HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE Nos. 772, 832, 839 and 854 of 2016

COMMON ORDER:

Crl.R.C.No.772 of 2016 is filed under Sections 397 and 401 of Cr.P.C. questioning the order dated 05.02.2016 passed in C.C.No.30 of 1998 on the file of the Special Judge for SPE and ACB Cases, Visakhapatnam.

Crl.R.C.No.832 of 2016 is filed under Sections 397 and 401 of Cr.P.C. questioning the marking of inadmissible documents as Exs.P67 to P101 in C.C.No.29 of 1998 on the file of the Special Judge for SPE and ACB Cases, Visakhapatnam, on 12.01.2016.

Crl.R.C.No.839 of 2016 is filed under Sections 397 and 401 of Cr.P.C. questioning the marking of inadmissible documents as Exs.P38 to P79 in C.C.No.28 of 1998 on the file of the Special Judge for SPE and ACB Cases, Visakhapatnam, on 01.01.2016.

Crl.R.C.No.854 of 2016 is filed under Sections 397 and 401 of Cr.P.C. questioning the order dated 04.01.2016 questioning the marking of inadmissible document as Ex.P50 in C.C.No.14 of 1996 on the file of the Special Judge for SPE and ACB Cases, Visakhapatnam, on 04.01.2016.

In all the above C.C.s the petitioner/accused No.1 raised an objection with regard to marking of the typed annexure to audit reports for the years 1990-91, 1991-92 and 1992-1993 through G.Krishna Murthy, who, as a member of the Audit Party, conducted audit and submitted report to Audit Officer, Local Funds, Vizianagaram. Since the issue involved in all revisions is one and the same, they are being disposed of by this common order.

The facts in issue are as under:

The petitioner, who is accused No.1 worked as Executive Engineer, Panchayat Raj, Vizianagaram from 27.08.1988 to 15.07.1993. Accused No.2 worked as Deputy Executive Engineer, I/c. Divisional Stores, Panchayat Raj, Vizianagaram from 20.07.1989 to 19.04.1992, accused No.3 worked as Assistant Executive Engineer, Panchayat Raj (Stores) at Vizianagaram from 20.12.1990 to 15.07.1993. Accused No.4 worked as Non-Technical Works Inspector, Panchayat Raj Stores at Vizianagaram from 17.06.1991 to 15.07.1993. Accused No.5 worked as Assistant Engineer, Panchayat Raj, Gajapathinagaram Sub-Division from 04.07.1991 to 31.07.1997. Accused No.6 worked as Assistant Executive Engineer, Panchayat Raj, Gajapathinagaram from 02.05.1986 to 31.01.1992. Accused No.7 worked as Assistant Engineer, Panchayat Raj, MRP, S.Kota from 11.08.1990 to 30.06.1997. Accused Nos.8 to 10 were the Transport Operators and belonging to various places and to whom the transport of steel and cement was entrusted by accused No.3. Accused Nos.2, 3 and 4 worked in Central Stores, Panchayat Raj Department, Vizianagaram under the direct supervision of accused No.1.

The District Collector, Vizianagaram sent a confidential note of the Superintendent Engineer, Panchayat Raj, Vizianagaram to the Deputy Superintendent of Police, ACB, Vizianagaram, for taking necessary action in a matter relating to misappropriation of cement and steel from central godowns, Vizianagaram. As the contents of the confidential notes of the Superintendent Engineer were found to be true, cases were registered against the petitioner and others. During the course of Investigation, Deputy Director (SES), ACB, A.P., Hyderabad, requisitioned the services of Assistant Audit Officer, Local Fund Accounts, Visakhapatnam, who conducted the audit basing on the relevant seized records. The averments in the charge sheets would show that accused No.1 indulged in indenting large scale steel and cement without obtaining proper requisitions from sub-divisional officers and also indulged in large scale misappropriation of steel and cement by making false entries with the active assistance and connivance of accused Nos.2 to 7, who have made false entries in their respective registers. It is thus alleged that the accused have caused loss to the Government funds during the years 1990-91, 1991-92 and 1992-1993. The A.C.B. investigated into the matter and filed charge sheets against the petitioner and others. After filing of the charge sheets, the same were taken on file as C.C.Nos.28 of 1998 (Crl.R.C.NO.839 of 206), 29 of 1998 (Crl.R.C.NO.832 of 2016) and 30 of 1998 (Crl.R.C.No.772 of 2016).

