

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Appeal No.877 of 2014

JUDGMENT:

This Criminal Appeal is preferred by the appellant/Accused Officer (AO) aggrieved by the order under Sec.452 Cr.P.C dated 17.06.2014 in Crl.M.P.No.16 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 was working as District Coordinator, Hospital Services, Hindhupur and in C.C.No.24 of 2007 he was facing 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/-.

b) The trial Court further held that the accused was holding disproportionate assets worth Rs.28,94,801/- and the same shall be confiscated to the State after appeal time is over. The trial Court directed that the accused shall deposit the said amount before the Court within four(4) months from the date of judgment and the same shall be remitted to the Government and if he fails to deposit the amount, the State shall take steps for realisation of the amount by selling the assets of the accused mentioned in Annexure-I appended to the charge sheet and in case of compliance of the condition of depositing the amount by the

accused or upon realisation of the said amount by the State, all the documents of title to the properties of the accused and also the other material seized from the house of accused under separate mad-up files by the Investigating Agency including cash of Rs.45,000/- seized under Ex.P.39 during the course of investigation shall be returned to the AO on proper identification, after appeal time is over.

c) While-so, aggrieved by the above judgment, AO filed Criminal Appeal No.127 of 2013 before this High Court and the same is pending. As per order dated 22.05.2013 in Crl.A.M.P.No.733 of 2013, the High Court extended time for deposit of Rs.28,94,801/- for a period of six(6) weeks.

d) Then the AO filed Crl.M.P.No.16 of 2014 before the trial Court submitting that he deposited the amount of Rs.28,94,801/- before the trial Court on 06.07.2013 and requested the Court to raise the attachment against the immovable properties covered under Annexure-I attached to the charge sheet and return the original sale deeds covered by Ex.P.39 and also cash of Rs.45,000/- covered under Item No.18 of Annexure-I. The respondent/ State, ACB opposed the petition. In its impugned order dated 17.06.2014, the trial Court dismissed the petition on the main ground that the petitioner/ AO filed appeal before the High Court against the judgment of the trial Court and the same is pending and hence, the trial Court became *functus officio* to pass any order.

Hence the instant Criminal Appeal by AO.

3) Heard arguments of Sri P.V. Vidya Sagar, learned counsel for appellant/AO and Sri M.B.Thimma Reddy, learned Special Public

Prosecutor (for short "Spl.P.P") for ACB.

4) The submission of learned counsel for appellant is that the appellant/ AO has complied with the direction of the trial Court and deposited Rs.28,94,801/- which is the worth of disproportionate assets arrived at by the trial Court and hence he deserves raising of attachment over the properties and also return of Rs.45,000/- seized during the house search of the AO and merely because he filed appeal challenging the lower Court's judgment, that will not come in the way of returning the property documents and cash of Rs.45,000/- since he complied with the direction of the trial Court.

5) Learned Spl.P.P opposed the appeal on the submission that since the Criminal Appeal No.127 of 2013 filed by AO is pending, the appellant/AO is not entitled to take back the documents and cash of Rs.45,000/- and seek for raising of the attachment.

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 hearing both sides and perusing the impugned order, I find force in the submission of learned counsel for appellant. While passing the judgment, the trial Court arrived at the value of disproportionate assets at Rs.28,94,801/- and directed the AO to deposit the said amount within four(4) months from the date of judgment, failing which the State shall take steps for realisation of the said amount by selling the assets of AO mentioned in Annexure-I appended to the charge sheet. It further directed that in either case, all the documents of the title of the properties of the

accused and cash of Rs.45,000/- seized shall be returned to the AO after appeal time is over. The submission of appellant/AO is that in obedience to the above direction, he deposited the said amount of Rs.28,94,801/- before the trial Court on 06.07.2013. Upon verification by Registry, the trial Court confirmed this fact in its letter Dis.No.324/IASJ/2015 dated 19.06.2015. Hence, he deserves raising of the attachment and return of the documents and cash of Rs.45,000/- mainly for the reason that respondent/State has not challenged the finding of the trial Court in its judgment to the effect that on deposit of Rs.28,94,801/-, the documents and cash shall be returned to him. So inspite of appellant/AO filing appeal challenging the lower Court's judgment, the finding of the trial Court still holds good. Further, the interest of respondent/State, ACB is well-protected because the worth of disproportionate assets was deposited by the appellant/AO. In case the appeal is ultimately dismissed, the respondent/ State, ACB can request the trial Court to release the amount for confiscation to the State. Hence, in the opinion of this Court, the prayer of the appellant/ AO merits consideration.

8) In the result, this Criminal Appeal is allowed and the attachment against the immovable properties covered under Annexure-I of the charge sheet is raised and the trial Court is directed to return the cash of Rs.45,000/- covered under Item No.18 of Annexure-I and also return original sale deeds seized under Ex.P.39 to appellant/AO on proper identification and acknowledgement and on his substituting the original sale deeds with certified copies.

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

U. DURGA PRASAD RAO, J

Date: 22.06.2015

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