HON'BLE SMT. JUSTICE ANIS

CRIMINAL REVISION CASE No. 59 OF 2015

ORDER:

The Criminal Revision Case is filed challenging the order dated 02.01.2015 passed in Crl.M.P.No.593 of 2014 in C.C.No.15 of 2012, wherein the learned Principal Special Judge for SPE & ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad, dismissed the petition on the ground that there is a strong *prima facie* case against the revision petitioner herein for framing the charges for the offences under the provisions of the Prevention of Corruption Act, 1988 (for short 'P.C. Act') and also under the provisions of the Indian Penal Code, 1860 (for short 'IPC') as alleged in the charge sheet by the prosecution.

2. The learned counsel for the revision petitioner argued that Central Bureau of Investigation (CBI), Hyderabad registered a case in Crime in Rc.No.17(A)/2009-CBI, Hyderabad, in pursuance of Notification dated 01.12.2009, issued by the Central Government with the consent of the State of A.P., wherein an enquiry/investigation was permitted regarding illegal mining and several other activities and other related offences of M/s.Obulapuram Mining Company (P) Ltd., and M/s.Bellary Iron Ore (P) Ltd. and all other related offences in the course of same transaction and after completion of investigation, charge sheet was filed. It is further argued that during the course of investigation, on credible information, the CBI authorities unearthed the transfer of huge amount which were part of illegal earned money from illegal mining to Hyderabad which were deposited in the lockers of the Corporation Bank, Ashok nagar Branch, Hyderabad and during the course of investigation, it was come to the light that some judicial officers were also involved in receipt of money and that the CBI

continued its investigation after taking oral permission of the Chief Justice. It is also argued that the CBI collected certain evidence against the judicial officers and placed the matter before the High Court and on 07.06.2012, the High Court permitted to take steps for issuing a notification under Section 6 of the Delhi Police Establishment Act so as to enable the CBI to register a case and investigate and in the said order, it was also stated that the CBI may move the ACB by way of complaint for registering a case under P.C. Act and IPC. It is also argued that the High Court passed orders on 07.06.2012 on the administrative side and the same will not empower the CBI to transfer the investigation to the ACB without any notification from the Central Government to empower the ACB to investigate the present matter against the petitioner. It is also argued that the CBI ought to have completed the investigation against the petitioner and filed the supplementary charge sheet but not empowered to transfer the case to the other investigating agency, therefore the case investigated by the ACB is without jurisdiction and the transfer of a case for investigation from CBI to ACB is illegal and all other subsequent proceedings are without jurisdiction. The learned counsel also argued that the trial Court erred in law while holding that there is a *prima facie* case while ignoring the fact that ACB is lacking jurisdiction either to investigate the case or to file charge sheet against the petitioner.

The learned counsel relied on a case-law reported in *Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat and others*[1], wherein the Hon'ble Supreme Court held at Para 56 as follows:

> "The facts of the instant case demonstrate that a presiding officer of a court may be arrested and humiliated on flimsy and manufactured charges which could affect the administration of justice. In order to avoid any such situation in future, we consider it necessary to lay down guidelines which should be followed in the case of arrest and detention of a Judicial Officer. No person whatever his rank, or designation may be, is, above law and he

must face the penal consequences of infraction of criminal law. A Magistrate, Judge or any other Judicial Officer is liable to criminal prosecution for an offence like any other citizen but in view of the paramount necessity of preserving the independence of judiciary and at the same time ensuring that infractions of law are properly investigated, we think that the following guidelines should be followed.

(A) If a judicial officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.

(B) If facts and circumstances necessitate the immediate arrest of a judicial officer of the subordinate judiciary, a technical or formal arrest may be effected.

(C) The facts of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court.

(D)The Judicial Officer so arrested shall not be taken to a police station, without the prior order or directions of the District & Sessions Judge of the concerned District, if available.

(E) Immediate facilities shall be provided to the Judicial Officer of communication with his family members, legal advisers and Judicial Officers, including the District & Sessions Judge.

