

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 3223 of 2015

ORDER:

Assailing the order dated 14.09.2015 passed in C.C.(SR) No.1554 of 2015 on the file of the Principal Judge for SPE and ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad, the petitioner, who is appearing in-person, filed the present revision under Sections 397 and 401 of Cr.P.C.

The facts in issue are as under:

The petitioner herein filed a private complaint against 23 accused for the offences punishable under Sections 7, 11, 12 and 13 of the Prevention of Corruption Act, 1988 and Sections 119, 120-A, 120-B, 166, 177, 182, 191, 192, 193, 217, 218, 219 and 409 read with 34 IPC. The averments in the complaint show that the complainant herein is the informant in C.C.No.235 of 2007 on the file of the XII Additional Chief Metropolitan Magistrate, Hyderabad. Accused Nos.1 and 2 are public servants, while accused No.3 is a builder. Accused Nos.4 to 21 are the officers/directors/agents of Voltas Limited and accused Nos.22 and 23 claim themselves to be landlords of D.No.3-1-22, 87-D, R.P.Road, Secunderabad, where the Voltas office is situated. The gist of the allegations in the complaint and the sworn statement would show that the informant is working as Service Mechanic in Voltas Limited, Secunderabad and is also the President of Voltas Employees Co-operative Canteen Limited. In Minimum Wages Case No.51 of 1996, the Assistant Commissioner of Labour, Hyderabad, requested the XXI Additional Chief Metropolitan Magistrate, to recover arrears of

Rs.35,000/- from the said canteen society. The Court entrusted the matter to the CCS Police, Hyderabad. Pursuant to which, the police have seized the entire property of the canteen including the building, sealed the premises on 24.03.1999 and accordingly reported to XXI Additional Chief Metropolitan Magistrate. It is stated that the said lock and key of the canteen was entrusted to the Management of Voltas in the year 2005 itself. Since some of the property was found missing, the informant made a complaint to the Court, which inturn directed the CCS Police to register a case and investigate into the matter. The investigating officer visited the society premises on 31.10.2005, opened the old lock of the society building, conducted a panchanama, obtained the signatures of the panchas and the Management of Voltas Company and submitted a detailed report to the Court of XII Additional Chief Metropolitan Magistrate, Hyderabad, along with two sealed covers containing old lock and new key. The then Presiding Officer is alleged to have received them on 10.11.2005 and made an endorsement on the file as "to put up with file". On 11.11.2005, the concerned C.M.O. is alleged to have received the said cover along with the inventory report and acknowledgment to the CCS police was also issued stating that the IO produced two sealed covers along with the panchanama. The Management of the Voltas Company which has established the co-operative canteen is alleged to have avoided regularization of the services of the concerned employees working in the canteen and is also avoiding payment of statutory benefits like PF, ESI and Wages on par with regular employees, in violation of Industrial Employment and Standing Orders registered by the Voltas Company with Labour Commissioner, Bombay. During the year 2005, the Management of Voltas is alleged to have made several efforts to

remove the canteen society from the premises but could not succeed. It is alleged that when the property was in the custody of the Court, the Management of Voltas, accused No.3 and Directors and Managers of the Voltas Company are alleged to have colluded together, approached the Presiding Officer and C.M.O. i.e. accused No.1 and 2 and got the old lock and new keys in the sealed cover misplaced from the safe custody. Subsequently, the Voltas Company approached CCS Police and lodged a report on 05.02.2012 questioning the demolition made by the third party builders. It is alleged that the canteen building which was in Voltas Premises came to be demolished with the active connivance of accused Nos.4 to 23. Pursuant to a complaint made to Metropolitan Sessions Judge, an explanation was called for from the accused officers and direction was given to accused No.1 to visit the premises of the society canteen and make out a detailed panchanama report with regard to the earlier seizure report. Accused No.1 is said to have visited the canteen premises on 02.08.2012 along with her Court staff and one police constable from CCS, Hyderabad, obtained photographs in the cell phone and enquired into the matter. It is alleged that accused No.1, who is the Presiding Officer did not conduct any detailed panchanama and also did not conduct any enquiry as directed by the Metropolitan Sessions Judge. It is further alleged in the complaint that the CCS Police have not deposited the old lock and new keys with the then Presiding Officer as per the orders of the then Presiding Officer in the year 2005.

