

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 2099 of 2016

ORDER:

Assailing the order dated 08.07.2016 passed in S.R.No.2502 of 2016 by I Additional Chief Metropolitan Magistrate, Hyderabad, wherein and whereunder a complaint filed for the offences punishable under Sections 13(1)(a), 13(1)(d)(i) and (ii) punishable under Section 13(2), Sections 7 and 12 of the Prevention of Corruption Act, 1988 read with Section 120-B and 34 of the Indian Penal Code, 1860 was dismissed, the present Revision is filed under Sections 397 and 401 of the Code of Criminal Procedure.

2. The petitioner herein, who claims himself to be a social worker and founder member of Telangana Rashtriya Samiti (T.R.S) party to which the first respondent(A-1) is the President, allege that the first respondent entered into a criminal conspiracy to wipe out the opposition parties and in pursuant thereto, the first respondent is alleged to have induced and lured respondents 2 and 3(A-2 and A-3), who got elected as M.L.As., from two different political parties, by offering them cabinet posts, which according to him, is nothing but illegal gratification, for which he seeks punishment under the provision of Prevention of Corruption Act. It is further alleged in the complaint that the respondents 2 and 3, who were elected from Telugu Desam Party (T.D.P) and Bahujan Samaj Party (B.S.P) respectively, were admitted into the

T.R.S. party without following due process of law. It is alleged that second respondent herein gave an impression that he has submitted his resignation to the Hon'ble Speaker of Telangana Legislative Assembly on 15.12.2014 and since the Hon'ble Speaker of the Legislative Assembly did not accept his resignation, the second respondent continued to be a member of the Legislative Assembly representing the Telugu Desam Party. It is said that inspite of the same, on 15.12.2014 he was sworn-in as Minister for Commercial Tax and Cinematography for the Telangana State under T.R.S. Government as per Article 164 of the Constitution of India. The contents of the complaint also show that Mr. Gandra Venkata Ramana Reddy, former M.L.A., belonging to Congress Party, who applied, under Right to Information Act to the office of the Hon'ble Speaker of the Legislative Assembly, about the status of purported resignation of the second respondent, received a reply stating that the second respondent has not given any resignation letter for his post of M.L.A. Hence, it is urged that under Article 191(2) of the Constitution of India the second respondent should have been disqualified from being a member of Legislative Assembly on 15.12.2014 itself, as he quit his political party and joined the ruling party and continuing in the post of Cabinet Minister amounts to playing fraud on the Constitution. Similarly A-3, who is third respondent herein, got elected to the Legislative Assembly on Bahujan Samaj Party ticket, joined in T.R.S. Government and was appointed as Cabinet Minister by the said Government. It is alleged that the said act amounts to violation of the Constitutional mandate and

abuse of official position by the first respondent, who is the Chief Minister of the State of Telangana. Basing on these allegations and having regard to the alleged violation of Articles 164 and 191(2) of the Constitution of India, the present complaint came to be filed seeking punishment under the provisions of the Prevention of Corruption Act. The complaint was rejected without taking cognizance of the same and as such the present Revision came to be filed.

3. Learned counsel for the petitioner mainly submits that the fact of admitting respondents 2 and 3 herein into the party and giving them the post of Cabinet Ministers immediately thereof, is nothing but indulging in corrupt practices by the first respondent. It is his case that for changing loyalties, respondents 2 and 3 were offered gratification viz., the posts of Cabinet Ministers in T.R.S. Government, apart from the pecuniary advantages attached to such posts. It is urged that without enquiring into the allegations made in the complaint the learned Magistrate erred in dismissing the complaint at the threshold. He also commented upon the observation made by the learned Magistrate with regard to disqualification of a Member from the Legislative Assembly.

4. Learned Advocate General for the State of Telangana, strongly opposed the Revision contending that there is no illegality or perversity in the order passed by the trial court. Even otherwise he submits that the said Court has no jurisdiction to entertain a complaint filed under the provisions of the Prevention of Corruption Act. He took me through

various provisions of the Constitution and also the orders passed by this Court in Writ Petition Nos.7679 and 7217 of 2015 to show that there is no illegality in the impugned order.

