

**\* THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

**+ Criminal Petition No.1547 of 2015**

**%31.03.2015**

**Between:**

Mocherla Satyanarayana.

....

Petitioner

AND

The State of Andhra Pradesh,  
Rep. by Standing Counsel-cum-P.P for ACB,  
High Court of Judicature at Hyderabad  
For the States of Telangana and A.P  
and another.

....

Respondents

**! Counsel for Petitioner**

**: Sri K.R. Prabhakar**

**^ Counsel for Respondents  
Reddy,**

**: Sri M.B.Thimma**

**Standing Counsel for ACB**

**< Gist:**

**> Head Note:**

**? Cases referred:**

- 1) (2011) 7 SCC 167
- 2) (1990) 2 SCC 340
- 3) 1994 Supp.(3) SCC 97

**HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

**CRIMINAL PETITION No.1547 of 2015**

**ORDER:**

In this petition filed under Section 482 Cr.P.C.,

petitioner/Accused Officer (AO) seeks to quash the proceedings in C.C.No.16 of 2014 on the file of III Additional District and Sessions Judge-cum-Special Judge for ACB Cases, Visakhapatnam.

2) The factual matrix of the case is thus:

a) The Inspector of Police, ACB, Visakhapatnam registered FIR No.13/RCA-VSP/2010 dated 15.09.2010 against AO for the offence under Section 13(2) r/w 13(1) (e) of Prevention of Corruption Act, 1988 (for short "PC Act") and after investigation laid charge sheet on 23.12.2014. The allegations briefly to the required extent are that:

b) The AO joined in service as Junior Assistant on 02.07.1984 in the Collectorate Office, officiated in different capacities at different places and worked as Sub-Registrar Grade-II at Anandapuram, Visakhapatnam District from 01.10.2007 to 20.08.2010 and ultimately retired on 31.12.2012 on attaining superannuation and thus he was a '*public servant*' as defined under Section 2 (c) of PC Act. During the check period ranging between 02.07.1984 and 20.08.2010 i.e. from the date of his entering into service and the date of his house search conducted in Cr.No.12/RCT-VSP/2010 (trap case) the AO acquired disproportionate assets to a tune of Rs.75,28,684/- which according to the prosecution, could not be explained satisfactorily.

Hence, the charge sheet.

c) It was mentioned in the charge sheet since the AO was

already retired from service on 31.12.2012, no sanction was required for his prosecution which is the subject matter of contention as we come across shortly. Charge sheet was taken cognizance and registered as C.C.No.16 of 2014 by the learned III Additional District and Sessions Judge-cum-Special Judge for ACB cases, Visakhapatnam.

Hence, the instant Criminal Petition to quash the proceedings in C.C.No.16 of 2014 on the following grounds.

3 a) Firstly, earlier the ACB sought to prosecute the petitioner and one Pakki Ganesh—a document writer (A2) in Cr.No.12/RCT-VSP/2010 under Sections 7, 12 and 13(2) r/w 13(1)(d) of PC Act with the allegations that the petitioner solicited bribe of Rs.20,000/- from defacto complainant payable through A2 for registration of a ratification document and on the complaint given by defacto complainant, the ACB police have arranged trap on 20.08.2010 in the Sub-Registrar Office of the petitioner and successfully laid trap when the petitioner (AO) accepted bribe through A2. As a part of investigation, on 20.08.2010 the DSP, ACB, Visakhapatnam conducted search of house of petitioner/AO and also the bank locker and subsequently registered Cr.No.13/RCA-VSP/2010 against the petitioner on the allegation of acquiring disproportionate assets. Be that it may, the Director General, ACB submitted a comprehensive final report No.140/RCT/WVP/2010-S11 dated 10.02.2011 to the Principal Secretary to Government, Hyderabad through Vigilance Commissioner, Hyderabad and sought for sanction under Section 19(1)(b) of PC Act for

