THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.5313 of 2012
AND
CRIMINAL REVISION CASE No.2349 of 2012

COMMON JUDGMENT:

The Criminal Petition and the Criminal Revision Case are arising out of the common orders passed by the trial Court and hence, they are heard together and being disposed of by this common order.

Criminal Petition is filed by the petitioner seeking to quash the orders in Crl.M.P.No.525 of 2011 in Crime No.7 ACB-CIU-Hyderabad/2011 passed by the Principal Special Judge for ACB Cases at Hyderabad dated 18.6.2012 whereby the learned Special Judge took cognizance of the case against the petitioner for the offences punishable under Sections 409 IPC and Section 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988 (for short 'the Act').

Whereas Criminal Revision Case is filed by the de facto complainant being aggrieved by the very same order to the extent of refusal by the trial judge to take cognizance of case against the respondents 2 to 15, those who are shown as A.2 to A.15 in the complaint filed by him.

The brief facts which necessitated in filing the criminal petition and the revision are as follows:

The petitioner in Crl.P.No.5313 of 2012 being the Chief Minister of the erstwhile State of Andhra Pradesh, based on the representations filed by respondents 2 to 15 in Crl.R.C.No.2349 of 2012 seeking to exempt their lands admeasuring Ac.9-14 guntas located in Sy Nos 26, 30, 41, 42, 43 & 44 of Ameerpet, Hyderabad (hereinafter referred to as subject land) from the Land Acquisition proceedings, passed a favourable order vide G.O. Ms No. 288, Municipal Administration and Urban Development (I) Department on 15.07.2010 withdrawing the lands from land acquisition proceedings by purportedly exercising the powers under Sec 48 of the Land Acquisition Act. The allegation of the complainant is that petitioner while functioning as Chief Minister, conspired with the land owners i.e. respondents 2 to 15 in the revision case and for gain of pecuniary advantage for himself and the said respondents and as *quid pro quo*, issued orders in G.O.Ms.No.288 by de-notifying the subject-land from the acquisition proceedings and thereby caused monitory loss of Rs.200 crores to the exchequer. With the said allegations, the complainant filed a private complaint before the trial Court in C.C.SR.No.2431 of 2010 and the learned Judge referred the same under Section 156(3) Cr.P.C. for investigation and report. Subsequently, the DSP, CIU, ACB, Hyderabad conducted investigation and filed a final report under Section 173 Cr.P.C. stating that there is no material evidence to show that there was misappropriation, cheating, abetment or any collusion or conspiracy on the part of A.1 (petitioner in Crl.P.No.5313 of 2012) with A.2 to A.15 and prayed the Court to issue orders for closure of FIR. Aggrieved thereby, the complainant-revision petitioner preferred a protest petition under Section 202 Cr.P.C. and examined himself and 7 other witnesses. Thereafter, the learned trial judge passed the impugned order allowing the protest petition to the extent of A.1. However, he refused to take cognizance against the other accused. Hence, the present petition by A.1 and revision case by the complainant.

Heard the learned counsel for the petitioner, learned counsel appearing on behalf of revision petitioner-complainant, learned counsel appearing on behalf of respondents 2 to 15 in the revision case and also the learned standing counsel for ACB.

The main grievance of the complainant-revision petitioner is that even though similar representations were made by various persons seeking withdrawal of their lands from the Land Acquisition proceedings, the same were rejected by the earlier Chief Minister and also by the departments concerned. The present G.O.Ms.No.288 came to be issued only because of the persuasion by the persons who have made the representations and also for monitory benefit by the petitioner herein. Further it is the grievance of the complainant that the compensation amount in respect of the subject-land was already deposited before the Civil Court for payment to the owners. The petitioner being the Chief Minister, contrary to the notes prepared by the officials concerned, passed the orders in favour of the respondents 2 to 15 in the revision, who made the representations seeking re-conveyance of the subject-land. Further it is the grievance of the complainant that by the said act of the petitioner, the Government suffered a loss of Rs.200 crores. The act of the petitioner in passing the said G.O. is contrary to the notes placed by the officials and also contrary to the earlier rejection orders passed by the former Chief Minister and therefore, the said act of the petitioner would attract an offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and Section 409 IPC.