(F) No statement of a Judicial Officer who is under arrest be recorded nor any panchnama be drawn up nor any medical tests be conducted except in the presence of the Legal Adviser of the Judicial Officer concerned or another Judicial Office of equal or higher rank, if available.

(G) There should be no handcuffing of a Judicial Officer. If, however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be over-powered and handcuffed. In such case, immediate report shall be made to the District & Sessions Judge concerned and also to the Chief Justice of the High Court. But the burden would be on the Police to establish necessity for effecting physical arrest and handcuffing the Judicial Officer and if it be established that the physical arrest and handcuffing of the Judicial Officer was unjustified, the Police Officers causing or responsible for such arrest and hand cuffing would be guilty of misconduct and would also be personally liable for compensation and/or damages as may be summarily determined by the High Court."

The learned counsel also relied on a case-law reported in *Divine Retreat Centre Vs. State of Kerala and others*[2], wherein the Hon'ble Supreme Court held at Para 33 to 35 and 43 as follows:

“The sum and substance of the above deliberation and analysis of the law cited leads us to an irresistible conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions under Chapter XII of the Code. However, we may hasten to add that unfettered discretion does not mean any unaccountable or unlimited discretion and act according to one's own choice. The power to investigate must be exercised strictly on the condition of which that power is granted by the Code itself.

In our view, the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions addressed to a named Judge. Such communications cannot be converted into suo motu proceedings for setting the law in motion. Neither are the accused nor the complainant or informant entitled to choose their own investigating agency to investigate a crime in which they may be interested.

It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an investigating officer mala fide. That power is to be exercised in the rarest of the rare case where a clear case of abuse of power and non compliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code.

It is evident from Sections 154, 156 and 157 of the Code that even a police officer can act on the basis of information received or otherwise and proceed to investigate provided he has reason to suspect the commission of a cognizable offence which he is empowered to investigate under Section 156 Code of Criminal Procedure. If the essential requirements of the penal provisions are not prima facie disclosed by a first information report and the police officer has no reason to suspect the commission of a cognizable offence, no investigation can be undertaken by him based on the information received or otherwise.

Can the High Court set the law in motion against the named and unnamed individuals' based on the information received by it without recording the reasons that the information received by it prima facie disclosed the commission of a cognizable offence? Setting criminal law in motion is fraught with serious consequences, which cannot lightly be undertaken by the High

> Court even in exercise of its jurisdiction under Article 226 of the Constitution of India. In our view, the High Court in exercise of its whatsoever jurisdiction cannot direct investigation by constituting a special investigation team on the strength of anonymous petitions. The High Courts cannot be converted into station houses."

The learned counsel also relied on a case-law reported in *Registrar (Vigilance), High Court of A.P., Hyderabad and another Vs. Station House Officer, Police Station Annasagar, Mahaboobnagar District and others*[3], wherein this Court held at Para 10 and 15 to 17 as follows:

> "The learned Counsel would contend that the District Judge performed a judicial function at the behest of the High Court and in that view of the matter, he should not have been directed to be interrogated by the police authority. The learned Counsel urged that having regard to the provisions of Article 235 of the Constitution of India, the direction of the High Court was binding on the District Judge and as such in that view of the matter, the doctrine of judicial independence as envisaged under Article 50 of the Constitution demands that he should not have been directed to submit himself to any investigation. The learned Counsel would contend that the provisions of Section 121 of the Evidence Act must be interpreted in the light of Article 235 of the Constitution of India. According to the learned Counsel, the investigation of a Judicial Officer in such matters is not only protected under the Judicial Officers' Protection Act, but also under the Contempt of Courts Act.
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> The only question which therefore arises for consideration is whether Sri T. Ramachandra Reddy acted in his capacity as a Judge or Magistrate. The answer to the said question in the considered opinion of this Court must be rendered in negative. As the complaint was made by a citizen of India suspecting involvement of a higher authority, that petition at best could be treated to be a PIL. It was not so treated and the Chief Justice presumably in his capacity as Patron- in-Chief of the Stale Legal Services Authority under the Legal Services Authorities Act, 1987, while forwarding the same to the Member-Secretary, directed him to call for a report from the District Judge. The Member-Secretary in his turn without making any enquiry himself directed the District Judge to conduct the enquiry. Whatever was done by the District Judge therefore was not in his judicial capacity, but in terms of the direction issued by the authorities of the A.P. State Legal Services Authority.
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> Would in such a case, the protection be extended to the

