

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

+ Criminal Revision Case No.452 of 2008

%05.02.2015

Between:

M. Simon.

.... Petitioner

AND

The State of A.P,
Rep. by the Standing Counsel for ACB,
High Court of Judicature at Hyderabad.
Respondent

....

! Counsel for Petitioner : Sri M. Venkata Narayana

^ Counsel for Respondent : Sri M.B. Thimma Reddy

Special Public Prosecutor

< Gist:

> Head Note:

? Cases referred:

- 1) Unreported judgment in Crl.R.C.No.1857 of 2008 dt.12.10.2011.
- 2) Unreported judgment in Crl.P.No.5496 of 2007 dt.15.03.2010
- 3) AIR 1957 SC 389
- 4) (1987) 1 SCC 288
- 5) Unreported judgment in Crl.R.C.No.2042 of 2006 dt.27.08.2014
- 6) 2003 Crl.L.J. 1896 (AP)

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.452 of 2008

ORDER:

Challenge in this Revision is the order dated 17.11.2007 passed in Crl.M.P.No.830 of 2007 in C.C.No.32 of 2006 by the learned Special Judge for SPE & ACB cases, Nellore,

whereunder he refused to accord consent under Section 321 Cr.P.C to the Special Public Prosecutor to withdraw the prosecution against the accused.

2 a) Shorn off the unnecessary details, the prosecution case against the accused who is charged under Section 7 and 13(2) r/w 13 (1)(d) of Prevention of Corruption Act, 1988 (for short "P.C Act") is that the complainant was a conductor in APSRTC, Nellore Depot and accused was the Sub-Inspector of Police, Women P.S, Nellore during relevant time and in respect of the complaint given by Swaroopa Rani—wife of complainant, AO initially demanded Rs.2,000/- as bribe from the complainant for not taking action on the petition of his wife and on the request of the complainant he reduced the bribe amount to Rs.1,000/- and on 17.02.2006 at about 9:30 am at mechanic bunk situated opposite to Nippo Batteries Factory, Nellore, the accused was caught red-handed while accepting illegal gratification of Rs.1,000/- from the complainant and hence facing the charges for the offences stated supra.

b) The trial Court framed charges and matter is coming up for trial.

c) While-so, learned Public Prosecutor at that stage filed petition under Section 321 Cr.P.C submitting that the AO approached Government and made a representation to drop the criminal case and Government considered his representation and issued order in G.O.Ms.No.272/SC.A-

3/2006-5 dt: 06.07.2007 (Home (SC.A) department) cancelling the sanction order earlier issued under G.O.Ms.No.272/SC.A3/2006-3 dated 22.09.2006 of Home (SC.A) department on the ground that it would meet the ends of justice if the AO were to face departmental action and in turn, D.G, ACB, A.P issued a memo vide Rc.No.38/RCT-NNL/2006 dated 01.10.2007 requesting the Spl.P.P, ACB to file petition under Section 321 Cr.P.C and therefore, he was filing the said petition. Learned Special Judge after thorough enquiry dismissed the petition on the following observations:

In the withdrawal order the Government has not shown reasons as to why it came to conclusion to withdraw the criminal case against AO and to institute departmental action. It is not mentioned as to what material the Government have collected to conclude to withdraw the case and no such material is placed before the Court. Learned Spl.P.P simply filed a petition basing on the orders of the Government without applying his mind and without showing any grounds for withdrawal of the case. He has not shown any grounds which will further the ends of justice, public order and peace.

Hence the revision.

3) Impugning the order, learned counsel for petitioner firstly argued that the trial Court erred in observing that the learned Spl.PP has not made an independent application of his mind in seeking withdrawal of the case. During the pendency of the

case the accused retired from service and now he is an old man of 65 years and also a sick person and considering these aspects and having regard to the nature of offence, the Government on humanitarian grounds acceded to his request and proposed to withdraw the prosecution but at the same time directing him to face departmental enquiry which in its opinion would be sufficient to meet the ends of justice. Learned Spl.P.P having taken stock of the situation applied before trial Court for permission. He thus argued that the trial Court ought to have accorded consent for withdrawal. He relied upon the following decisions.