It is further alleged that accused Nos.1 and 2, who are Public Servants acted in collusion with other accused, tampered with the record and passed orders contrary to the earlier record stating that the old lock and new keys were never handed over to

the Court. In view of the letter given by the Metropolitan Sessions Judge, Hyderabad, directing the petitioner to proceed as per law with regard to the misplacement of old lock and new keys from the file of C.C.No.235 of 2007 on the file of the XII Additional Chief Metropolitan Magistrate, Hyderabad, the canteen society represented by the petitioner filed a writ petition before this Court seeking a direction to the Registrar General to enquire into the matter and prosecute the concerned. The said writ petition was dismissed directing the petitioner to take steps as per law. Thereafter, the petitioner moved an application to prosecute accused Nos.1 and 2 under Prevention of Corruption Act before the Hon'ble Chief Justice of High Court of A.P., in the year 2014. It is stated that in spite of several remainders there was no response and finally the petitioner addressed a letter referring to the Judgment of the Apex Court in **Vinith Narayana** stating that if the application seeking sanction to prosecute accused Nos.1 and 2 is not rejected within four months by the appointing authority it is presumed that the appointing authority, has granted permission for prosecution of accused Nos.1 and 2. Accordingly, the petitioner filed the present complaint for the above mentioned offences. Along with the complaint, the complainant got examined three more persons as witnesses in support of his plea. The said complaint came to be dismissed on the ground that none of the witnesses have stated that they have seen any of the proposed accused Nos.3 to 23 talking with the proposed accused Nos.1 and 2, offering gratification other than legal remuneration or that the proposed accused Nos.1 and 2 demanding and accepting gratification other than legal remuneration or has obtained any valuable thing without consideration from any of the accused. It was also held that the allegations made against the proposed

accused are only based on assumptions and presumptions and there are no grounds to proceed against the proposed accused Nos.1 to 23. Challenging the same the present revision is filed.

It is to be noted that out of 23 accused, who were shown as respondent Nos.2 to 24 herein, respondent Nos.2 and 3 are public servants. Out of them, accused No.2 is Judicial Officer and accused No.3 is a C.M.O. working in Nampally Criminal Court, where as other accused are private parties.

The petitioner appearing in-person mainly submits that the findings given by the learned Judge, while dismissing the complaint, are contrary to law. He submits that having regard to the nature of allegations made, the Court ought to have taken the same on file. He further submits that in view of the judgment of the Apex Court in Vineet Narain v. Union of India^[1] it is deemed that the High Court accorded sanction for prosecuting accused Nos.1 and 2. It is his case that accused Nos.1 and 2 who are Public Servants created fictitious documents and allowed accused Nos.3 to 24 to take away the property of the canteen society, which is in the custody of the Court. He took me through the sworn statements of the witnesses and also the material filed along with the revision in support of his plea.

Sri V.Ravi Kiran Rao, learned Standing Counsel for ACB (TG) on instructions states that the allegations made in the complaint are ill founded and without any basis. He submits that even accepting the averments of the complaint are true, no offence is made out against any of the accused more particularly accused Nos.1 and 2 for the offences punishable under the provisions of Prevention of corruption Act.

In order to appreciate the rival arguments, it would be useful to refer to the sworn statement of the witnesses and also the material filed along with the revision.

The sworn statements of the witnesses namely A.Narasimha Rao, M.Yellamaiah and B.Srihari, were recorded along with the sworn statement of the complainant.

