HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.1227 of 2013

ORDER:-

The criminal revision case is filed against the order dated 11.06.2013 in Crl.M.P.No.800/2012 in CC No.80/2011 on the file of the II Additional Special Judge for SPE & ACB Cases, Hyderabad, by and under which, the Court below dismissed the petition filed by the petitioner/accused under section 239 Cr.P.C seeking to discharge him from the charges levelled against him.

2. Heard the learned counsel appearing for the petitioner/accused and the learned Special Public Prosecutor, representing the ACB/State.

3. The petitioner, while working as Motor Vehicle Inspector at Keshavapatnam village, is alleged to have been trapped by the ACB on a complaint lodged by one M.Raji Reddy, a Transport Contractor, with regard to demand and receipt of illegal gratification in the course of discharge of his official duties. A crime was registered against the petitioner/accused in Cr.No.16/ACB-KNR/2009 under Section 7, 13(1)(d) r/w.Sec.13(2) of Prevention of Corruption Act. In the meantime, the petitioner/accused was dismissed from service vide proceedings dated 24.04.2010 of the Transport Commissioner. The charge sheet was filed on 24.09.2010 and cognizance was taken on 08.11.2010. Against the dismissal order of the Transport Commissioner, the petitioner/Accused approached the APAT in O.A.No.4403/2010 and vide orders dated 05.08.2010 the APAT set aside the dismissal order for want of jurisdiction. Later, the Government issued G.O.Ms.No.17 dated 04.02.2011 clarifying that the petitioner is deemed to be under suspension from 02-06-2009 and subsequently

the petitioner/accused was reinstated into service vide G.O.Rt.No.391 dated 13.04.2012.

4. Contending that the prosecution agency without taking any sanction for prosecuting the petitioner/accused, which is mandatory, filed the charge sheet, the petitioner/accused filed a petition in Crl.MP.No.800 of 2012 under section 239 Cr.P.C seeking discharge of the charges levelled against him. The Court below dismissed the said petition, while observing that by the date of filing the charge sheet and taking cognisance of the case, the petitioner/accused was not in service. Aggrieved by the said order, the present criminal revision case is filed.

5. The admitted facts are that the petitioner/accused while working as Motor Vehicle Inspector is alleged to have demanded and accepted a bribe of Rs.7,500/- for doing an official favour and accordingly a trap was successfully laid. On the basis of the complaint, dated 01-06-2009, the trap was laid on 02-06-2009. The petitioner/accused was arrested and remanded to judicial custody on 02-06-2009 and was released on bail on 24-07-2009. It is also fact that the Transport Commissioner vide orders dated 24-04-2010 has dismissed the petitioner/accused from service. Aggrieved by that, the petitioner/accused filed O.A.No.4403 of 2010 before the Andhra Pradesh Administrative Tribunal, Hyderabad. By Judgment, dated 05-08-2010, the said O.A. was allowed and the order of the Transport Commissioner dismissing the petitioner/accused from service was set aside holding that the Transport Commissioner is not competent to inflict the said punishment and that it is the Government which is competent to dismiss the petitioner/accused. The Tribunal without going into the other points urged by the petitioner/accused has set aside the impugned order for want of jurisdiction observing that this shall not preclude the competent

authority i.e., the Government to pass appropriate orders by duly taking into consideration the contentions and the explanation of the petitioner/accused and also the report of the Enquiry Officer.

6. It is also on record that the respondent after completing the investigation, filed the charge sheet on 24-09-2010 and the same was registered as C.C.No.80 of 2011 on the file of the II-Additional Special Judge for SPE & ACB Cases, Hyderabad. Subsequently, the said case is transferred to Special Judge for SPE & ACB Cases, Karimnagar, where it is re-numbered as C.C.No.44 of 2015. It is also fact that before filing the charge sheet, the statutory sanction from the Government to prosecute the petitioner/accused was not obtained. It was stated that since the petitioner/accused was dismissed from service on 24-04-2010 and since he was not in service by the date of filing of the charge sheet namely ON 24-09-2010, Sanction is not required.

7. Subsequently, in view of the orders of APAT, dated 05-08-2010, the Government issued G.O.Ms.No.17, dated 04-02-2011, stating that the petitioner/accused shall be deemed to be under suspension right from the date of trap viz., 02-06-2009. Nearly two years after the charge sheet was filed, the Government issued G.O.Rt.No.391, dated 14-03-2012, reinstating the petitioner/accused in pursuance to the orders of the APAT. It is also on record that the cognizance of the charge sheet was taken by the Special Judge on 26-03-2011.

8. What is manifest from the above is that the petitioner/accused was placed under suspension on 02-06-2009, the date on which he was arrested and remanded to judicial custody and he was dismissed from service on 24-04-2010. Even though, APAT vide its Judgment in O.A.No.4403 of 2011, dated 05-08-2010 has set aside the dismissal order, no orders are

passed by the Government reinstating the petitioner/accused in service and only on 14-03-2012, the orders reinstating the petitioner/accused were passed. It is evident from the above that on the date when the charge sheet is filed namely 24-09-2010 and the date on which the cognizance of the case was taken on 26-03-2011, the petitioner/accused was not a public servant since he has already been dismissed from service.

9. Learned Counsel appearing for the petitioner/accused submits that in view of the orders of the APAT, dated 05-08-2010, the petitioner/accused shall be deemed to be in service on 24-09-2010 when the charge sheet is filed since the dismissal order is set aside.