1. Ch.Vijaya Bhaskara Rao vs. State, Inspector of Police, ACB, Nellore ^[1]

2. Kuntrapakam Muddukrishnaiah vs. The Inspector of Police, ACB, Tirupathi, Chittoor District ^[2]

3. The State of Bihar vs. Ram Naresh Pandey ^[3]

4. Sheonandan Paswan vs. State of Bihar ^[4]

He thus prayed to allow the petition.

4 a) Per contra, Sri M.B.Thimma Reddy, learned Standing Counsel for ACB cases while opposing the revision firstly argued that trial Court having observed that no satisfactory grounds were mentioned by Spl.P.P. to seek sanction, has rightly dismissed the petition and hence the present revision which is bereft of merits is not maintainable.

b) Secondly, he argued that the case on hand relates to corruption charges under PC Act and as such granting or refusing to grant consent to withdraw such type of case stands on a different footing.

Expatiating it, he argued that before taking cognizance of the offence under PC Act, the Court would direct prosecution to produce sanction order issued by the concerned Government Department to prosecute the accused who is a public servant and upon producing such sanction order in terms of Section 19 of PC Act only, the Court will take cognizance and therefore, once the Government accorded sanction later it cannot withdraw the same mechanically without there being any strong grounds. On this aspect he relied upon the decision of this Court in ***G.Audiseshaiah vs. State of A.P.***^[5] He submitted that in the instant case except stating that Government proposes to proceed with the departmental action, learned Spl.P.P. has not stated any other reasons for withdrawing the sanction. Mere initiation of departmental action by withdrawing criminal case will not in any way advance the public interest or the administration of criminal justice which is *sine quo non* for according consent by trial Court and therefore, the trial Court rightly rejected the petition.

5) In the light of respective arguments, the points for determination are:

1. Whether the Government can withdraw the consent once given under Section 19 of PC Act?

2. Whether learned Spl.P.P. has exercised his independent application of mind and showed sufficient grounds for seeking withdrawal of the case under Section 321 Cr.P.C.?”

6 a) **POINT No.1:** As stated supra, the accused is facing charges under Sections 7 and 13(2) r/w 13(1)(d) of PC Act for allegedly demanding and accepting bribe of Rs.1,000/- from the complainant. It is important to note the AO was S.I. of Police, Women PS, Nellore at the time of offence. The charges were framed and matter is coming up for trial and at that juncture learned Spl.P.P. filed petition under Section 321 Cr.P.C. The basis for his petition, it appears, is the Memo No.272/SC-A3/2006-5 dated 06.07.2007 issued by the Government. Hence it is relevant to extract the same.

“GOVERNMENT OF ANDHR APRADESH

HOME (SC-A) DEPARTMENT

Memo No.272/SC.A3/2006-5

dated 06.07.2007

Sub: Public Services – Allegation of corruption against Sri M.Simon, Sub-Inspector of Police, Women Police Station, Nellore District (Retd.) – Representation received from the AO requesting for withdrawal of charge sheet and intimation of Departmental Action – Examined – Orders – issued.

Ref: 1. Memo No.272/SC.A3/2006-3, dated 22.0.2006.
2. Representation received from the AO Sri M.Simon, S.I. of Police, formerly at Women Police Station, Nellore District Received through CMP Note No.9955/CMP/2006, dated 04.10.2006.
3.From the Director General, Anti Corruption Bureau, Andhra Pradesh, Hyderabad Lr.No.38/RCT-NNL/2006, Dated 25.11.06.

The attention of the Director General, Anti-Corruption Bureau, Andhra Pradesh, Hyderabad is invited to the references cited.

He is informed that the Government have decided to conduct departmental action against Sri M.Simon, Sub-Inspector of Police (Retd.) Women Police Station, Nellore District instead of prosecuting him in a Court of Law, Government have also decided to withdraw the charge sheet filed before the Hon'ble Court for SPE & ACB Cases, Nellore in C.C.No.32/2006 against the said retired officer.

The Director General, Anti Corruption Bureau, Andhra Pradesh, Hyderabad is therefore directed to take action as decided by Government in pra-2 above and send required material to the Director General of Police, Andhra Pradesh, Hyderabad for proceeding against the AO, departmentally, and the bureau is also directed to take all necessary steps to withdraw the charge sheet filed before the Trial Court, Nellore.

The Director General of Police, Andhra Pradesh, Hyderabad is requested to initiate Departmental action and complete it expeditiously and report submitted to Government.