Sri A.Narasimha Rao deposed that in the year 1998 the Canteen was locked by the Management and employees of the Canteen were denied all the benefits. In the year 1999 the CCS conducted panchanama, sealed the canteen and handed over the custody of the keys of the said canteen to a competent criminal Court in Nampally Criminal Courts Complex, Hyderabad. They enquired with the Court as to why their society canteen was sealed. He also deposes about filing of a writ petition before the High Court. It is deposed that in the year 2005, when the room of the society was checked, they found certain articles of the society missing. When the same was informed to the Court, the learned Judge directed the CCS to conduct a panchanama, lock the society canteen with new lock and key and deposit the same in the Court. It is said that accordingly, the keys were deposited in the Court. It is also stated that in the year 2012 the Management of Voltas, accused No.3 and accused Nos.22 and 23 colluded together and demolished the said canteen building with the help of accused Nos.4 to 29. It is further said that the Court has not acted on the complaint given and that the employees of the canteen society have to be paid their wages and benefits to a tune about 3.00 crores. Similar is the version of two other witnesses.

Basing on the statements of the witnesses, it is contended that while the property of the society was in custody of the Court,

the Management of the Voltas in collusion with the construction company, intentionally demolished the canteen building, which is contrary to law.

The sworn statements were recorded in the year 2015. The material which has been placed before the Court by the party appearing in person show that initially a case in Crime No.216 of 2012 of CCS Police came to be registered for various offences under the Penal Code against 33 persons. Most of the accused in the said case were employees of Voltas Company. In the said case it was alleged that the seized property was handed over to accused Nos.1 and 2 therein, who are the employees of the Voltas Company. Hence, W.P.No.6277 of 1999 was filed questioning the orders of the Assistant Commissioner of Labour. In the said case, this Court by its order dated 30.03.1999, granted interim suspension of the orders of the Assistant Commissioner of Labour. In view of the said order, the property was not put to auction and the same is in the custody of accused Nos.1 and 2 therein, who are the employees of Voltas company. Since the said property was sold by the company, a case in Crime No.552 of 2005 came to be registered. When the petitioner noticed missing of certain seized property, he filed CrI.M.P.No.3589 of 2005 seeking appropriate action. Accordingly, a team of Officers were authorized to break open the old lock and make an inventory in the presence of mediators and put a new lock to the kitchen and hall and thereafter deposit the new keys before the Court along with a report. The averments in the said report disclose that accused Nos.1 and 2 therein, who are the employees of the Voltas Company in collusion with the Directors of the company and with the owners of the property demolished the structure of employees

co-operative canteen building, in which the articles of the society were kept, by illegally trespassing into the same. Hence, the action of accused therein lead to filing of a charge sheet, which was taken on file as C.C.No.235 of 2007. In the said case, the trial has commenced and as many as six witnesses were examined.

From the statement of the witnesses recorded by the Court, it is to be noted that none of the witnesses have deposed about depositing of the keys in a sealed cover in the Court or allegation of any fraud being committed by any of the accused. The averments in the sworn statements indicate that pursuant to a report given by the society, the Court directed the Inspector of Police, CCS, to open the room, conduct a panchanama and prepare an inventory. It is to be noted that none of the witnesses speak to the fact of keys being deposited in the sealed cover.

The allegations in the sworn statement are only based on assumptions and presumptions. Apart from that, the record which has been filed by the complainant show that on 03.08.2012 the second respondent i.e. accused No.1 sent a report to the Metropolitan Sessions Judge, Hyderabad, wherein it has been stated that there is no specific room consisting of any property and the entire property was dumped in a corner which was covered with dust and are in dilapidated condition. It is stated that the property which was dumped in the corner consists of iron tables, iron chairs, wooden chairs, iron boxes, some cooking vessels, table fan, Voltas Refrigerator, bicycle, wall clock, steel carrier, water mugs and tube light etc. It was categorically stated in the report that the items of the property mentioned in the inventory list filed by the police earlier are all not available as per

the inventory list. It is further stated that the property is not in the same condition as it was mentioned in the inventory list. It was categorically stated that the keys of the premises were not deposited in the said Court but only property forms are kept in file and it was signed by the then Presiding Officer and no property item number was given. It was written by the then Presiding Officer as "put up with the file". The letter also indicates that the file was not put up before the then Presiding Officer with note and it does not contain any order of the then Presiding Officer. It is stated that at the time of inspection the security Officer of Voltas Company by name M.Rama Murthy and Security guard by name M.Ram Mohan were present representing the Voltas Company.

