THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.1323 of 2013

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, (for short, 'the CrPC') is filed by the petitioner-3rd party having been aggrieved of the order, dated 27.05.2013, of the learned Special Judge for SPE & ACB Cases, Vijayawada, passed in Crl.MP.No.359 of 2013 in Crl.No.21/RCA-ACB-VJA/2010.

2. I have heard the submissions of Sri C. Nageswara Rao, learned senior counsel representing Sri Kuriti Bhaskara Rao, learned counsel appearing for the petitioner-3rd party, and of Sri Udaya Bhasakara Rao, learned Standing Counsel for ACB representing the respondent-State. I have carefully perused the material record.

3. The petitioner is the daughter of the Accused Officer against whom the present case in Cr.No.21/RCA-ACB-VJA-2010 was registered on 06.10.2010 by the ACB Police Station, Vijayawada range, for the offences punishable under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 ['the PC Act', for short]. In the said crime, the petitioner filed the afore-mentioned Miscellaneous Petition with the following submissions: - 'The case was foisted against her father and the allegations and the imputations against her father are all false. There is no truth in the allegations made against the Accused Officer. The investigating agency has taken into consideration verifiable income of this petitioner and her family members and boosted up the value of the assets and tagged on the assets of this petitioner as well as of the other family members to the assets of the Accused Officer though the Accused Officer, who is the father of this petitioner, was not at all concerned with the assets of the other family members. A case in Cr.No.6/RCA-TPT of 1995 was earlier registered, on 21.12.1995, against the Accused Officer, who is the

father of the petitioner, for the offences punishable under Section 13(2) read with 13(1) of the PC Act. The check period in the present crime i.e., from 07.11.1981 to 05.10.2010 is illegal as the said check period covers the check period from 1981 to 1995 of the earlier crime and as the prosecution of the said case was dropped by the Government in the year 2003 stating that there is no disproportion in the assets of the accused officer. Once the case insofar as the said period from 1981 to 1995 was dropped, the inclusion of the same period in the present crime's check period is illegal and impermissible. The petitioner's mother hails from a well to do agricultural family. The family has 40 acres of fertile land in Emani village of Guntur District. In the earliest period itself the family used to get good agricultural income from the said lands. At the time of marriage of the parents of the petitioner, that is, at the time of the marriage of the mother of the petitioner with the Accused Officer, the parents of the petitioner's mother gave 60 tolas of gold jewellery, ¾ KGs of silver articles, cash of Rs.2.00 lakhs and 2 acres of wet land to the petitioner's mother towards stridhanam. The father-in-law of the mother of the petitioner also gave 25 tolas of gold jewellery and ¼ KGs of silver articles to the mother of the petitioner at that time. She also received cash gifts in a sum of Rs.25,000/- from relatives and friends at the time of marriage. The mother of the petitioner gave the said cash to her father for improving. Both the parents of the Accused Officer were employed. They also owned agricultural lands. The income of the mother of the petitioner is developed from time to time and the mother of this petitioner made lot of savings from her income in the shape of FDRs etcetera. The deposits are in nationalised banks. This petitioner's marriage was fixed to be performed on 23.05.2013. However, her marriage could not be performed as the Accused Officer was placed under suspension and his assets and deposits were seized by the investigating agency on 06.10.2010 itself. Despite lapse of 2 ½ years, there is no progress in the case and it is not yet decided. The investigating officer wrote letters to the bank authorities not to allow any operations of the accounts of the Accused Officer and his family members. Therefore, this petitioner is not able to operate her accounts. In-fact this petitioner wants to operate her accounts and withdraw her deposits to meet the expenditure of her marriage. But she was not being allowed to do the same. Hence, as on the date of the filing of the petition, the marriage of the petitioner could not be performed. When an application was filed before the trial Court in March, 2013, it was returned stating that all further proceedings are stayed by the High Court. When a revision was preferred before this Court, the trial Court's order was set aside and a direction was given to entertain the petition and pass appropriate orders. Hence, a direction may be given to the police to return the FDRs and permit her to operate her accounts/FDRs.'