As seen from the record, though it is alleged by the complainant that the said G.O. was issued by the petitioner herein for monitory consideration, nothing has been placed before the Court concerned. The fact remains that after issuance of G.O.Ms.No.288, it was challenged by way of public interest litigation and the *status quo* order was also passed by this Court. It is the grievance of the complainant that the said G.O. was passed without taking into consideration that the possession of the subject-land has already been taken by Government and it is contrary to the provisions of the Land Acquisition Act since, as per the provisions of the Act, once the possession of the land is vested in the Government by way of acquisition, the same cannot be re-conveyed or divested. Subsequent to passing the impugned G.O., though the officials requested the petitioner for reconsideration and cancellation of the G.O.Ms.No.288, the petitioner passed an order as “earlier order holds good”. Further it is the grievance of the complainant that the order passed by the petitioner is motivated by illegal consideration and as *quid pro quo* he received huge amounts. The petitioner being the Chief Minister has to protect the public interest, but he has acted against the interest of the public and thereby caused monitory loss to the exchequer.

The points that arise for consideration are (i) whether the act of the petitioner being the Chief Minister in issuing the G.O.Ms.No.288 is contrary to the provisions of Land Acquisition Act and against the notes prepared by the officials concerned and (ii) whether the passing of G.O.Ms.No.288 to re-convey the subject-land to the original owners would attract an offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and under Section 409 IPC.

The counsel appearing for the petitioner in Criminal Petition No. 5313 of 2012 contended that the entire material on record would not attract any of the penal provisions. It is also contended that the material on record would clearly establish that some of the owners of the land were discriminated in de-notifying the land already acquired and the actual physical possession of the land was not taken over and only symbolic possession was taken. As per the material available on record, initially, a notification was issued under Section 4 (1) of the Land

Acquisition Act on 19.7.1997 acquiring an extent of Ac.38.06 guntas of land situate in Sy.Nos.3, 5, 18, 26 to 44, 233 to 237 and 244 to 277 of Ameerpet Village, Hyderabad District for construction of District Commercial Complex. After issuing 4(1) Notification, an extent of Ac.8.17 guntas belonging to Gayatri Cooperative Society was deleted from the acquisition. Subsequently, acquisition of an extent of Ac.19.18 guntas of land was quashed by the orders passed by this Court. Subsequently, 4 (1) notification was issued in the year 1987 leaving an extent of Ac.7.03 guntas belonging to Sunrise Cooperative Society. Further, an extent of Ac.3.01 guntas was deleted due to declaration of the land as surplus land under Urban Land Ceiling Act. It is found that finally, an award was passed on 1.2.1997 only for an extent of Ac.9.41 cents of land out of Ac.38.06 guntas of land. During the investigation it was found that shopping complex, apartments and also commercial complexes were constructed in the land situate in Sy.No.26, 30, 42 and 44 of Ameerpet Village. The Investigating Agency in the final report concluded that nearly half of the land out of Ac.9.14 guntas was occupied by permanent structures and the land is also scattered without continuity.

