HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE Nos.926 & 927 of 2012

COMMON ORDER:

The Crl.R.C.No.926 of 2012 is filed by the petitioners/A-1 to A-4 and Crl.R.C.No.927 of 2012 is filed by the petitioner/A-5 under Sections 397 & 401 of Cr.P.C., challenging the order, dated 13.06.2012, passed in Crl.M.P.Nos.283 & 284 of 2012 in C.C.No.41 of 2004 by the Special Judge for SPE & ACB Cases, Nellore, whereby and whereunder, the trial Court dismissed the above petitions filed by the petitioners herein for transfer of the C.C.No.41 of 2004 from the file of the Special Judge for SPE & ACB Cases, Nellore, to the competent Judicial Magistrate of First Court to try the offences charged against the accused.

2. Heard and perused the material available on record.

3. The case of the prosecution is that all the accused colluded with one M.E.G. Ranjan, then Commercial Tax Officer, Ongole, and M.E.G. Ranjan had issued way bills indiscriminately under APGST & CST, without verifying Utilization/Tax Collection particulars and without scrutinizing the required Returns or by cross-verification of exemptions, claimed by them in the Returns or in the way bills, utilization statements, leading to clandestine trade, which resulted in evasion of taxes, payable to the State to an extent of Rs.2.33 crores. Thus, it is alleged that for their wrongful gain, they cheated the Government in collusion with M.E.G. Ranjan, transporting Black-gram, Bengal-gram, Red-gram and other items, which were all sensitive commodities, for which purpose, the Deputy Commissioner, Commercial Tax, alone was competent to issue R.Cs or to make additional inclusions. It is further alleged that A-1 to A-5 submitted false Returns with misleading Utilization Statements, showing as if they transported coriander, though actually transported Pulses like Black-gram, Bengal-gram, Red-gram and other items. Thus, it is alleged that these accused have committed offences punishable under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the P.C. Act') read with Section 109 IPC and Sections 420, 468,

417 & 477-A IPC. M.E.G. Ranjan, then Commercial Tax Officer, Ongole, is said to have expired on 20.11.2003 and therefore, after investigation, charge sheet was laid in the Court below only against A-1 to A-5 for the above offences.

4. Contending that the charges laid against them are not made out against them, the accused filed Crl.M.P.Nos.542 & 543 of 2005 under Section 239 Cr.P.C. for discharge, which were dismissed vide common order, dated 29.12.2006.

5. Charges under Section 13(2) read with 13(1)(d) of the P.C. Act read with Section 109 IPC and Sections 420, 468, 471 & 477-A IPC were framed against the accused, upon their examination under Section 239 Cr.P.C., on consideration of the material, upon hearing the prosecution as well as the accused, for which the accused denied the charges and pleaded not guilty.

6. The accused filed Crl.P.No.901 of 2008 before this Court under Section 482 Cr.P.C. to quash the proceedings in C.C.No.41 of 2004, on the file of the Special Judge for SPE & ACB Cases, Nellore, for want of jurisdiction insofar as Section 13(2) read with 13(1)(d) of the P.C. Act is concerned, which was allowed.

7. The present petitions i.e., Crl.M.P.Nos.283 & 284 of 2012 were filed by the accused stating that since the charges framed against the petitioners under Section 13(2) read with 13(1)(d) of the P.C. Act are quashed by this Court by an order, dated 23.09.2011, in Crl.P.No.901 of 2008, the remaining offences i.e., Sections 420, 468, 417 & 477-A IPC are all triable by the Judicial Magistrate of First Class. Hence, the petitioners moved the said petitions for transfer of the same. It is further contended by the petitioners, that the offences triable by the Court below are deleted, if the case is tried by the Court below, then the accused would be deprived of an opportunity of preferring an appeal to the Court of Sessions, but the Court below dismissed the two petitions. Aggrieved by the same, the accused preferred the above criminal revision cases.

8. It is an admitted fact that after the order, dated 23.09.2011, in Crl.P.No.901 of 2008 was passed by this Court, the respondent herein

has not filed any petition before the Apex Court challenging the said order. Apart from that, the fact remains that the offences which are remaining are triable by the concerned Judicial Magistrate of First Class. Hence, this Court is of the view that the order impugned in these criminal revision cases is liable to be set aside.

9. Accordingly, the Criminal Revision Cases are allowed by setting aside the order, dated 13.06.2012, passed in Crl.M.P.Nos.283 & 284 of 2012, by the Special Judge for SPE & ACB Cases, Nellore, and the Special Judge for SPE & ACB Cases, Nellore, is directed to transfer the C.C.No.41 of 2004 to the appropriate Court within a period of one (1) month from the date of receipt of a copy of this Court. Miscellaneous petitions, if any, pending in these criminal revision cases shall stand closed.

RAJA ELANGO, J

Date: 4th August, 2016

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HONOURABLE SRI JUSTICE RAJA ELANGO

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CRIMINAL REVISION CASE Nos.926 & 927 of 2012

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Date: 4th August, 2016

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