prosecution of petitioner and the Government after careful consideration have rejected sanction and instead directed the petitioner to place his defence before the Tribunal for Disciplinary Proceedings vide Memo No.39440/Vig.VI (1)/2010-2, dated 12.03.2012 and requested the Director General, ACB to furnish relevant records and material to the Tribunal for Disciplinary Proceedings to conduct enquiry on the trap case. However, not leaving the matter there, the Director General, ACB sought for sanction repeatedly on two more occasions but the Government staunchly declined to grant sanction reiterating its earlier stand vide its orders in Memo No.39440/Vig.VI(1) 2010-5 dated 04.02.2013 and Memo No.39440/Vig.VI(1)/2010-6 dated 01.03.2014. In spite of the categorical refusal by the Government, the ACB filed charge sheet in C.C.No.16 of 2014 on 23.12.2014 with a strange submission that *no sanction was necessary* since the petitioner/AO retired from service on 31.12.2012 itself. When the sanction was refused by the Government while public servant was in service, the ACB cannot file charge sheet after his retirement on the pretext that no sanction was needed which is opposed to process of law. Hence the proceedings in C.C.No.16 of 2014 are vitiated by abuse of process of law.

b) Secondly, the ACB filed charge sheet on 23.12.2014 with an inordinate delay of more than four years though the petitioner submitted his explanation way back on 14.04.2011 to the statutory notice dated 31.01.2011 and also made representation on 22.05.2012 and another representation on

01.12.2014 which were all long prior to filing of charge sheet and in view of inordinate delay the fundamental right of the petitioner to the speedy trial was infringed.

c) Thirdly, there is no basis to charge sheet the petitioner/AO since the ACB tacked the properties of wife, brothers-in-law and son of the AO to his assets and bolstered them to create a false case which was clearly explained by the petitioner in his explanation dated 14.04.2011 and also in his representations dated 22.05.2012 and 01.05.2014 and therefore, continuation of proceedings is devoid of merits besides being abuse of process of law.

4) Learned Standing Counsel for ACB filed counter and opposed the petition averments.

5 a) Seeking quashment, Sri S.Ramchander Rao, learned Senior Counsel for Mr.K.R.Prabhakar, learned counsel for petitioner firstly argued that continuation of criminal proceedings are nothing but sheer abuse of process of law besides lacking merits on facts inasmuch as not less than on three occasions, the Government have categorically refused to accord sanction for prosecution under 19 of PC Act which is evident from the final report dated 10.02.2011 submitted by Director General, ACB to the Principal Secretary to Government, through Vigilance Commissioner, Hyderabad and refusal proceedings of the Government dated 12.03.2012, 04.02.2013 and 01.03.2014. Reading out the letter of request and refusals, he expatiated that the offences covered by

Cr.No.12/RCT-VSP/2010 [offences under Sections 7, 12, 13(2) r/w 13(1)(d)] and Cr.No.13/RCA-VSP/2010 [offences under Sections 13(2) r/w 13(1)(e)] are integrated offences and hence, succinctly narrating both offences in the final report the Director General, ACB sought for sanction for prosecuting the petitioner in both the cases, but the Government on the first occasion declined to accord sanction and held that the petitioner/AO shall be placed on defence before the Tribunal for Disciplinary Proceedings and on second and third occasions, refused to budge and reconsider its earlier order. In view of categorical refusal by the Government to accord sanction, like the proceedings in RCT/12, the proceedings in RCA/13 (C.C.No.16/2014) also have to be closed by the ACB. However, in sheer violation of law and procedure, it filed charge sheet in RCA/13 (C.C.No.16/2014) with an untenable claim that no sanction is required for prosecuting the petitioner as he retired from service on 31.12.2012. He argued that what could not be done without sanction while the petitioner was in harness, cannot be done by the prosecution after his superannuation on the mischievous pretext of his retirement. Such a practice was severely deprecated by the Honourable Apex Court in its judgment reported in ***Chittaranjan Das v. State of Orissa***<sup>[1]</sup>.

b) Secondly, learned senior counsel argued that in this case prosecution caused inordinate delay in filing the charge sheet though the petitioner/AO promptly submitted his explanation on 14.04.2011 to the statutory notice dated 31.01.2011 and also

made subsequent representations on 22.05.2012 and 01.12.2014 to drop the proceedings. In view of extraordinary and unexplained delay caused by the prosecuting agency, the fundamental right of the petitioner to speedy trial was grossly violated and hence on this ground also proceedings are liable to be quashed. On this aspect he relied upon the decisions of the Apex Court reported in ***State of A.P. v. P.V.Pavithran***<sup>[2]</sup> and in ***Biswanath Prasad Singh v. State of Bihar***<sup>[3]</sup>.