10. Learned Special Public Prosecutor for ACB however submits that in view of the admitted fact that the petitioner/accused continued to be under suspension and he was not reinstated till 14-03-2012, he cannot be said to be a public servant as on the date when the charge sheet is filed namely 24-09-2010 and when the cognizance thereafter was taken on 26-03-2011 and therefore the petitioner/accused cannot be discharged on the ground that sanction has not been obtained from the competent authority.

11. The petitioner/accused filed Crl.M.P.No.800 of 2012 before the trial Court and by order dated 11-06-2013, the learned Special Judge has dismissed the petition by following the decisions of the Supreme Court reported in **STATE OF KERALA v. PADMANABHAN NAIR (AIR 1999 SC 2405), and SAT PAUL v. INSPECTOR OF POLICE AND ANOTHER (1995 Crl.L.J., 2890)**.

12. In **K.S.DHARMADATAN V. CENTRAL GOVERNMENT AND OTHERS (AIR 1979 S.C., 1495 (1)**, the Supreme Court held in para Nos.2, 3, 5 and 13 as under:-

> "The point involved in the present appeal lies within a very narrow compass. The appellant was being prosecuted for

offences under Sections 120-B, 420, 471 and 468 read with Section 34 I.P.C., Section 167(72) of the Sea Customs Act and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. At the time when the charge-sheet was filed and the Special Judge took cognizance against the appellant sometime in October, 1970 the appellant ceased to be a public servant and, therefore, no sanction under Section 6 of the Prevention of Corruption Act (hereinafter referred to as the Act) was obtained. It appears that in pursuance of a departmental enquiry held against the appellant he was charge-sheeted and ultimately dismissed by the appointing authority. Thereafter, the appellant filed an appeal before the President of India on 18.10.1967 against his removal from service. After consulting the Union Public Service Commission the President by his order dated 25.9.1972 allowed the appeal and set aside the order of removal from service passed by the Collector of Customs against the appellant. The order of the President further directed that the period of absence from 5.9.1967 till the date of reinstatement was to be treated as under suspension. The appeal appears to have been allowed by the President mainly on the ground that there was some defect in the charge-sheet served by the disciplinary authority. The disciplinary authority was directed to institute de novo proceedings against the appellant after rectifying the defect in the charge-sheet. While these proceedings before the President were going on, the trial against the appellant proceeded to its logical end and we now understand that evidence has already been led and the arguments have to be heard.

The appellant on being reinstated by the President filed an application before the special Judge praying that all further proceedings be dropped inasmuch as the prosecution against the appellant was initiated in the absence of a proper and valid sanction having been obtained under Section 6 of the Act. The special Judge, however, rejected the petition as a result of which the appellant moved the High Court but was not successful there.

A perusal of this section would clearly disclose that the section applies only where at the time when the offence was committed the offender was acting as a public servant. If the offender had ceased to be a public servant then Section 6 would have no application at all. Further more, it is also manifest from the perusal of Section 6 that the point of time when the sanction has

> <u>to be taken must be the time when the court takes cognizance of an offence and not before or after. If at the relevant time, as indicated above, the offender was not a public servant no sanction under Section 6 was necessary at all.</u>
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> Thus, it is well settled that a deeming fiction should be confined only for the purpose for it is meant. In the instant case, the order of the President reinstating the appellant and creating a legal fiction regarding the period of suspension must be limited only so far as the period of and the incidents of suspension were concerned and could not be carried too far so as to project it even in cases where actions had already been taken and closed. In other words, the position seems to be that at the time when actual cognizance by the court was taken the appellant had ceased to be a public servant having been removed from service. If some years later he had been reinstated that would not make the cognizance which was validly taken by the court in October, 1970 a nullity or render it nugatory so as to necessitate the taking of a fresh sanction. We, therefore, entirely agree with the view taken by the High Court that in the facts and circumstances of the present case legal fiction arising out of the Presidential Order cannot be carried to nullify the order of cognizance taken by the special Judge. The argument of the under Counsel for the appellant is, therefore, overruled. No other point was pressed before us. The appeal being without merit is accordingly dismissed. The special Judge would now hear the arguments of the parties and dispose of the case as expeditiously as possible. Let the records be sent back to the special Judge immediately."

13. The facts before the Supreme Court were similar to the facts of the case in hand. In the case before the Supreme Court, the point that fell for consideration was as to whether the order of the President reinstating the appellant retrospectively, the accused must be deemed to be in service when the charge sheet was filed. The Supreme Court clearly observed that at the time when the charge sheet was filed and when the cognizance was taken, the appellant/accused ceased to be a public servant in view of the dismissal from service.

14. Following the said authority of the Supreme Court and

applying the same to the facts of the present case, the petitioner/accused is not liable to be discharged on the ground that Sanction to prosecute was not obtained from the competent authority in view of the fact that he was not a public servant as on the date when the charge sheet was filed and the cognizance thereof was taken. Merely because, there was an order of the APAT to reinstate him into service that cannot be taken as implying that the petitioner/accused shall be deemed to be in service on the date when the charge sheet was filed and the cognizance is taken. The Government Orders reinstating the petitioner/accused into service retrospectively cannot make it mandatory on the part of the prosecuting agency to seek Sanction before launching the prosecution. The petition of the petitioner/accused to discharge was rightly dismissed by the Court below and I see no grounds to discharge the petitioner/accused on the ground that there was no Sanction for launching the prosecution. There are no merits in the revision and the same is liable to be dismissed.

15. In the result, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

October, 2015

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