

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
CRIMINAL PETITION No.11632 of 2014

ORDER:

The petitioner is accused in C.C. No.5 of 2013 on the file of Additional Special Judge for S.P.E and A.C.B Cases, Hyderabad, where the learned Special Judge under Section 7 and 13(2), 13(i)(d) of the Prevention of Corruption Act taken cognizance of the offence in allotting the calendar case number. It is outcome of Crime No.4/ACB/HR-2012 registered and after investigation filed the final report. It is important to note that the very counter filed by the State representing the Deputy Superintendent of Police, ACB, Hyderabad Range through Special Public Prosecutor, ACB Cases that after the alleged trap dated 16.02.2012 while taking illegal gratification of Rs.25,000/- and after completion of the investigation the prosecution agency supra sent draft final report to the Government on 14.11.2012 recommending prosecution in a Court of law against the said accused, the then Deputy Superintendent of Police, Chevella Sub-division, Rangareddy District. The charge sheet was filed on 28.12.2012 that was taken cognizance by the learned Special Judge in allotting C.C. No.5 of 2013 at the cost of repetition supra.

2) It is important to note that the Government issued G.O.Ms.No.47, dated 15.03.2012 discharging the accused from service while he was in the probation period

as Deputy Superintendent of Police. It is in fact subsequently by G.O.ms.No.39, dated 18.02.2014 he is reinstated into service.

3) It is the contention of the learned counsel for the petitioner in impugning the cognizance taken by the learned Special Judge without sanction and without even waiting for a statutory period after 14.11.2012 of more than three months for any deemed sanction for filing the final report for the learned Special Judge to take cognizance on the charge sheet dated 02.08.2012 in allotting the calendar case number.

4) The sum and substance of the submission in seeking to quash the cognizance for want of valid sanction within the meaning of Section 19 of the Prevention of Corruption Act, is that once the services were discharged even initially on 15.02.2012 by G.O.Ms.No.47 where he was reinstated subsequently as per G.O.Ms.No.39, dated 18.02.2014 by virtue of the reinstatement and not a reappointment there is a legal fiction of deemed service although from the date of original appointment and thereby as on the date the cognizance taken from the police final report filed on 28.12.2012 by the learned Special Judge once he is in deemed service and once sanction is required under Section 19 of the Prevention of Corruption Act mandatorily for no sanction the cognizance taken is unsustainable

and illegal and liable to be set aside of the cognizance by quashing the proceedings.

5) Whereas, it is the submission of the learned Special Public Prosecutor for A.C.B cases that the very order dated 18.02.2014 speaks of the probation commences afresh and as such the mere reinstatement does not restore in the absence of any specific order to that effect in the G.O.Ms.No.39 date backs to the discharge of service on 15.03.2012 to say any deemed in service and once as on the date cognizance taken by the learned Special judge there was no any service because G.O.Ms.No.39 dated 18.02.2014 long thereafter no sanction is required under law and cognizance taken is valid and no way required to be inferred by this Court muchless to quash the proceedings and at best, it is a matter to be agitated, if at all during the course of trial before the Court as cognizance taken long back and the case is on the track to proceed with.

6) The learned counsel for the quash petitioner placed reliance on several expressions on the scope of the sanction and object behind sanction including from the recommendation of the law commission incorporated in para No.19 of the Judgment of the Apex Court in ***Rakesh Kumar Mishra V. State of Bihar***^[1], for sanction under Section 197 Cr.P.C where it is observed the protection under Section 19 of the Act is indeed such after retirement

of the public servant as public retirement as per the 41st report of the Law Commission para No.15.123 as the protection afforded by the section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution and it should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant. No doubt, it is a recommendation in fact on the facts as on the date cognizance taken there was no reinstatement as he was discharged from service earlier to it on 15.03.2012. Further by virtue of another G.O.Ms.No.39, dated 18.02.2014 his services are reinstated. Therefrom, the contention is the reinstatement dates back to the original date of service and date of discharge to say even as on the date the cognizance taken from the police final report on 28.12.2012 before the Special Judge is deemed in service. Undoubtedly and undisputedly prosecuting agency addressed the Government on 14.11.2012 for sanction to prosecute the public servant. It is to say it is eight months after the services were discharged by G.O.Ms.No.47, dated 15.03.2012. The learned counsel for the quash petitioner mainly placed reliance on it that as he is deemed in

service and what the order of discharge of probation that too undisputedly pending as referred in G.O.Ms.No.39, para No.4 of the O.A. No.2562 of 2012 filed by said Gunasekhar before the A.P.A.T impugning the discharging from service by G.O.Ms.No.47, dated 14.03.2012 the so called discharge is without subject matter of litigation before the Administrative Tribunal impugning by the said Gunasekhar and the G.O.Ms.No.39, dated 18.02.2014 aptly refers the same while reinstating in suggesting to withdraw the O.A and other legal proceedings and in saying it should commence his probation afresh.

7) The extension of probation is the prerogative of the employer from the performance of the employee that does not mean a fresh appointment as the G.O.ms.No.39, dated 18.02.2014 no way speaks as a fresh appointment but reinstatement. However, this matter requires to be adjudicated before the trial Court by referring to the factual matrix in controversy and not a plain case for quashing. Thus, sanction is required in this case and cognizance without sanction is valid or not is thereby left open to the accused to agitate before the trial Court.

8) Subject to the above observations, the criminal petition is disposed of. Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

20.01.2016
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[\[1\]](#) (2006)1 SCC 557