c) Thirdly, learned senior counsel argued that there is no factual basis to lay charge sheet since the prosecution tacked the properties of wife, brothers-in-law and son of the accused to his assets which was clearly explained by the petitioner in his explanation. Omitting them, there will be no asset worth name to term as '*disproportionate asset*'. On this ground also he sought for quashment of proceedings.

d) Additionally, learned senior counsel submitted that in the counter the respondent/ACB made false averments as if earlier it has not sought for sanction in the instant case and for such false averments the respondent may be taken to task for contempt. He thus prayed to allow the petition.

6 a) In oppugnation, Sri M.B.Thimma Reddy, learned Special Public Prosecutor firstly argued that earlier Director General, ACB while filing final report sought for sanction to prosecute the petitioner/AO only in respect of trap case covered by RCT/12 which was refused by the Government and subsequently also twice he requested the Government to reconsider its decision,

but the Government refused to budge and so what was importuned by the ACB and refused by the Government was the sanction to prosecute the petitioner/AO in the trap case but the ACB never requested the Government to prosecute him in disproportionate assets case. He vehemently argued that the proceedings of Government would amply demonstrate this aspect. Since petitioner/AO retired from service by the time the investigation was completed in disproportionate case, ACB filed charge sheet mentioning that there was no need for sanction which act of ACB is perfectly valid under law. He thus argued that first point raised by the petitioner is not maintainable and cited decision will have no application.

b) Secondly, arguing on the aspect of delay, he submitted that there was some delay in AO submitting his explanation and thereafter, prosecution has to secure information from different authorities with regard to his assets, income and expenditure to prepare balance sheet and to come to a conclusion and since it being a disproportionate assets case the delay is inevitable but not wanton. He submitted that accused cannot plead any prejudice in view of the nature of the case and delay cannot be taken as ground for quashing the proceedings. He submitted that in fact in the decisions cited by the petitioner, the same aspect was discussed.

c) Thirdly, he argued that whether the petitioner could satisfactorily explain about his assets, income and expenditure or not can be decided only after trial but not at this juncture. He thus prayed to dismiss the petition.

7) In the light of above rival arguments, the point for determination is:

*“Whether there are merits in the application to allow?”*

8 a) **POINT:** The first ground raised by the petitioner is with regard to refusal of sanction by the Government thrice. In this context, I perused the copies of letter of Director General, ACB dated 10.02.2011 and the proceedings of the Government dated 12.03.2012, 04.02.2013 and 01.03.2014 purported to be the refusal of sanction as filed by the petitioner along with criminal petition. A close scrutiny of these documents, it must be said, would reveal that the sanction earlier sought for by the Director General, ACB was in respect of the trap case covered by Cr.No.12/RCT-VSP/2010 but not in respect of disproportionate assets case covered by Cr.No.13/RCA-VSP/2010. No deep exploration or excavation is necessary as this fact is evident from the aforementioned documents. If one needs clarity, it can be stated that the letter of request of Director General, ACB is couched from Pages 36 to 65 of the material papers submitted by the petitioner. His letter is divided into certain headings whereunder he clearly narrated the facts which led to one Pothivada Srinu to give complaint against the petitioner for his soliciting bribe and DSP, ACB registering FIR, conducting trap proceedings and laying trap etc. in para-14 of his letter under the head Findings and Recommendations, he mentioned thus:

**“14. FINDINGS AND RECOMMENDATIONS:**

The oral and documentary evidence discussed so far is sufficient to prove the guilt of offence of Sri M.Satyanarayana, SRO, Anandapuram

(Accused Officer-1) that on 20.08.2010 at about 11.40 hours the AO1 demanded Rs.20,000/- as bribe from the complainant and accepted through A2, for doing official favour to register a ratification document pertaining to a sale document No.755/2010, 28.04.2010 of SRO Anandapuram. Hence, AO-1 is liable for prosecution under Sections 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988.