learned Judge available under Section 121 of the Evidence Act? A Judge is not compelled to answer any question as to his own conduct in Court as a Judge or Magistrate or as to anything which came to his knowledge in Court as Judge or Magistrate, but he may be examined as to other matters which occurred in his presence while he was so acting. The protection under Section 121 of the Evidence Act therefore is only to the conduct of a Judge. But if something happens in his presence in the Court, he may be examined.

It is unfortunate that this Court directed for making a discreet enquiry on the allegations made by a person as regard to involvement of another. While exercising administrative discretion under Article 235 of the Constitution of India, this Court could not have done so. No investigation as regards the culpability or otherwise of an offender could have been the subject-matter of investigation by this Court. The Member-Secretary, A.P. State Legal Services Authority and for that matter, the District Judge, Mahabubnagar therefore were not acting either in law or on fact pursuant to or in furtherance of this Court's power of superintendence over the subordinate judiciary as adumbrated under Article 235 of the Constitution of India. The Chief Justice might have exercised his jurisdiction as Patron-in-Chief of the State Legal Services Authority in terms of the provisions of the Legal Services Authority Act and not in his jurisdiction under Article 235 of the Constitution. The investigation made by a Judicial Officer pursuant to the direction issued by the Patron-in-Chief or the Member-Secretary, Legal Services Authority thus was made in purported exercise of the power under a statute, but not in terms of Article 235 of the Constitution. The District Judge, Mahabubnagar while complying with the said directions, was not acting as a Judge or a Judicial Officer. No direction as such was issued to the District Judge on the judicial side of this Court as wrongly recorded in one of the Minutes.

The learned counsel also relied on a case-law reported in *Vinay Tyagi Vs. Irshad Ali @ Deepak and others*[4], wherein the Hon'ble Supreme Court held at Para 12 as follows:

"The criminal investigative machinery is set into motion by lodging of a First Information Report in relation to commission of a cognizable offence. Such report may be made orally, in writing or through any means by an officer in charge of a police station. Such officer is required to reduce the same into writing, read the same to the informant and wherever the person reporting is present, the same shall be signed by such person or the person receiving such information in accordance with the provisions of Section 154 of the Code. A police officer can conduct investigation in any cognizable

> case without the orders of the Magistrate. He shall conduct such investigation in accordance with the provisions of Chapter XIII, i.e., in accordance with Sections 177 to 189 of the Code. Where information as contemplated in law is received by an investigating officer and he has reasons to believe that an offence has been committed, which he is empowered to investigate, then he shall forthwith send a report of the same to the Magistrate and proceed to the spot to investigate the facts and circumstances of the case and take appropriate measures for discovery and arrest of the offender. Every report under Section 157 shall be submitted to the Magistrate in terms of Section 158 of the Code upon which the Magistrate may direct an investigation or may straight away proceed himself or depute some other magistrate subordinate to him to hold an inquiry and to dispose of the case in accordance with the provisions of the Code. It needs to be recorded here that the proceedings recorded by a police officer cannot be called into question at any stage on the ground that he was not empowered to conduct such investigation."

The learned counsel for the petitioner finally prayed the Court to set aside the order dated 02.01.2015 passed in Crl.M.P.No.593 of 2014 in C.C.No.15 of 2012.