5. Section 4 of the Prevention of Corruption Act states that notwithstanding anything contained in the Code of Criminal Procedure, 1973, or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by the special Judges only. Sub-section 2 to Section 4 contemplates that every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case. Sub-section 3 to Section 4 postulates that when trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure 1973, be charged at the same trial.

6. From a reading of the above provision, it is clear that it is only the Special Judge, who has been appointed to try the cases under the Provisions of the Corruption Act, can try the cases under the provisions of the Prevention of Corruption Act along with other offences to be charged at the time of trial. Admittedly the Court before which the present complaint came to be filed i.e., the Court of I Additional Chief Metropolitan Magistrate, Hyderabad is not a Special Judge authorized to try offences under the provisions of the Prevention of Corruption Act.

Therefore, the very filing of complaint before the Court of I Additional Chief Metropolitan Magistrate, Hyderabad is not maintainable for want of jurisdiction.

7. Coming to the merits of the case, the grievance of the petitioner appears to be with regard to the induction of Accused 2 and 3 i.e., respondents 2 and 3 herein into a political party, headed by the first respondent herein and then offering them the posts of Cabinet Ministers. In order to appreciate the same, it would be useful to extract Article 164(1) of the Constitution of India, which is as under :-

164. (1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor: Provided that in the States of 1[Chhattisgarh, Jharkhand], Madhya Pradesh and [Odisha]2 there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

8. A reading of the said Article would show that on the advice of Chief Minister, the Governor of the State shall appoint the Ministers. Even in the instant case, on the advice of the first respondent, the second and third respondents were appointed by His Excellency the Governor. Since the appointments were made in exercise of power under Article 164 of the Constitution of India, it cannot be said that the first respondent by himself has indulged in any corrupt practices the ingredients of "illegal gratification" within the meaning of the provisions of the Prevention of Corruption Act. The issue, which has been raised in this Revision, more particularly with regard to the defection of the

second respondent and he being given a post of Cabinet Minister etc., came up for consideration before a Division Bench of this Court in Writ Appeal No.158 of 2015. In the said case, the Division Bench of this Court considered the entire issue and dismissed the Writ Appeal along with the connected Writ Petitions.

9. The Bench categorically held that the powers to disqualify a Member of Legislature is within the purview of the Speaker of State Legislature and if the Speaker violates the Constitutional mandate, as malafide, non-compliance of rules of natural justice and perversity, the constitutional courts can interfere by way of judicial review but not otherwise. Referring to Article 164(1), it has been held that the Governor of the State is the appointing authority of the post of Chief Minister and the other Ministers on the advice of the Chief Minister and the Ministers shall hold the office during the pleasure of the Governor.

10. After referring to **Kihoto Hollohan v. Zachillu**¹, the Division Bench of this Hon'ble Court rejected the argument of the learned counsel for the petitioner that there was any violation of defection rules and non-observance of the said rules amounts to violation of Constitutional mandate. The Bench further observed that Article 164(1B) contemplates that a member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified from being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification

¹ 1992 Supp (2) SCC 651

till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier. Apart from that as per Para 4 of the Tenth Schedule of the Constitution of India, if there are any grievances, the aggrieved person alone has to file necessary petition before the Speaker under Xth Schedule and it is said that such petitions are pending before the Hon'ble Speaker.

11. Having regard to the circumstances stated above and the issue, which according to the petitioner amounts to accepting illegal gratification under the provisions of the Prevention of Corruption Act; and the acts done by His Excellency the Governor on the advice of the Chief Minister as per the Article 164 of the Constitution of India, is covered by the decision of a Division Bench of this Court, it cannot be said that the offences as alleged are *prima-facie* made out.

12. Accordingly, the Criminal Revision Case is dismissed. No order as to costs. Consequently, Miscellaneous Petitions pending if any in this Revision shall stand closed.

JUSTICE C.PRAVEEN KUMAR

Dt: 30.08.2016

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