The above oral and documentary evidence is sufficient to prove that Sri P.Ganesh, Document Writer (A-2) on 19.08.2010 has insisted P.Srinu of Vemulavalasa (v) Anandapuram Mandal to pay the demanded bribe of Rs.20,000/- to M.Satyanarayana, SRO, Anandapuram who demanded the same to register the ratification document pertaining to a sale document No.755/2010 of SRO, Anandapuram. On 20.08.2010 at about 11.40 hours on the instructions of Sri M.Satyanarayana, SRO, Anandapuram has accepted bribe amount of Rs.20,000/- for the above registration work. Thus, A2 has abetted Sri M.Satyanarayana, SRO, Anandapuram in commission of the above offence. Hence A2 is liable for prosecution under Section 12 of Prevention of Corruption Act, 1988. A2 is a private person hence no sanction order is required.

The AO did not file Annual Property Returns relating to the years 1985 to 2003, 2008 and 2009, thereby violated Rule 9(7) of APCS (Conduct) Rules, 1964. Hence Departmental Action may be initiated against AO for major punishment.”

b) After that, in para-15 he gave an abstract of findings and recommendations and then made his request as follows:

“In view of the findings and recommendations mentioned above, it is requested:

- a) To issue speaking order for sanction of prosecution as required u/s 19(1)(b) of the PC Act, 1988 for which a model sanction order is enclosed herewith to guidance.
- b) To take departmental action under Rule 9(7) of APCS (Conduct) Rules, 1964 for which Draft Articles of Charge etc. are enclosed herewith for guidance.

Yours faithfully,  
Sd. x x x x x”

c) From the above, it is not difficult to delineate that the sanction was sought for prosecuting the petitioner/accused and A2 in the trap case alone. No doubt, in pages-51 and 52, the Director General incidentally mentioned about the house

search of the petitioner/accused on 20.08.2010, search of the locker said to be in the name of M.Shiva Prasad s/o AO in Traaviss Safe De Lockers Private Limited, Dwarakanagar, First Lane, Visakhapatnam and finding an amount of Rs.19,72,000/- and registration of Cr.No.13/RCA-VSP/2010 against the petitioner/AO for acquisition of disproportionate assets etc. facts. But however, such mentioning is only in his attempt to narrate the sequence of the events but not seeking sanction for prosecution of petitioner/AO in disproportionate assets case. Further, investigation was not completed by then, in the disproportionate assets case.

d) Be that it may, the proceedings dated 12.03.2012 of the Principal Secretary to Government which can be stated as first refusal to accord sanction reads thus:

“ Whereas Sri M.Satyanarayana, Sub-Registrar, Anandapuram, was trapped on 20.08.2010 by the Anti Corruption Bureau, when he demanded and accepted a bribe of Rs.20,000/- from the complainant, for doing official favour. Government therefore have decided to entrust the case to the Tribunal for Disciplinary Proceedings for detailed and regular inquiry into the allegation of demand and acceptance of illegal gratification.

2. Government under Rule 3 of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1989 hereby order that Sri M.Satyanarayana, Sub-Registrar, Anandapuram be placed on his defence before the Tribunal for Disciplinary Proceedings, on the Trap Case. The Tribunal for Disciplinary Proceedings shall conduct enquiry as per rules and submit its report to Government within the stipulated period.

3. The Director General, Anti Corruption Bureau shall furnish all relevant records and material to the Tribunal for Disciplinary proceedings to conduct enquiry on the trap case.”

The above proceedings would clearly disclose that Government considered the request of Director General, ACB

in respect of trap case and refused to accord sanction and instead directed the petitioner/AO to appear before Tribunal for Disciplinary Proceedings on the trap case. There is no whisper in the above proceedings about the disproportionate assets case.

e) When we seek further clarification, we will find in the proceedings dated 04.02.2013 of Principal Secretary to Government in para—4 which reads thus:

“4. Government have examined the case in detail and again decided to entrust the case to the Tribunal for Disciplinary Proceedings for detailed and regular enquiry on the following points raised by the Accused Officer:

1. The amount of bribe was not recovered from the Accused Officer and recovered from a private person and he also denied that the amount was taken on his behalf.
2. The complainant has a criminal back ground and he was not a party of the document and that there is no complaint from the parties of the document.”

f) The above would show that the petitioner/accused raised some points on the validity of prosecution in trap case and considering the same, the Government decided to entrust the case to Tribunal for Disciplinary Proceedings. Therefore, the ACB, AO and Government were clear on the aspect that sanction was sought for in respect of trap case only. So, from the above documents, there is no demur that what was sought for by the ACB and refused by the Government was sanction for prosecution of petitioner/AO in a trap case but not in disproportionate assets case. It is needless to emphasise that soliciting bribe and acquiring assets disproportionate to the known sources of income by a public servant are two different

and distinct offences under PC Act. Therefore, one should not be mistaken that refusal by the Government for prosecution in trap case as refusal for prosecution in disproportionate case also.

g) The cited decision in **Chittaranjan Das's** case (1 supra) can be distinguished on facts. In that case, the Vigilance Department sought for sanction of the Government of Orissa for the prosecution of a public servant in a disproportionate assets case while he was in service and sanction was refused by the Government vide its letter dated 13.05.1997 and later the public servant was superannuated on 30.06.1997. Again Vigilance Department wrote a letter dated 25.03.1998 to Government to reconsider its earlier order but the State Government vide its letter dated 31.07.1998 declined to grant sanction. Despite the same the Vigilance Department filed a charge sheet on 10.09.1998 against the retired public servant for holding disproportionate assets. In that context the Honourable Apex Court while deprecating the action of the Vigilance Department held thus:

*“13. Here in the present case while the appellant was in service sanction sought for his prosecution was declined by the State Government. Vigilance Department did not challenge the same and allowed the appellant to retire from service. After the retirement, Vigilance Department requested the State Government to reconsider its decision, which was not only refused but the State Government while doing so clearly observed that no prima-facie case of disproportionate assets against the appellant is made out. Notwithstanding that Vigilance Department chose to file charge-sheet after the retirement of the appellant and on that Special Judge had taken cognizance and issued process.*

*14. We are of the opinion that in a case in which sanction sought is*

*refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after the retirement of Public Servant. Any other view will render the protection illusory. Situation may be different when sanction is refused by the competent authority after the retirement of the public servant as in that case sanction is not at all necessary and any exercise in this regard would be action in futility.”*

So, the facts in the above case would show that during the service and also after retirement of the public servant, the Vigilance Department sought for sanction in respect of the same offence i.e. acquisition of disproportionate assets and sanction was twice refused and in that context it was observed by the Apex Court that Vigilance Department cannot file charge sheet on the pretext no sanction required since he was retired by the time of filing charge sheet. The facts in the present case are quite different, in the sense that sanction earlier was sought for a different offence than for which the charge sheet filed subsequently. So, the first ground raised by the petitioner does not carry merit.

9) Then, the second ground raised is concerned, it is true that FIR in Cr.No.13/RCA-VSP/2010 was registered on 15.09.2010 and charge sheet was filed on 23.12.2014 after a lapse of four years. The petitioner/AO, it appears, submitted his written explanation to the notice of Inspector, ACB on 14.04.2011 itself and also submitted subsequent representations on 22.05.2012 and 01.12.2014. In this backdrop, the point is whether the proceedings can be quashed on the sole ground that there is inordinate delay in filing the charge

sheet. It should be noted that the length of investigation is directly proportional to the gravity of offence and its associated facts. When the offence is a single incident and witnesses are limited, the investigating agency is expected to complete its investigation within a reasonable and short duration. However, when the offence is a grave one comprising several incidents spreading over a length of period and including the acts of several accused situated at different places and information relating to their culpable acts are to be gathered from different agencies, it will not be apposite to ordain a fixed time frame for completion of investigation in such type of cases.