Complaining the discrimination, the owners of land made representation to the Government under Section 48 of the L.A. Act in the year 1996. The issue was raised in the A.P.Legislative Assembly and a House Committee appears to have been appointed by the Speaker of the A.P. Legislative Assembly to look into the issue. The House Committee appears to have also informed that there was discriminatory treatment against the owners of the remaining extent of Ac.9.14 guntas of land compared to the other owners, whose lands were already deleted from the acquisition. The respondents in the revision case again submitted representation to the Government on 25.1.2010 bringing to the notice of the Government the entire factual matrix and also the discrimination shown to them. The Respondents in the revision requested for re-conveying of the land in their favour. The representation dated 25.1.2010 was submitted bringing to the notice of the Government that the lands in question were in their physical possession and enjoyment from the date of submitting their representation dated 12.9.1996, the Government has acted in a discriminatory manner in rejecting the representation for deleting the lands from the acquisition while considering the representation of others who stand on the same footing and it was also brought to the notice of the Government that the purpose for which the lands were acquired i.e. for construction of District Commercial Complex was no longer in existence as the same was constructed in another place. The Government after considering the same, issued G.O.Ms.No.288, dated 15.7.2010 with the following observations:

> *"The Metropolitan Commissioner, Hyderabad Metropolitan Development Authority has also stated that Smt.Azia Khatoon and (25) others submitted representation to the Government on 07.01.2005 for re-conveyance of their land which was acquired in Sy.Nos.26, 30, 41 to 44 total extent Ac. 9.14 gts. The Government have granted stay orders on 14.12.2005 and subsequently Govt. Have disposed of the petitions and rejected the request of Azizia Khatoon and others vide Lr.No.23035/11/2006, dated 3.11.2006. Aggrieved by these orders Smt.Aziza Khatoon and others approached Hon'ble High Court. Due to status quo and interim orders of Hon'ble High Court in W.P.M.P.No.0085/07 of W.P. No.0060/07, W.P.M.P.No.129/2010 in W.P.No.124/2010 in respect of the building Door Nos. 7-1-451/15 to 22 inSy.No.42, 43 & 44 of Ameerpet (V) and WA No.3/2010 in respect land to an extent of 97157 Sq. Yards inSy.No.25 & 26 further action could not be taken by HMDA. However, Metropolitan Commissioner, Hyderabad Metropolitan Development Authority reported that the total land acquired to an extent ofAc.9-14 gts inSy.No.26, 30, 41, 42 & 44 is in the possession of HMDA.*

Government have carefully examined the representations in the references first and second read above vis-a-vis the report of the Metropolitan Commissioner, Hyderabad Metropolitan Development Authority in the reference third read above and observe that after re-notification of the land, some of the land owners request was considered and de-notified their land. The request of the applicants who were similarly situated, for de-notification of their land to the extent of Ac.9-14 gnts., was not considered. Further the purpose of the land for which it was acquired will not be served as the land in question is not a single piece of land but is the sum total of different isolated pieces of land and can not be used for the purpose of construction of District Commercial Complex i.e., for the purpose for which the land acquisition process was initiated. The possession of the land could not be taken by the HUDA within the stipulated time due to various reasons and orders of Hon'ble High Court and finally took possession of the land by HMDA comes under the category of symbolic possession as laid down by Hon'ble Supreme Court of India in the case of Balwant Narayan Bhgade V.M.D. Bhagwat (AIR 1975 SC 1767). It is, therefore, decided to with draw the land of the applicants from the acquisition and to re-convey the same to the land owners, in supersession of the earlier orders of the Government in this regard in order to resolve along standing litigation.

Accordingly, under the provisions of Section 48 (1) of the Land Acquisition Act, 1894, Government hereby decided to withdraw the land belonging to Smt.K.Vijayakumari, Dr.G.N..Naidu and others to an extent of Acs. 9-14 gnts. In Sy.Nos. 26, 30, 41, 42, 43 & 44 of Ameerpet Village and Mandal, Hyderabad District from acquisition proceedings.

These orders will be subject to final orders in the cases pending before the Hon'ble High Court and other Courts and withdrawal of further legal proceedings by the Petitioners. It is further ordered that there shall be no liability to the Government . HMDA on these lands and all such liabilities shall vest in the applicants / persons to whom the land is being re-conveyed."