P.V.Naidu

Principal Secretary to

Government"

b) So, a plain reading of the above Memo would show that the Government wanted to withdraw the case as it decided to conduct departmental action against the accused. In this context, it is pertinent to ponder over the arguments raised by Sri Thimma Reddy, learned Standing Counsel. The case on hand relates to corruption charges under PC Act. As rightly argued by him, as per Section 19 of PC Act the Court shall not take cognizance of the offences punishable under Sections 7, 10, 11, 13 and 15 of PC Act except with previous sanction of the concerned Government. In the instant case also the Court took cognizance of the offences under Section 7 and 13(2) r/w 13(1)(d) against the accused after sanction order was filed by the prosecution. There can be no doubt the sanctioning authority must exercise its independent mind basing on the

record and issue sanction. Now, the question is once such a sanction is accorded to prosecute the errant public servant whether same can be withdrawn by seeking withdrawal of the case under Section 321 Cr.P.C. The law on this aspect is no more *res integra*. In the cited decision in **G.Audiseshaiah**'s case (5 supra) a learned single Judge of this High Court dealt with this aspect exhaustively and held thus:

*“A perusal of Section 19 and relevant case law would denote that the sanctioning authority, on perusal of entire material before it and on due application of mind, shall come to a conclusion as to whether or not accord sanction to prosecute concerned public servant. When once that exercise is completed and concomitant acts are being followed in a court of law and when there arose no compelling and justifiable reasons, the Government cannot withdraw the sanction once accorded. In fact, Section 19 has not saddled the Government with such power, as can be seen from the language of the section. Whether the Government can assume such power under other enactments was dealt with by a learned single Judge of this High Court in **M.Veeraiah Chowdary vs. The State of Andhra Pradesh** ^[6]”*

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“Thus, it was held that the competent authority who issued sanction proceedings cannot exercise its power either under Section 19 of P.C. Act or under Section 21 of the Central General Clauses Act or Section 15 of the A.P. General Clauses Act to withdraw the sanction. I endorse the same view. Therefore, in the instant case the Government was not justified in withdrawing the sanction.”

c) In view of this precedential jurisprudence, so far as withdrawal of prosecution in respect of the offences under PC Act are concerned, the same stands on a different footing from the offences under other enactments which do not require prior sanction from Government for prosecution. The offences under PC Act are concerned most of them require prior sanction from the Government. When once the Government have applied its mind and issued sanction, it cannot withdraw the sanction on a lame pretext of proceeding with department action against a charged public servant. Hence this point is answered accordingly.

7) **POINT No.2:** This point is concerned, as rightly observed by the trial Court, except voicing the proposal of Government to withdraw the sanction order issued earlier, the Spl.P.P. ACB, Nellore has not placed any other strong reasons for withdrawal of the case. It is difficult to comprehend how a public servant who is facing charges under PC Act for his mortal turpitude and facing prosecution in a Court of law against whose prosecution the society has a right, can be asked to simply face the departmental action. It is needless to emphasize to the Government that criminal proceedings and departmental enquiry are two different proceedings emanate from the same misdeed of a public servant and both are water tight compartments. So, the Government cannot let off him from facing criminal trial with a substitute of departmental action without there being any other strong compelling reasons. Of

course, petitioner's counsel tried to show some lame reason as if the accused retired from service and an old man and he is sick and hence the Government have considered his case sympathetically. If retirement, sickness or old age are to be taken as grounds for showering sympathy to the corrupt public servants, it would resonate a wrong signal to the society. So, none of the causes shown by the petitioner, in the considered view of this Court, sub-serve ends of justice, public order and peace. The trial Court rightly turned down the request of the prosecution. I have gone through the citations placed by the petitioner and it must be said they will not help his cause. This point is answered accordingly.

8) In the result, this Criminal Revision is accordingly dismissed.

U. DURGA PRASAD RAO, J

Date: 05.02.2015

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Note: L.R Copy to be marked: YES / NO

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Scs/Murthy

[1] Unreported judgment in CrI.R.C.No.1857 of 2008 dt.12.10.2011.

[2] Unreported judgment in CrI.P.No.5496 of 2007 dt.15.03.2010

[3] AIR 1957 SC 389

[4] (1987) 1 SCC 288

[5] Unreported judgment in CrI.R.C.No.2042 of 2006 dt.27.08.2014

[6] 2003 CrI.L.J. 1896 (AP)