

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 849 OF 2001

P. PRABHAVATHY Appellant (s)
VERSUS

STATE OF TAMIL NADU Respondent(s)

(With office report)

WITH APPEAL(CRL) NO. 850 of 2001

(With appln.(s) for substitution of deceased petitioner and exemption from filing O.T. and with office report)

Date: 31/03/2009 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Appellant(s)

Mr. Sushil Kumar, Sr.adv. (NP)
Mr. S. Jaya Kumar, Adv.
Mr. D. Selvam, Adv.
Ms. Purnima Bhat,Adv.

Mr. Rakesh Dwivedi, Sr.Adv.
Mr. S. Jaya Kumar, Adv.
Mr. D. Selvam, adv.
Ms. Gulnar, Adv.
Mr. Ankit Dalela, Adv.
Mr. Anant Prakash, Adv.
Ms. Preetika Dwivedi, Adv.
Mr. Rahul Dua, Adv.
Mr. Shantanu Krishna, Adv.
Mr. Rakesh K. Sharma, adv.

For Respondent(s)

Mr. S. Thananjayan,Adv.

UPON hearing counsel the Court made the following
ORDER

CrI.M.P.No.4365 of 2009

This application has been filed to bring on record the legal
representatives of deceased appellant P. Mala who

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-2-

expired on 14.1.2009. In the application legal representatives are mentioned in para 2. The proposed legal representatives be brought on record substituting the deceased appellant. The substituted legal representatives are already represented by Advocate-on-record. Therefore no fresh notice is required to be served. The application is allowed.

The appeals are allowed to the extent indicated in the signed order.

(Sukhbir Paul Kaur)
Court Master

(Vinod Kulvi)
Court Master

(Signed Order is placed on the file)
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.849 OF 2001

P. PRABHAVATHY

APPELLANT(S)

Versus

STATE OF TAMIL NADU

RESPONDENT(S)

WITH

CRIMINAL APPEAL NO.850 OF 2001

P. MALA

APPELLANT

Versus

STATE OF TAMIL NADU

RESPONDENT

ORDER

Heard learned counsel for the parties.

The application for substitution of deceased appellant in Criminal Appeal No.850 of 2001 is allowed.

Both these arising out of a common judgment and order dated 12.4.2001 passed by the High Court of Judicature at Madras in Criminal Appeal Nos.748 to 752 of 2000 and Criminal Appeal Nos. 882 to 886 of 2000. By the impugned order the High Court has

-2-

acquitted Prabhavathy (A-2), P. Mala (A-3) (since deceased), G. Venkatesan (A-4) and Rajappa (A-5) for an offence punishable under Sections 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 read with Section 109 of the Indian Penal Code. The Trial Court found G. Venkatesan (A-1) guilty for an offence under Section 13(1) (e) read with Section 13(2) of the Prevention of Corruption Act and sentenced him to undergo rigorous imprisonment for one

year and also to pay a fine of Rs.10,000/-. In default thereof, to suffer simple imprisonment for one month. That conviction has attained its finality. So far as A-2 to A-5 are concerned, the Trial Court found them guilty and accordingly, convicted and sentenced them. However, on appeal, the High Court acquitted A-2 to A-5 for the charged offences.

In the present case, we are not concerned with the acquittal of A-4 and A-5.

The Trial Court as well as the High Court while recording the respective orders have ordered the confiscation of the property held by A-1, A-2 and

-3-

A-3. During the pendency of these appeals A-1 is stated to have served out the substantive sentence. P. Mala (A-3) has since died during the pendency of the appeal filed by her and her legal representatives have been brought on record.

In these appeals, we are concerned with the direction contained in the order of the Trial Court as confirmed by the High Court in appeals to the extent of ordering the confiscation of pecuniary resources of the property as reflected in Annexure II to Ex.P.292 to the extent of Rs.77,14,337/- to the State. The order runs as follows :-

"The Trial Court while delivering the judgment in the above case ordered confiscation of pecuniary resources of property in Annexure II to Ex.P.292 to the extent of Rs.77,14,337/- to the state. In-as-much as this Court acquitted the accused 4 and 5, since their individual income has not been investigated, the assets standing in the name of A4 and A5 in Annexure II to Ex.P.92 has to be excluded from the order of confiscation. With the result, the appeals filed in C.A.No.885 and 886 of 2000 alone are allowed and the other appeals are dismissed."

We have heard learned counsel for the parties.

On our independent examination of the orders of the Trial Court as confirmed by the High Court, we find that both the Courts have not given any reason

-4-

for ordering the confiscation of the above said property owned

and possessed by A-2 and A-3 (since deceased) in exercise of the jurisdiction under Section 452 of the Criminal Procedure Code, 1973. We may not be understood to hold that the Trial Court has no power to order the confiscation of the property owned by the beneficiaries out of the money received by the public servant as illegal gratification constituting offence under Section 13(1)(e) of the Act. The Trial Court and the High Court both undisputedly have given detailed reasons in the context of the conviction of the accused in its order, but relating to the confiscation of the property owned and possessed by A-2 and A-3 (deceased), there are no tangible and sustainable reasons recorded in both the orders which caused miscarriage of justice to A-2 and the legal representatives of deceased A-3.

Learned counsel representing the State of Tamil Nadu states that no appeal has been preferred by the State against the acquittal order of A-2 and deceased A-3 though a statement finds mentioned in

-5-

the judgment of this Court dated July 31, 2001 passed in Criminal Appeal No.759 of 2001 preferred by K. Ponnuswamy (A-1) that the State would be preferring the appeal against acquittal of A-2 to A-5.

In the facts and circumstances of the case, we set aside the order of the High Court ordering the confiscation of the property as reflected in Annexure II to Ex.P.292 belonging to A-2 and deceased A-3. We allow these appeals to the extent indicated above. Therefore, the matter is remitted to the High Court for fresh consideration in accordance with law in respect of the confiscation of the property of A-2 and deceased A-3 as detailed in Annexure II to Ex.P.292.

.....J.
(LOKESHWAR SINGH PANTA)

.....J.
(B.SUDERSHAN REDDY)

New Delhi,
March 31, 2009