Prior to the said cases, a case in Cr.No.5/ACB-VZM/93 was registered against the petitioner and others for the offences punishable under Sections 13 (2) read with 13 (1) (c) of the Prevention of Corruption Act, 1988 basing on a confidential note sent by Superintending Engineer, Panchayat Raj, Vizianagaram alleging that the petitioner along with others have committed forgery and misappropriation in respect of steel purchased for the department. The A.C.B. investigated into the matter and filed a charge sheet against the petitioner and five others for the above mentioned offences. After filing of the charge sheet, the same was taken on file as C.C.No.14 of 1996 (Crl.R.C.No.854 of 2016).

It is stated that a Special Audit party consisting of G.Krishna Murthy, P.Krishna Rao and V.Lachanna was formulated by Director, State Audit, A.P., Hyderabad, vide Proceedings Rc.No.32846/ 564/42/93, dated 31.12.1993 as per the orders of the Government in Memo No.50668/Estt./93/4, dated 13.12.1993, to audit the accounts regarding mis-utilisation of cement and steel in Panchayat Raj division office, Vizianagaram. Accordingly, G.Krishna Murthy, Assistant Audit Officer, who was cited as LW.3 in C.C.No.14 of 1996, LW.25 in C.C.No.28 of 1998, LW.32 in C.C.No.29 of 1998 and LW.31 in C.C.NO.30 of 1998, along with P.Krishna Rao, V.Lachanna , conducted audit for the years 1990-1991, 1991-1992 and 1992-1993 pertaining to serious irregularities of misappropriation of funds in the divisional stores, Panchayat Raj Department, Vizianagaram and submitted year-wise reports to the Audit Officer, Local Fund Accounts, Vizianagaram.

During the course of evidence of said G.Krishna Murthy, the prosecution intends to bring on record the typed annexure to the audit report for the years referred to above through him, who was a member of the audit party and also submitted a report to the audit officer, Local Funds, Vizianagaram. Accused No.1 raised an objection to the said document on the ground that it is not original (not in manuscript) and the said typed annexure were signed by the audit officer, Local Funds, Vizianagaram. It is his case that G.Krishna Murthy is not the proper person through whom the questioned document can be brought on record as evidence.

To this learned Public Prosecutor prayed the Court below to receive the said document on behalf of the prosecution subject to the objection raised by the petitioner/accused No.1, which can be decided at the time of final arguments. But the learned counsel for the petitioner filed a memo and insisted the Court to pass a speaking order on the said objection before marking the said document. Under those circumstances, further chief examination of G.Krishna Murthy was deferred and the issue raised was decided by the trial Court in C.C.No30 of 1998, holding that the Court can proceed with the trial of the case and the objection raised by the petitioner with regard to the admissibility of audit report can be decided at the time of final judgment of the case.

From a perusal of the papers filed along with four revisions, it appears that the objection raised at the time of evidence of G.Krishna Murthy was recorded only in C.C.No.30 of 1998, but however, counsel for the petitioner submits that the objection memos were filed before the trial Court but the orders were not passed in other C.C.s.

It is to be noted that in C.C.No.14 of 1996 (Crl.R.C.No.854 of 2016) two objection memos were filed, one on 23.12.2015 and another on 22.01.2016, but the said memos appears to have been returned by the office on 29.01.2016. Similarly in C.C.NO.28 of 2008 (Crl.R.C.No.839 of 2016) the evidence of G.Krishna Murthy through whom the audit report annexures are sought to be marked is silent on the said aspect except stating that the cross examination by accused officers is deferred at request. The memo in the said case is said to have been filed on 23.12.2015, where as the evidence of G.Krishna Murthy was recorded on 04.01.2016, it appears that the memo was filed much prior to the date of recording of the evidence of P.V.Krishna Rao.