4. The case of the respondent which is broadly in the nature of denial, in brief, is this: 'The present crime was registered against the Accused Officer, who is the father of the petitioner, alleging *inter alia* that he is having assets which are disproportionate to his known sources of income during the check period from 07.11.1981 to 05.10.2010. During searches several incriminating documents were seized, on 08.10.2010. As per the investigation done until the stay orders are granted by this Court and as per the scrutiny of records, it was found that the accused is possessing disproportionate assets to a tune of Rs.3,85,54,754/- and that the percentage of disproportion is 753% to the known sources of income of the Accused Officer. He acquired huge assets after closure of the earlier disproportionate assets case of Tirupathi Range, that is, after the year 2003. Taking advantage of dropping of action against him in the earlier disproportionate assets case, the accused with a *mala fide* motive and corrupt means & methods periodically acquired movable and immovable assets in his name and in the names of his family members, after 01.01.1996. There is unimpeachable evidence against the Accused officer. The investigation so far conducted was done according to the procedure and law. It is absolutely

false to allege that the amounts, which were in the names of the petitioner in various banks, are her personal amounts and that she acquired the said amounts in the manner stated by her in her petition. The petitioner is no other than the daughter of the Accused Officer. A huge amount of Rs.2,55,45,160/- was invested in the name of the Accused Officer and in the names of his family members including the petitioner herein, who is no other than his daughter. Further, the accused officer and his family members got huge bank balances to a sum of Rs.92,17,764/- in various banks. Out of the said amount, an amount of Rs.41,15,238/- was invested in the name of the petitioner in Fixed Deposit Receipts. Apart from that the petitioner has got bank balance to a tune of Rs.3,09,084/- in her bank account. The amounts stated above, which were seized, are part of the ill gotten money and disproportionate assets of the Accused Officer. The petitioner has no income or sources of income. She has no capacity to earn, save and invest such huge amounts. After registration of this case, the petitioner, her mother and her brother have withdrawn an amount of Rs.1,06,75,904/- from various banks and the said amount is in their custody. Therefore, it is false to allege that the parents of the petitioner were not in a position to perform the marriage of the petitioner, on 23.05.2013. The family members of the accused officer including the petitioner have withdrawn a huge amount afore-stated from various banks and therefore it is not difficult for them to meet marriage and other expenses. All the contrary allegations in the petition are false and are denied.'

5. At the hearing, learned counsel for both the sides advanced arguments in line with the pleadings of the parties.

6. Learned Standing Counsel, while supporting the orders of the Court below submitted as follows: 'According to the investigating agency, the subject money is part of Disproportionate Assets of the Accused Officer as the same is acquired during the check period in his name and in the names of his family

members. The issue as to whether the money belongs to the accused or the petitioner cannot be prejudged. If any order releasing the money for interim custody to the petitioner is passed, it would cause prejudice to the rights and contentions of the prosecution as the prosecution is specifically contending that the money is that of the Accused Officer and is part of Disproportionate Assets but not that of the petitioner. Hence, the revision is devoid of merit and is liable to be dismissed.'

7. I have given detailed and thoughtful consideration to the facts and submissions, which are adverted to supra in detail.

8. The petitioner submits that the monies invested in fixed deposits which are in the name of the petitioner are her amounts and that the said amounts are part of her income and savings and that she got the said amounts which exclusively belong to her by way of gifts from her paternal and maternal grand parents given on various festive and other auspicious occasions out of love and affection and that the amounts given as gifts from time to time are developed and improved and that therefore, the said amounts which are invested in her name since childhood exclusively belong to her. Per contra, the case of the ACB is that the said FDRs in the name of the petitioner, who is no other than the daughter of the Accused Officer is part of the ill gotten money and disproportionate assets acquired by Accused Officer and that the same is acquired during the check period, according to the investigation done in the matter. Thus, there are two rival versions. No-doubt, the Special Court is having power to give interim custody and return the property involved in a crime to the eligible applicant provided the facts and circumstances warrant granting of such relief. In the case on hand, during the course of investigation, several documents including FDRs etcetera were seized and bank accounts details etcetera were collected. The investigation is not yet completed and no final report/charge sheet is yet filed in view of the stay order obtained from

this Court by the accused officer on 09.09.2011 in his criminal petition no.5171 of 2011. Therefore, the claim of the petitioner cannot be pre-judged, at this nascent stage, in the considered view of this Court. It is trite to note that only on the final opinion that may eventually be expressed by the Investigating officer in his report that may be filed on completion of investigation, the facts of the matter would become clear rather clearer. Depending upon the result of the investigation the question 'whether a full-fledged trial of the case is necessary to come to a conclusion on the request of the petitioner herein' has to be answered. The questions – 'whether the version of the petitioner in her present petition is correct? and, 'Whether the request of the petitioner can be reconsidered at a later stage, if renewed? cannot be answered at the threshold. Further, the Accused Officer is facing imputations constituting the offences punishable under the provisions of the P.C. Act and the allegations are to the effect that he amassed wealth during the check period which is in excess of his known sources of income. Therefore, this Court finds that unless there is ample material to come to a safe conclusion on the issue and until the investigation concludes, it is not just and fair to consider the request of the petitioner and grant her the relief claimed.

9. On the above analysis, this Court finds that the order impugned is justified and warrants no interference, in the facts and circumstances of the case.

10. In the result, the Criminal Revision Case is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

11.09.2017
Vjl