The Government issued the G.O. after taking into consideration the discrimination that was meted out to the respondents in the revision. In the present case, the G.O. was issued after the petitioner in the Criminal Petition agreed with the request made by the land owners. The petitioner directed issuance of the G.O. in discharging of his official duty and also in accordance with the Business Rules of the State of Andhra Pradesh. The State filed Counter in the Criminal Petition. The Counter filed by the State is as follows:

> *"It is submitted that after receipt of the said order, the Director General, A.C.B., entrusted the same to Sri N.V.Srinivas, then Deputy Supdt. Of Police, A.C.B., for investigation. After completion of the investigation, the said D.S.P., A.C.B., submitted a detailed draft final report on 02.08.2011 (Copy enclosed as Annexure-I) to the 2nd Respondent herein. Thereafter, the said D.S.P., A.C.B., prepared a concise final report (Copy enclosed as Annexure-II) on the basis of the aid draft final report and filed the same in the Court of learned Principal Special Judge for ACB Cases, Hyderabad, duly praying the learned Judge to issue order for closure of F.I.R. as there was no material evidence to show misappropriation, cheating, abetment or any collusion or conspiracy on the part of petitioner and the land owners arrayed as A-2 to A-15 in the private complaint."*

It is to be examined that by admitting the entire case of the complainant as true, whether the allegations would attract an offence for the above said provisions of law. Before the trial Court, the complainant himself examined as P.W.1 apart from examining 7 witnesses as P.Ws.2 to 8. The said witnesses stated as to the procedure to be followed when the files/representations are floated through the departments concerned. It is true that G.O.Ms.No.288 was passed contrary to the notes prepared by the officials concerned. But, this Court is of the view that merely because an official order is passed by the Chief Minister contrary to the notes prepared by the officials concerned, it would not amount to an offence since he is the person to decide the issues and furthermore, the said orders were passed based on the representations made by respondents 2 to 15 in the revision. It is alleged by the complainant that even though he could not remotely connect the petitioner with the allegation of receiving money, still his act is motivated by illegal consideration and as *quid pro quo*, he received huge amounts.

To decide the issue, it is necessary to refer the ingredients of Section 13(1)(d) of the Prevention of Corruption Act, which reads thus:

> "13. Criminal misconduct by a Public servant:-- (1) A public servant is said to commit the offence of criminal misconduct,--
>
> (a) xxxx
>
> (b) xxxx
>
> (c) xxxx
>
> (d) if he,--
>
> (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
>
> (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
>
> (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or …."

The main ingredients to attract an offence under Section 13(1)(d) of the Act as observed by the Apex Court in **R. Sai Bharathi v. J.Jayalalitha and Others** [1] are as follows:

> "To attract provisions of Section 13(1)(d) of the Prevention of Corruption Act, public servant should obtain for himself or any other person any valuable thing or pecuniary advantage:
>
> (i) by corrupt or illegal means, or
>
> (ii) by abusing his position as a public servant, or
>
> (iii) without any public interest."

In the present case, even admitting the entire facts or allegations as narrated to be true, there is nothing on record to show that the petitioner passed the orders to re-convey the subject-land by corrupt or illegal means by abusing his official position as public servant to obtain pecuniary advantage.

The presumption under the Prevention of Corruption Act can be invoked when a prima facie case is made out by the complainant. It is to be noted, even the trial Court which has taken cognizance of case against the petitioner herein observed at para 11 as follows:

> "This Court perused the statements of PWs.1 to 8 and Ex.P.1 to P.19. There is prima facie material to proceed further against accused No.1. Accused Nos.2 to 15 only presented representations to accused No.1. The statements of PWs-1 to 8 do not disclose that either they have cheated anybody or committed breach of trust or played any part to influence accused No.1 to commit the offence. Mere presentation of representations to the Government on the ground of discrimination would not attract any mala fides on their part."

