court that in view of the explanation offered by the respondent No.1, the prosecution was expected to verify from the relevant records as to whether Arun had paid the amount to him and further to ascertain the source of income of Arun. It held the view that even if Arun had not submitted his own accounts and other details, the prosecution was expected to include his name as one of the accused to prove that he had not advanced any amount to the respondent No.1. The High Court D inferred from such omission, that Arun indeed had lent money to the respondent No.1 and thus the accusation of disproportionate assets qua him was untenable. It also recorded that the fact that Rs. 60 lacs had been paid by Arun to the respondent No.1 stood proved. While endorsing the direction of the Trial Court for further investigation to verify the source of income of Arun as well as payments by him to respondent E No.1, the High Court ordered discharge of the respondents.

F 11. Mr. Rohtagi, learned Senior Counsel for the State has urged that in the overall conspectus of facts bearing on the charge leveled against the respondents and the materials already gathered in course of the investigation, the High Court ought not to have discharged them at this stage while affirming further investigation into the source of income of their son Arun. This is more so in the face of the explanation offered by the respondent No.1. According to the learned Senior Counsel, not only the observations made by the High Court in the impugned order G suggesting the innocence of the respondents are not borne out by the records, those are patently predetermined and are likely to adversely affect the further investigation, as ordered by the Trial Court and affirmed by it. Mr. Rohtagi has maintained that as the outcome of the further investigation would have a vital bearing on the charge leveled against the respondents, their discharge at this stage is wholly unwarranted

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Considering the gravity of the charge and the disclosures in the investigation already conducted, the order of discharge ought to be interfered with by this Court, he insisted. A

12. As against this, Mr. Gupta has strenuously argued that as the respondents have a right in law to satisfactorily explain the lawful source of income and the assets alleged to be disproportionate before being prosecuted under the Act and it being evident on the face of the records at this stage that the available materials do not substantiate the allegation, the discharge of the respondents is perfectly justified and does not merit any interference. According to the learned Senior Counsel, the investigation into the lawfulness or otherwise of the source(s) of income of Arun and the assets acquired therefrom though is relatable to the explanation furnished by the respondent No.1 to the charge leveled against him, their continuance as accused pending the probe as ordered is indefensible in law. B C

13. The rival assertions have been duly considered. Having regard to the First Information Report, the explanation provided by the respondent No.1, the charge-sheet submitted as well as the indispensability of the scrutiny of the sources of income of Arun and his assets, we are of the view that the Courts below had rightly directed further investigation to verify the genuineness or otherwise of the source(s) of income of Arun and his assets and the bearing thereof, if any, on the charge leveled against the respondents. In this perspective, we are constrained to observe that the High Court having endorsed the direction for further investigation vis-à-vis Arun ought not to have recorded its findings of exoneration of the respondents at this stage. In fact, the discharge of the respondents flies in the face of the direction for further investigation into the affairs of Arun in order to verify the lawfulness or otherwise of his source of income and his assets. In our estimate, in view of the correlation of the explanation provided by the respondent No.1 to the imputation of disproportionate assets and the probe ordered into the affairs of Arun, to say the least, the discharge of the respondents before the completion of the investigation is visibly premature. The finding in particular that the respondent No.1 had proved that he had received the amount only from his son Arun and that the latter had received remuneration for which he had paid TDS under the Income Tax Act and therefore the question of disproportionateness of his assets did not arise, in the face of the pending investigation, amounts to prejudging the charge against the respondents. D E F G

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- A We have thus no hesitation to hold that the order of the High Court, discharging the respondents herein, pending the investigation against Arun, at this stage, is unsustainable in law as well as on facts.

14. The decisions cited on behalf of the respondent No. 1 in *State of M.P. vs. Sheetla Sahai and others* (2009) 8 SCC 617, *Randhir Singh Rana vs. State (Delhi Administration)* (1997) 1 SCC 361 and *Reeta Nag vs. State of West Bengal and others* (2009) 9 SCC 129 are of no avail to him in view of the prima facie evaluation of the materials on record made by the courts below and the concurrent view entertained that in the facts and circumstances of the case, having regard to the gravity of the allegations and the tone and tenor of the explanation of respondent No. 1, further investigation is called for to ascertain the sources of income of Arun and the extent thereof so as to render the assets claimed to be of his, is feasible therefrom. As the investigating agency in the instant case has not questioned the order for further investigation and rather has endorsed the same in order to disinter the correct facts pertaining to the case, the approach adopted by the trial court deserves to be endorsed in the singular facts of the case.

15. We hereby uphold the direction of the courts below for further investigation, as ordered. The Investigating Agency would, bear in mind, the seriousness of the charge and the avowed objectives of the anti-corruption law involved and conduct the investigation as expected of it and submit its report as expeditiously as possible. The appeal is thus allowed. The impugned order directing the discharge of the respondents is hereby set aside and the order of the Trial Court vis-à-vis them is restored. To reiterate, the Investigating Agency would complete the further investigation as ordered at the earliest so as to enable the Trial Court to proceed thereafter in accordance with law. It is made clear that we have not offered any comment on the merits of the case.