In Crl.R.C.No.832 of 2016 the evidence of G.Krishna Murthy, who is the member of audit was recorded on 12.01.2016 and a memo raising the objection was said to have been filed on 22.01.2016 but the same was returned on 29.01.2016. The record does not anywhere indicate that the returned memos were re-presented. The evidence of G.Krishna Murthy in the said C.C. also does not contain the endorsement with regard to the objections raised by accused No.1.

From the above, it appears that objection raised in C.C.No.30 of 1998 was considered by the Court and a detailed order came to be passed negating the request of the petitioner.

Learned counsel for the petitioner mainly submits that since the objection as to the admissibility of the documents which are sought to be marked through Krishna Murthy, who is the member of the audit party and who prepared the audit report goes to the root of the matter, the same needs to be decided at this stage itself. He submits that the orders passed by the trial Court is totally contrary to the judgments of the Apex Court in ***Gopal Das and another v. Sri Thakurji and others***[1]***, R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P.Temple and another***[2] and ***Suryadev Rai v. Ram Chander Rai and others***[3].

On the other hand, learned Standing Counsel for ACB Cases opposed the revisions contending that the order passed by the trial Court warrants no interference since the same is based on the three Judge Bench Judgment of the Apex Court in ***Bipin Shantilal Panchal v. State of Gujarat***[4]. He submits that no prejudice would be caused if the admissibility of the document is decided at the time of final hearing along with the main C.C.

It is to be noted that earlier the C.B.I. filed an application to summon the annexure to the audit reports for the years 1990-91, 1991-92 and 1992-93, wherein the prosecution contended that earlier petition filed vide Crl.M.P.No.841 of 2008 to summon the audit reports was allowed but while sending the records the annexure to the audit reports were not sent. Since the Court received incomplete record, an application ie. Crl.M.P.No.290 of 2009 came to be filed to summon the annexure to the audit report. Accused No.1, who is the petitioner herein, filed his counter opposing the same. Counter filed by the petitioner therein was adopted by the other accused as well. After hearing both sides, the Court allowed the said application holding that the defence is at liberty to raise the objection while marking the documents as exhibits and they can also point out the prejudice that would be caused to the defence during the final arguments. It was further held that the objections raised by the defence cannot be considered at that stage. The said order was passed in the month of September, 2009, which has become final as none of the accused challenged the same. As the handwritten audit report annexures for the years 1990-91, 1991-92 and 1992-93 were not found even after several efforts, typed copies of the said documents duly certified by the District Audit Officer were sent to the Court. The present objection came to be raised when these documents were sought to be marked through Krishna Murthy.

The short question that arises for consideration is whether the issue as to the admissibility of the documents needs to be decided at this stage or whether it can be considered along with the final arguments of the matter.

In Bipin Shantilal Panchal Case (4 supra) the Apex Court held as under:

> "Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.) The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is re-canvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses."

In ***R.V.E. Venkatachala Gounder*** case (2 supra) the Apex Court held as under:

> "The objections as to admissibility of documents in evidence may be classified into two classes:-(i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility

is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections referred to hereinabove in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior Court."

From the two judgments referred to above, it is clear that if the objection raised by accused officer No.1 is decided now itself vide speaking order upholding the objection raised, and if the same issue is re-canvassed before the appellate or revisional Court leading to a different result, the said Court would be deprived of the said evidence on record, in which event the Court has to remand the case back for retrial causing inordinate delay. If the said document is marked as an exhibit subject to the objections raised by the accused, to be decided at the time of final judgment; no prejudice would be caused to either party. Hence, the order under challenge warrants no interference.

Accordingly, all the Criminal Revision Cases are dismissed.

Miscellaneous petitions, if any, pending, shall stands closed.

C. PRAVEEN KUMAR, J

04.04.2016
gkv

[1] AIR (30) 1943 Privy Council 83

[2] (2003) 8 SCC 752

[3] AIR 2003 SC 3044 (1)

[4] (2000) 1 ALD Crl.548