10) In **Pavithran's** case (2 supra) Apex Court reiterated the same point thus:

*"7. There is no denying the fact that a lethargic and lackadaisical manner of investigation over a prolonged period makes an accused in a criminal proceeding to live every moment under extreme emotional and mental stress and strain and to remain always under a fear psychosis. Therefore, it is imperative that if investigation of a criminal proceeding staggers on with tardy pace due to the indolence or inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, the Court as the protector of the right and personal liberty of the citizen will step in and resort to the drastic remedy of quashing further proceedings in such investigation.*

*8. While so, there are offences of grave magnitude such as diabolical crimes of conspiracy or clandestine crimes committed by members of the underworld with their tentacles spread over various parts of the country or even abroad. The very nature of such offences would necessarily involve considerable time for unearthing the crimes and bringing the culprits to book. Therefore, it is not possible to formulate inflexible guidelines or rigid principles of uniform application for speedy investigation or to stipulate any arbitrary period of limitation within which investigation in a criminal*

*case should be completed.*

*9. The determination of the question whether the accused has been deprived of a fair trial on account of delayed or protracted investigation would also, therefore, depend on various factors including whether such delay was unreasonably long or caused deliberately or intentionally to hamper the defence of the accused or whether such delay was inevitable in the nature of things or whether it was due to the dilatory tactics adopted by the accused. The Court, in addition, has to consider whether such delay on the part of the investigating agency has caused grave prejudice or disadvantage to the accused.*

*10. The assessment of the above factors necessarily vary from case to case. It would, therefore, follow that no general and wide proposition of law can be formulated that wherever there is inordinate delay on the part of the investigating agency in completing the investigation, such delay, ipso facto, would provide ground for quashing the First Information Report or the proceedings arising therefrom.*

*x x x x*

*12. It follows from the above observations that no general and wide proposition of law can be formulated that wherever there is any inordinate delay on the part of the investigating agency in completing the investigation, such delay is a ground to quash the F.I.R.”*

So, from the above expression of Honourable Apex Court it is clear that mere delay in investigation cannot be a sole ground to quash the FIR unless delay is without any justification and it deprives the fair trial to the accused.

11) Sofaras **Biswanath Prasad Singh**'s case (3 supra) is concerned, it is a case of misappropriation of funds. In that case FIR was filed on 10.12.1977 and charge sheet was filed on 05.02.1983 and charges were framed on 25.04.1989. Taking all these facts into consideration the prosecution was quashed in the case. No specific ratio was laid down.

12) Reverting to the instant case, it is a disproportionate assets case. No doubt the accused submitted his explanation within a reasonable time but investigation continued for four years. Having regard to the nature of the case, the investigating agency in order to prepare a balance sheet relating to the assets, income and expenditure of the accused has to consult different agencies to get information and sieve the same and then prepare the ultimate balance sheet. Further, in this case the check period spreads over 26 years from 1984 to 2010. So, the investigating agency has to collect relevant information spreading over the above long period to assess the guilt or innocence of the accused. The completion of investigation in a case of this nature largely depends upon the cooperation and coordination extended by not only the accused but also the other witnesses, different agencies and organizations. So, in my considered view, mere delay in investigation cannot be taken as a sole ground to quash the proceedings. Except harping that his right to fair trial is affected the petitioner could not put-forth how the delay has prejudiced his defence. Therefore, this argument cannot be upheld.

13) The third ground projected is concerned, whether the prosecution correctly assessed the assets, income and expenditure of the accused to come to a conclusion that he holds disproportionate assets or not and whether the accused could successfully shown his explanation that assets of third parties were tacked to him and that he did not hold disproportionate assets, should be tested on the anvil of trial

and decided. Therefore, basing on the explanation of the petitioner/AO it cannot be decided either way in this petition. So, at the outset the grounds raised by the petitioner/AO are not strong enough to quash the proceedings.

14) Then, the argument of the petitioner that ACB in its counter made false averments is concerned, since the record shows that the prosecution earlier did not seek for sanction in disproportionate assets case, I find no falsity in the counter averments.

15) In the result, this Criminal Petition is dismissed.

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

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**U. DURGA PRASAD RAO, J**

Date: 31.03.2015

**Note:** L.R. Copy to be marked Yes /No

Murthy

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[\[1\]](#) (2011) 7 SCC 167

[\[2\]](#) (1990) 2 SCC 340

[\[3\]](#) 1994 Supp.(3) SCC 97