

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Appeal No.878 of 2014

JUDGMENT:

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This Criminal Appeal is preferred by the appellant/third party aggrieved by the order under Sec.452 Cr.P.C dated 17.06.2014 in Crl.M.P.No.15 of 2014 in C.C.No.24 of 2007 passed by the learned I Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad.

2) The factual matrix of the case is thus:

a) The A.O worked as District Coordinator, Hospital Services, Hindhupur and in C.C.No.24 of 2007, he faced charge under Sec.13(1)(e) r/w 13(2) of Prevention of Corruption Act, 1988 for amassing assets disproportionate to his known source of income. After full-fledged trial, the trial Court in its judgment dated 29.01.2003 found AO guilty of the charge levelled against him and sentenced him to undergo R.I for a period of three(3) years and also to pay a fine of Rs.1,00,000/-. Aggrieved by the judgment, AO filed Criminal Appeal No.127 of 2013 before this High Court and the same is pending.

b) Be that it may, the petitioner/third party is the son of AO. Pending trial, in respect of Item No.7—house site measuring 361 Sq.yards in S.No.850/3 located in Kadiri in Anantapur District, the petitioner/third party contended that the said property belongs to him as it was purchased by him under Ex.P.44—registered sale

deed dated 06.04.2001 from one J.Jai Prakash and it does not belong to his father i.e, AO. The prosecution contended that the property was purchased by AO in the name of his son with ill-gotten money and hence it will form part of disproportionate assets. The trial Court as per orders in CrI.M.P.No.501 of 2010 dated 09.06.2010 released the property documents in favour of petitioner/third party on the condition of his depositing Rs.9,00,000/- towards the value of the property. He obtained property documents on depositing the said amount.

c) Subsequent to the conviction of AO in C.C.No.24 of 2007, the petitioner/ third party filed CrI.M.P.No.15 of 2014 before the trial Court with the submission that the trial court in its judgment, arrived at the value of the disproportionate assets acquired by AO at Rs.28,94,801/- and directed him to deposit the said amount within four (4) months from the date of judgment failing which the State shall take steps to realise the amount by selling the assets of the accused mentioned in Annexure-I which includes the Item No.7— property for whose value the petitioner deposited Rs.9,00,000/-. The trial Court further directed that in case of compliance by depositing the amount by AO or realisation of the amount by disposing of the assets, the property documents shall be returned to him. The petitioner/third party further submitted in his petition that as per the directions of the trial Court, the AO deposited Rs.28,94,801/- on 06.07.2013. As such, he is entitled to take return of Rs.9,00,000/- deposited by him earlier. He thus prayed in CrI.M.P.No.15 of 2014 to return the security amount of

Rs.9,00,000/-.

d) The respondent/State, ACB filed counter and opposed the petition contending that the trial Court in its judgment held that Item No.7 is one among other properties acquired by AO with ill-gotten money and as the petitioner/third party deposited the value of Item No.7 and took back the property documents to gift away to his sister as Pasupukunkuma and as the amount of Rs.9,00,000/- will form part of the disproportionate assets, the said amount no more belongs to him and in view of this and appeal is pending before the High Court, he cannot seek for return of the amount.

e) The trial Court in its impugned order dated 17.06.2014 in Crl.M.P.No.15 of 2014 in C.C.No.24 of 2007, agreed with the contention of respondent/State, ACB and observed that as per the earlier order in Crl.M.P.No.501 of 2010, the petitioner deposited the market value of Item No.7 and took back the property documents for executing a gift deed in favour of his sister as Pasupukunkuma and in its final judgment, since it gave a finding that Item No.7— property does not belong to the petitioner and it was purchased by AO in the name of his son and tacked to the assets of AO, the amount of Rs.9,00,000/- deposited by the petitioner/third party will form part of the disproportionate assets and if the security amount is returned to petitioner as per his request, the property covered by Item No.7 (i.e, its value) will not be available before the Court so as to confiscate to the State if ultimately the appeal before the High Court is dismissed and as the appeal is pending and as the

chances of High Court arriving at a higher figure of disproportionate assets are there, in which case, the AO may be directed to deposit some more amount besides the amount already deposited by the accused, it is not feasible to accede to the request of the petitioner/third party. The trial Court further observed that after the judgment it became *functus officio* and on that ground also, it cannot pass any order.

Hence the instant Criminal Appeal by petitioner/third party.

3) Heard arguments of Sri P.V.Vidya Sagar, learned counsel for appellant/ third party and Sri M.B.Thimma Reddy, learned Special Public Prosecutor (for short "Spl.P.P") for ACB.

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4) The main plank of argument of learned counsel for appellant is that the AO already deposited Rs.28,94,801/- towards the value of disproportionate assets fixed by the trial Court and the amount of Rs.9,00,000/- also will form part of the value of disproportionate assets and therefore, the appellant is entitled to take return of his Rs.9,00,000/- because the State is secured with the entire value of disproportionate assets i.e, Rs.28,94,801/-.

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5) Per contra, the contention of learned Spl.P.P is that the appellant having paid Rs.9,00,000/-, got back the property and gifted to his sister and therefore, he has nothing to do with the Rs.9,00,000/- which is lying in the Court and as the trial Court held

that Item No.7 also is part of the disproportionate assets and as the appeal in respect of the said finding and other findings is pending before the High Court, the appellant/third party cannot seek for return of Rs.9,00,000/- at this stage.

6) In the light of above rival arguments, the point for determination in this appeal is:

“Whether there are merits in this appeal to allow?”

7) **POINT:** Upon perusal of the record and hearing both sides, I find much force and logic in the contention of learned Spl.P.P. The contention of appellant/ third party is that Item No.7 is his own property and it does not belong to his father. Pending trial, subject to the result of the case he deposited Rs.9,00,000/- and took back the property documents and gifted to his sister. The trial Court in Para 49 of its judgment gave a finding that the Item No.7—property was acquired by AO in the name of his son with the ill-gotten money and tacked to the assets of AO. Criminal Appeal No.127 of 2013 filed by AO is now pending in this High Court. At this stage, one cannot predict what would be the finding of the Appellate Court sofaras Item No.7 is concerned. Hence as the matter stands, till a final verdict comes in the appeal, more particularly a finding in favour of the appellant/third party holding that Item No.7—property belongs to him but not AO, the appellant/third party cannot now lay a claim on the amount of Rs.9,00,000/- lying with the Court. If ultimately the Appellate Court gives a finding that the Item No.7 belongs to appellant/third party, he can seek for return of

Rs.9,00,000/-. On the other hand, if the Appellate Court dismisses the appeal and holds that Item No.7 was acquired by AO in the name of appellant/ third party, the appellant/third party cannot lay any claim on the said amount. Therefore, everything depends on the final verdict in the Criminal Appeal No.127 of 2013. So merely because the AO deposited Rs.28,94,301/- towards the value of disproportionate assets, the appellant who is a third party cannot take advantage of the same and seek for return of Rs.9,00,000/- deposited by him. Hence the appeal does not deserve merits.

8) In the result, this Criminal Appeal is dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 22.06.2015
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