3. On the other hand, the learned Public Prosecutor argued that the trial Court followed the due process of law and has given reasonable opportunity to the petitioner to show the grounds to allow the petition, but the petitioner failed to put forth valid grounds in support of his contentions, therefore the trial Court rightly dismissed the petition. It is also argued that the CBI in due course of investigation gathered some evidence regarding involvement of certain judicial officers in granting bail to Gali Janardhan Reddy (accused in Crime No.17(A)/2009-CBI-HYD of CBI) and brought to the notice of Chief Justice of AP High Court and on 31.05.2012 and the High Court vide its proceedings dated 07.06.2012 directed the CBI to take up appropriate steps for issuing a notification so as to enable the CBI to register a case and investigate and in the said order, the High Court also held that the CBI may move the ACB by way of complaint for registering the case under P.C. Act and IPC. It is also argued that the CBI after collecting some evidence, transferred

the case to ACB, therefore taking up the investigation by the ACB is not contrary to any provision of law, therefore the transfer of the case to ACB by the CBI for further investigation is not without any jurisdiction. It is further argued that the petitioner already filed W.P.No.28224 of 2013 by raising the same contentions and in that Writ Petition, no interim orders were passed and it is still pending, and without pursuing the Writ Petition, the petitioner filed the present Criminal Petition for the same relief. It is also argued that the petitioner filed Criminal Petition No.8393 of 2012 before this Court and the said petition was dismissed vide orders dated 26.12.2012 rejecting to quash the proceedings in C.C.No.15 of 2012 by holding that *prima facie* offences are made out against the petitioner. It is also argued that at the time of framing charges, the petitioner is filing the petitions of this nature to prolong the trial. It is further argued that under Section 19(3)(c) of the P.C.Act, the petitioner is not entitled for any interlocutory orders or stay of the proceedings and finally prayed the Court to dismiss the Criminal Petition.

4. Now, the point for determination is –

> Whether the petitioner is entitled to set aside the order dated 02.01.2015 passed in Crl.M.P.No.593 of 2014 in C.C.No.15 of 2012?

5. **<u>Point</u>**:

The contention of the respondent is that the petitioner along with some other accused in C.C.No.15 of 2012 made hectic efforts to lure the judges to pass favourable orders in a bail application of Gali Janardhan Reddy in order to grant bail to him by offering lucrative sum to the judges. In that process, the petitioner contacted other judicial officer to chalk out their plan of action to execute the criminal conspiracy. In that regard, the Investigating Officer unearthed the said conspiracy and recovered huge amount from the other judge by name T.Pattabhi Rama Rao who accepted the huge amount and granted bail to Gali Janardhan Reddy. The prosecution has placed the *prima* facie material before the trial Court to show the active involvement of the petitioner along with other accused.

6. The main contention of the petitioner is that the CBI should have been investigated the case and after investigation should have filed the additional charge sheet under Section 173(8) Cr.P.C., but transferring the case to ACB for investigation is without any jurisdiction and there are no judicial directions by the Court for transferring the investigation from CBI to ACB and whatever orders passed by the High Court is on administration side, therefore the said transfer of the case is illegal and other proceedings subsequent to transfer are without jurisdiction and prayed the Court to admit and grant stay of the proceedings in C.C.No.15 of 2012. However, the aforesaid contention of the learned counsel for the revision petitioner cannot be accepted as this Court on administrative side clearly passed orders that the CBI may move the ACB, Government of A.P., by way of a complaint for registering a case under appropriate provisions of the P.C. Act and IPC. Subsequently, on 09.07.2012 this Court permitted the ACB to proceed in accordance with law in registering a case and investigating the matter against the petitioner and others. Further, if the ACB registered the case against the petitioner, there is nothing irregular or against the spirit of the law as the CBI has embargo to take up the investigation without obtaining permission or notification, the case was handed over to the ACB. Therefore, there is absolutely no irregularity in the action of the CBI in entrusting the investigation to the ACB.

