THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1374 OF 2016

ORDER:

This Criminal Revision Case is preferred by the petitioner/accused officer No.2 under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") challenging the order, dated 1.4.2016, in Crl.M.P.No.706 of 2015 in C.C.No.10 of 2015 on the file of the Principal Special Judge for SPE and ACB Cases – cum – IV Additional Chief Judge, City Civil Courts, Hyderabad.

2. The offences alleged against the non-petitioner/accused officer No.1 are punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short, "the Act") and the offence alleged against the petitioner/accused officer No.2 is punishable under Section 12 of the Act. The petitioner herein filed the aforementioned petition under Section 239 Cr.P.C. requesting the Court below to discharge him from the offence punishable under Section 12 of the Act and the same was dismissed. Challenging the same, he filed the present Revision Case.

3. Learned counsel for the petitioner submitted that the petitioner is subordinate to accused officer No.1; that when accused officer No.1 instructed the petitioner to receive the money received by him from the *de facto* complainant, the petitioner has accepted the same and he does not have any *mens rea* to commit the offence; that the act of receiving money from accused officer No.1 will not come within the purview of Section 107 I.P.C.; that the petitioner is not aware of the reason for receipt of money from the *de facto* complainant by accused officer No.1 and hence, he should be treated only as a witness to the occurrence concerned.

4. *Per* contra, learned Additional Public Prosecutor submitted that the records clearly reveal about the discussion between accused officer No.1 and the *de facto* complainant and more precisely, the

demand and acceptance of bribe that happened in the presence of the petitioner herein and thereafter, the petitioner received the amount when the same was handed over to him by accused officer No.1 and hence, the petitioner is well aware of the fact that the money was given as a bribe in order to release the vehicle of the *de facto* complainant.

5. Perused the record and heard the arguments in detail.

6. Section 107 I.P.C. reads as under:

> *"**107. Abetment of a thing:-** A person abets the doing of a thing, who-*
>
> ***Firstly:**--Instigates any person to do that thing; or*
>
> ***Secondly**:--Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or*
>
> ***Thirdly**.--Intentionally aids, by any act or illegal omission, the doing of that thing."*

Explanation (1) to the said Section runs as follows:

> "*Explanation 1:-A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."*
>
> Explanation (2) to the said Section runs as follows:
>
> *"Explanation 2.--Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilities the commission thereof, is said to aid the doing of that act."*

From the entire reading of the record, it is clear that the petitioner could not substantiate the reason for the receipt of the money by accused officer No.1 from the *de facto* complainant and why the same was handed over to him and what necessitated him to receive the money. It may be argued by the learned counsel for the petitioner that the petitioner was on duty and that is why, he was present there and has received the money from A-1, but it is evident from the record that the entire transaction of receipt of money by A-1 happened in the presence of the present petitioner and as per his direction, the petitioner has received the money. It clearly indicates the fact that he facilitated the crime committed by A-1. Hence, the order passed by the learned trial Judge is in accordance with law. The points raised by the learned counsel for the petitioner are necessarily be subjected to examination and cross examination of the witnesses. Hence, the grounds raised by the learned counsel for the petitioner do not necessitate the Court to discharge the petitioner herein. Hence, the order under challenge is not liable to be set aside and the Criminal Revision Case fails and is liable to be dismissed.

7. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

JUSTICE RAJA ELANGO

20.6.2016
AMD

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRl.R.C.No.1374 OF 2016

Date:20.6.2016

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