HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 1740 of 2016

ORDER:

Assailing the order dated 05.10.2015 passed in Crl.M.P. No.541 of 2015 in Crime No.11/RCT-HR/2015 on the file of the I Additional Special Judge for S.P.E. and A.C.B. Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad, wherein and whereunder an application filed under Section 251 Cr.P.C., to discharge the accused was rejected, the present Revision is filed.

2. The facts, which lead to filing of the present Revision, are as under :

The above crime was registered against the petitioner for the offences punishable under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act in respect of a trap which was laid while the accused was working as Additional Assistant Engineer(Operation), TSSPDCL, Vanasthalipuram. The averments in the First Information Report show that on 30.06.2015 at about 11.00 a.m., one Karri Venkateshwar Rao lodged a report before the office of Deputy Superintendent of Police, A.C.B., Hyderabad Range stating that he has taken contract of obtaining electrical connections, fixing of panel board, cable, erection of pole etc., at Plot No.432/A, Prashanthinagar, Vanasthalipuram from K.Bhanu Murthy. Last year on 05.06.2014 he applied for six meter connections through ICSC. It is alleged that since last one year he has been meeting the accused and enquiring about his work. It was also brought to his notice that A.O. has sent estimation to D.E., through ADE instead of Panel board. But the A.E. suggested to reduce the load. Then the informant submitted an application for six single phase 1 KW at ICSC. The ICSC, A.E., changed the load in his old application. Thereafter he is alleged to have met the accused for submission of revised estimate for which the accused is alleged to have demanded a sum of Rs.30,000/- as bribe. On 25.06.2015 when he met the A.O., he is alleged to have reiterated his earlier demand. When the informant pleaded his inability to pay the said amount, the Accused Officer is alleged to have reduced the bribe amount to Rs.20,000/-. Then the informant is alleged to have requested the Accused Officer to send the estimate stating that he would pay the bribe amount at the time of preparing work order. On 27.06.2015 the informant obtained a D.D., for an amount of Rs.12,523/- as per the estimate and on 29.06.2015 he submitted the D.D., receipt along with sanction order and tax bills to the A.O., who reiterated the earlier demand of bribe. It has been alleged that the Accused Officer is alleged to have told the informant that he will not prepare work order without payment of bribe amount. Since the informant was not ready to pay the bribe amount, he lodged a report. Pre trap proceedings were drafted on 01.07.2015 in the office of the Inspector of Police, A.C.B., R.R. District, Nampally, Hyderabad and thereafter the trap was laid on the same day in the presence of two official mediators. The averments in the report show that when the informant gave the currency notes of Rs.20,000/- to the A.O., he asked him to keep them in a scribbling pad, which was closed by the A.O. and later kept the same in his shoulder bag available on the left side of the office table. Later the A.O., is alleged to have instructed Sri K.Venkat Rao, who was a witness to the transaction, to prepare work order application. The amount of Rs.20,000/- was said to have been recovered from the scribbling pad, which was kept in a bag carried by the A.O. It was found that the said bag was given to his son, who came to the office, and was instructed to wait in his Car. The report further discloses that the tainted amount along with bag was recovered from the middle seat of the bearing No.A.P.13-AB-8176.

3. Learned counsel for the petitioner mainly submits that even accepting the allegations in the report to be true no offence is made out as no money was recovered from the person of the petitioner. It is his case that since phenolphthalein test proved negative, continuation of

investigation would be improper and incorrect. He further submits that there was no favour, which the accused could have done as he has already forwarded the applications to the higher officials. In view of the above he submits that ingredients constituting offences punishable under Sections 7, 13(1)(d) read with 13(2) of the P.C. Act are not at all made out against the A.O. The same is opposed by the learned Standing Counsel for the respondent contending that an application under Section 251 Cr.P.C., or even assuming it to be under Section 239 Cr.P.C., is not at all maintainable since the investigation is still pending and no charge-sheet is filed.

4. As seen from the record, the present application came to be filed before this Court, on a dismissal of a petition filed under Section 251 Cr.P.C., seeking discharge in a crime. In order to appreciate whether the said application is maintainable or not, it would be relevant to extract Section 251 Cr.P.C., which reads as under : -

> **251. Substance of accusation to be stated:** When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

5. Section 251 Cr.P.C., deals with trial of summons cases by Magistrate. Definitely the case on hand is not a summons case. On the other hand, it is a warrant case. Further, Section 251 Cr.P.C., will come into operation only after filing of a charge-sheet and production of the accused pursuant thereto. Till date no charge-sheet is filed. Even assuming for the sake of argument that the present application is one under Section 239 Cr.P.C., still the said application is not maintainable for the reason that Section 239 Cr.P.C., envisages that if, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against

the accused to be groundless, he shall discharge the accused, and record his reasons for so doing. Therefore, in order to make an application under Section 239 Cr.P.C., the Court has to consider the police report and the documents sent to it under Section 173 Cr.P.C. But as stated earlier no final report is filed under Section 173 Cr.P.C., till date.

6. Learned counsel for the petitioner relied upon the judgment of the Delhi High Court in **Arvind Kejriwal and others v. Amit Sibal and Another**, which was decided on 16.01.2014. But the said judgment may not apply to the case on hand since the said case was a warrant case and an application was filed by the Investigating Officer after examination of all the witnesses by the Magistrate. Therefore, viewed from any angle, this Court is of the opinion that the present application is premature. Even on merits the issue as to whether the accused has received the bribe amount and whether the said amount was kept in a scribbling pad and then in his hand bag, which was subsequently handedover to his son to be kept in a Car, are factual aspects which have agitated and considered during trial. Merely because the phenolphthalein test turned negative, as alleged by the petitioner, still the statement of the informant, who narrated about the demand and payment of money, requires consideration at an appropriate stage. In view of the above findings, the order under challenge warrants no interference and the present Revision is liable to be dismissed.

7. Accordingly, the Criminal Revision Case is dismissed. As a sequel to it, miscellaneous petitions pending if any, in this Revision shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date: 12.08.2016
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