7. The learned Public Prosecutor representing the respondent argued that there is no provision in the Code of Criminal Procedure to say that CBI has no jurisdiction or authority for filing of the complaint to

investigate the case by the State ACB under the provisions of P.C. Act. On the other hand, the case-law cited by the learned counsel for the petitioner in *Delhi Judicial Service Association* (1 supra) is concerned, some guidelines were given that when a presiding officer of a Court is to be arrested, but this case-law is not helpful and not relevant to decide the present issue. In *Divine Retreat Centre* (2 supra), the Hon'ble Supreme Court held that the High Court in exercising of inherent jurisdiction cannot change the Investigating Officer in the midstream and appoint any agency on its own choice to investigate into a crime. But, in the present case, no such directions were given to change the Investigating Officer and to appoint any new agency. Therefore, the case-law (2 supra) is also not relevant to the facts of the present case. In the case-law cited by the learned counsel for the petitioner in *Registrar (Vigilance), High Court of A.P., Hyderabad* (3 supra), this Court categorically stated that a judge is not compelled to answer any question as to his own conduct in Court as a Judge or Magistrate, but he may be examined as to other matters which occurred in his presence while he was so acting. The case-law (3 supra) is also not relevant to decide the issue whether the petitioner is entitled for discharge under Section 237 Cr.P.C. Further, the case-law reported in *Vinay Tyagi* (4 supra) is also not relevant to deal with the present facts of the case.

8. On the other hand, a perusal of the record shows that in a departmental enquiry conducted by this Court, one of the accused by name Pattabhi Rama Rao gave evidence that the petitioner never approached him. However, the trial Court after considering all the aspects held that there is a *prima facie* case against the petitioner for framing the charges under the P.C. Act. Further, the learned Public Prosecutor argued that under

Section 19(3)(c) of P.C. Act, the petitioner is not entitled for any interlocutory order. Admittedly, Section 19(3)(c) of the P.C. Act says that "*no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any enquiry, trial, appeal or other proceedings*". Hence, Section 19(3)(c) of the P.C. Act prohibits for granting any stay while exercising the powers of the revision in relation to any interlocutory orders passed in any enquiry, trial, appeal or other proceedings.

9. Further, it is also an admitted fact that the petitioner already filed Writ Petition No.28224 of 2013, wherein the petitioner prayed this Court to quash the FIR No.9/ACB-CIU-HYD/2012, dated 09.07.2012 and C.C.No.15 of 2012 on the file of the Principal Special Judge for SPE & ACB Cases at Hyderabad and sought for direction to CBI to investigate the FIR No.8 of 2012 and also alternatively sought for directions to conduct investigation by CBI alone in FIR No.8 of 2012 and the investigation done by ACB in FIR No.8 of 2012 and FIR No.9 of 2012 is bad and without jurisdiction. The said Writ Petition is still pending for hearing and during pendency of the said Writ Petition, the petitioner filed the petition to discharge and the same was dismissed by the trial Court. The relief claimed in the Writ Petition and the grounds of revision are similar. Further, a perusal of the order passed by this Court in Criminal Petition No.8393 of 2012 it is evident that the petitioner herein filed the petition to quash the proceedings in C.C.No.15 of 2012 and the said petition was dismissed holding that there are *prima facie* offences made out against the petitioner.

10. As this Court and also the trial Court from time to time opined that there is a *prima facie* case against the petitioner, the trial Court rightly dismissed the discharge petition filed by the petitioner and the said finding needs no interference of this Court.

11. Accordingly, the Criminal Revision Case is dismissed, confirming the order dated 02.01.2015 passed in Crl.M.P.No.593 of 2014 in C.C.No.15 of 2012 on the file of the learned Principal Special Judge for SPE & ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad.

12. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 25.02.2015
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[1] AIR 1991 S.C. 2176(1)

[2] AIR 2008 S.C. 1614

[3] 2001(5) ALD 460 (LB)

[4] (2013)5 SCC 762