At this stage, it may be useful to refer to the original inventory report drafted at employees co-operative canteen society. In the said inventory report, the Inspector of Police after conducting inventory put up a new lock to the door of the kitchen room in the presence of panchas, complainant and the accused. During the said process, the services of key makers was also utilised. The body of the report shows depositing of old lock and key as Nos.1 and 2.

1. The broken old lock along with new key put in the envelop cover (with punch slips and sealed).
2. The keys in duplicate of New lock put in another envelop cover with punch slips and sealed.

At the bottom of the inventory report it was written that out of two sealed covers one containing old lock and one key and another containing the duplicate keys (2). If this endorsement is taken to be correct, no reasons are forthcoming as to what

happened to the original key. It appears that original key was not deposited in the sealed cover, as ordered. That being the position, it would be appropriate to refer to the explanation dated 01.12.2014 in Dis.No.144/12/ACMM/Hyderabad/2014 given by accused No.1 to the I Additional Metropolitan Sessions Judge, Hyderabad. In the said explanation it has been mentioned that she assumed charge as XII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad on 27.04.2011, and the keys of the premises in dispute were not deposited by the police in the said Court. However the property forms alone were kept in the file which were not signed by the then Presiding Officer and no property item number was given. It has been categorically stated in the said letter that the police did not deposit the old lock and new key before this Court as alleged in the complainant and the explanation submitted by the C.M.O. of the said Court clearly shows that there is no endorsement by the then Presiding Officer either in the property form or in the property register that old lock and new key were received by the Court. The then property clerk of the said Court by name E.Vittal is no more now. It has been further stated that as per the orders of the Metropolitan sessions Judge, Hyderabad, she inspected the property involved in C.C.No.235 of 2007 and submitted a report to the said Court in the year 2012 itself. It is stated that she gave an explanation to the effect that there was no negligence in discharging her duties as alleged in the complaint. It is stated that the entire case record in C.C.No.235 of 2007 was transmitted to the Chief Metropolitan Magistrate for disposal in accordance with law. This explanation of the officer made on 01.02.2014, which assumes lot of significance, cannot be ignored at this stage.

It is further to be noted that in C.C.No.235 of 2007, the State

filed an application before the trial Court vide CrI.M.P.No.2345 of 2012 to receive the acknowledgment given by the Court with regard to deposit of lock and key for marking the same through PW.4. The said application was rejected by the second respondent herein. The relevant portion of the order is as under:

“As per CMO note PW4 not deposited the broke open old lock and keys before this Court and no acknowledgment was given by the then P.O. The alleged acknowledgment filed by the prosecution does not even contains the signatures of the then P.O. and no P.I. number were given and the property form also received the same.

Moreover as per the instruction of the Hon'ble MSJ, I personally visited the deposited property on 02.08.2012 at 4.00 p.m, along with B.C. and office subordinate and submitted a detailed report along with photographs to the Hon'ble MSJ and there is no specific number consisting of any property and the same was demonstrated and the entire property is dumped in a corner and covered with dust and one is dilapidated condition and the said property is not kept in a room with lock and key as alleged. No property is lying in a room with lock and key as alleged by the prosecution not proved. Therefore, the question of deposit of broke open old lock and key and acknowledge as stated by the prosecution does not arise.”

The said order was challenged by way of revision before the Sessions Court by the State, which was allowed as under:

“No prejudice would occur to the respondent in getting the said acknowledgment marked before the Court. In order to gave a fair opportunity to the revision petitioner, the Court opines that the order of the lower Court has to be set aside.”

From the above, it is clear that the issue which is now raised ie. Missing of the old lock and key, is pending consideration

before a competent Court in C.C.No.235 of 2007. In view of the above, filing of another complaint making identical allegations is un-warranted. Suits are also filed by rival parties agitating the same issue. In view of the fact that the issue which is now raised is pending consideration in C.C.No.235 of 2007, I see no reasons to interfere with the order passed by the trial Court.

Accordingly, the Criminal Revision Case is dismissed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in this Criminal Revision Case, shall stand dismissed.

**JUSTICE C. PRAVEEN
KUMAR**

29.04.2016
gkv

[\[1\]](#) (1996) 2 SCC 199