It is true that the complainant preferred a revision against the said observation. But the fact remains that even the trial Court which has intended to proceed against the petitioner herein, admits that the evidence adduced by P.Ws.1 to 8 and also Exs.P.1 to P.19, does not disclose any inducement or any favour shown on the respondents 2 to 15 in the revision case, on whose favour the said G.O.Ms.No.288 is passed. When the Court has taken the view that the said persons are not beneficiaries, the entire case against the petitioner also fails. Further the trial court rightly observed to the extent that there is no monitory consideration or any persuasion or influence on the petitioner by the respondents in the revision. Such is the situation, the cognizance taken against the petitioner for the offence under Section 13(2) read with 13(1)(d) of the Act is totally contrary to the legal position.

The Issuance of G.O.Ms.No.288, dated 15th July, 2010 withdrawing the Land Acquisition Proceedings in respect of the Land Admeasuring Ac.9.14 Guntas situated in Sy.No.26, 30, 41, 42, 43 and 44 of Ameerpet, Hyderabad by the petitioner herein undoubtedly is in discharge of his Official Function. Except making bald allegations, there is no material on record to attract the ingredients of misconduct against the petitioner. There is no material to come to the conclusion that there is any pecuniary advantage gained by the petitioner for himself or for any other persons. The lands were de-notified under the G.O. shall vest back to the respective owners of the land and it is not the case of distribution of "State Largess" for any pecuniary advantage.

The Apex Court in the Judgment in **"C.K.Jaffer Sharief Vs. State (through CBI), reported in 2013 (1) SCC 205,** the Hon'ble Supreme Court while dealing with the actions attached to Official Functions, held that in the absence of Guilt Intention, the Provisions of Section 13 (1) (d) would not attract. The Relevant Observations of the Hon'ble Supreme Court are extracted as under:

"*Adverting to the facts of the present case it has already been noticed that the only allegation against the appellant is that he had prevailed upon RITES and IRCON to take the four employees in question on 'deputation' for the sole purpose of sending them to London in connection with the medical treatment of the appellant. It is also alleged that neither RITES nor IRCON had any pending business in London and that none of the four persons had not (sic) performed any duty pertaining to RITES or IRCON while they were in London; yet the to and fro air fare of all the four persons was paid by the above two public sector undertakings. On the said basis it has been alleged that the appellant-accused had abused his office and cause pecuniary loss to the two public sector undertakings by arranging the visits of the four person in question to London without any public interest. This, in essence, is the case against the appellant-*

accused.

A fundamental principle of criminal jurisprudence with regard to the liability of an accused which may have application to the present case is to be found in the work Criminal Law by K.D.Gaur. The relevant passage from the above work may be extracted below:

"Criminal guilt would attach to an man for violations of criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, actus non facit reum, nisi mens sitrea. It signifies that there can be no crime without a guilty mind. To make a person criminally accountable, it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called actus reus and mens area respectively."

As far as the offence under Section 409 IPC is concerned, necessarily prior sanction should be obtained to proceed against the petitioner herein. But, ignoring that aspect, this Court intends to discuss the provision under Section 409 IPC. Section 409 IPC defined criminal breach of trust in Section 405 IPC as under:

"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

In a similar situation, the Apex Court while dealing with an offence under Section 409 IPC in the case of **R. Sai Bharathi** (1 supra), at para 53 of the judgment, observed as follows:

"53. The next charge we have to deal with is one arising under Section 409 IPC. The properties in question belongs to TANSI, a corporation which is a separate and distinct entity from the Government and the properties are held by it as owner and has complete control over the same except when the said properties are to be alienated, approval of the Government has to be obtained as provided under the Articles of Association of the said Corporation. In a case of this nature, where there is no dominion over the properties by a Chief Minister or a Minister it cannot be treated as entrustment of the properties creating a trust which is an obligation annexed to the ownership of the properties and arises out of the confidence reposed and accepted by the owner. Indeed there is no material in the whole case to come to the conclusion that any such trust has been or deemed to have been created in respect of the said properties and that the relationship between A-1 and TANSI is one of trustee and beneficiary. Therefore, the ingredients of Section 409 IPC are not attracted to the present case at all. There is absolutely no entrustment of the properties in any manner, which allows a dominion over it except approving or disapproving, an act on the part of the Corporation either to sell or to alienate the properties. It cannot be said that a public servant who holds a particular port folio and has an element of supervisory control in certain matters, has a dominion over the property so as to exercise any legal incidents attached to the right of ownership. Therefore, there was no entrustment of the said properties and it cannot be said that A-1 had dominion over the said properties either as the Chief Minister or as the Minister of Industries and in any case, the evidence does not establish the ingredient of dishonest disposal or conversion of property for personal use………..”

In the present case also, the petitioner being the Chief Minister, based on the representations filed by respondents 2 to 15 in the revision case, passed an order to re-convey the subject-land in their favour by withdrawing the same from the Land Acquisition proceedings. Furthermore, the fact remains that even after deposit of the compensation amount in respect of the subject-land in favour of the respondents 2 to 15 in the revision, the same was not withdrawn by them. Hence, it is evident that the respondents 2 to 15 in the revision, intended to proceed in securing their land from the Government. Further on physical verification by the investigating agency, it is found that the possession of the subject-land was not taken over by the Government and permanent structures belonging to the respondents in the revision are in existence. Furthermore it is also brought to the notice of this Court that on various earlier occasions, some of the lands that were acquired by the Government along with the present subject-land, were also re-conveyed based on the representations made by the persons concerned.

Coming to the contention of learned counsel for the complainant that the order passed by the petitioner is contrary to the provisions of Land Acquisition Act, this Court is of the view that violation of any provisions of the Land Acquisition Act can be challenged before the appropriate forum. As already observed, the complainant has already challenged it by way of filing public interest litigation and he has also obtained an order of *status quo* therein. Merely because an order was passed contrary to the provisions of the Land Acquisition Act, it would not create any criminal liability on the petitioner. Hence, in any point of view, the act of the petitioner in passing the order re-conveying the subject-land in favour of respondents 2 to 15 in the revision would not attract an offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act or under Section 409 IPC and therefore, the criminal petition is liable to be allowed setting aside the impugned order.

In view of the forgoing discussions and the submissions made by the learned counsel on either side, I find that: (1) the act of the Petitioner in issuing G.O. is not illegal and the power was exercised invoking the Business Rules which empowers the Chief Minister to overrule the objections raised by the concerned Minister or the Officers In-charge; (2) the complainant could not establish the fact that there was monitory transaction for the act of the petitioner; (3) even as per the observation of the trial judge, there is nothing on record to show that the respondents in the revision those who are alleged to be the beneficiaries, either persuaded or pressurized the petitioner to pass an order in their favour; and (4) in earlier occasions also, the Government have passed orders re-conveying the notified lands. Further, violation of any of the provisions under the Land Acquisition Act itself would not attract criminal offence and in this case, remedy was already sought by way of filing a Public Interest Litigation. Furthermore, the investigating agency, on physical verification, found that the possession of the subject-land was not taken over by the Government and permanent structures belonging to the respondents in the revision are in existence

In the result, the Criminal Petition is allowed setting aside the orders dated 18.6.2012 in Crl.M.P.No.525 of 2011 in Cr.No.7/ACB-CIU-HYD/2011 on the file of Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad in so far as taking cognizance of offence against the petitioner herein for the alleged offences and consequently, the complaint filed by the complainant before the trial Court is hereby quashed.

In view of the above discussion, the Criminal Revision Case preferred by the complainant fails and the same is accordingly, dismissed.

Pending Miscellaneous Petitions, if any, in both the cases, shall stand closed.

JUSTICE RAJA ELANGO

06.10.2015
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[1] (2004)2 SCC 9