

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Revision Case No.2720 of 2016

ORDER:

The revision petitioner is the 3rd accused among other accused in C.C. No.39 of 2005 on the file of the III Additional Special Judge for CBI cases, Hyderabad, outcome of FIR R.C.No.13 (A) of 2003 of CBI, Hyderabad registered for the offences punishable under Sections 120-B read with Section 420, 477-A IPC and Sections 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988 (for short 'P.C. Act'). It is now even at the stage of pre-charge enquiry under Sections 239/ 240 Cr.P.C from compliance of Section 238 Cr.P.C.

2) At this stage, the accused filed CrI.M.P. No.989 of 2010 seeking to accord sanction for pardon saying that he will disclose certain facts known to him while pleading innocence and denying several averments in the final report.

3) The other accused also in opposing the petition though the CBI which is the prosecution agency in their counter mentioned and though their standing counsel submitted during hearing that it is subject to requirement of the legal parameters to consider they have no objection, though they are not interested in filing any application to accord him pardon.

4) Ultimately after hearing both sides by referring to the expression of the learned Special Judge by the impugned order dated 24.10.2016 dismissed the application.

5) The operative portion of the order supra, particularly at para No.46 reads as follows:

“In the light of the above facts and circumstances as the prosecution is not willing to join in the request of the petitioner and as the above circumstances shows that no purpose will be served by tendered pardon to the petitioner/accused A3, as he is pleading innocence and ignorance about the overt acts alleged against him, I am of the opinion that the petitioner will not make full and true disclosure of the whole circumstances out of his knowledge relating to the offence and as such the request of the petitioner cannot be permitted and the same permission is liable to be dismissed.”

Now the same is subject matter and impugned in the revision.

6) Heard both sides at length and perused the material on record and the provisions and propositions.

7) From the elaborate arguments heard including on maintainability of revision from the bar under Section 19 (3) P.C Act vis-à-vis under Section 397 (2) Cr.P.C, undisputedly, the wording of both the provisions is almost one and the same in saying ‘interlocutory orders’ against which revision is a bar. The law is fairly settled that merely because the order is passed on an interlocutory application, it cannot always be considered as interlocutory in nature, when it affects the right of the parties as held reference to catena expressions including of the Apex Court by this Court in ***Sun Pharmaceuticals Limited vs State of Telangana***¹. When such is the case, the impugned order since affects the rights of the petitioner, it is as good as a regular order and thus the revision is maintainable as Section 19 (3) of the P.C Act nowhere says revision is not at all maintainable, but for against an interlocutory order.

¹ 2016 (2) Alt (crl) 165 (AP) at para No.3, 30 (i) pages 202 to 221.

8) The other aspect required to be considered in the application filed is, as no doubt as conceded, there is no duty of the accused to state several facts but for to state on oath simply of he is ready and willing to give full disclose of the truth of the facts known to him. Several paras unnecessarily stated in his affidavit petition stated that that he does not know certain facts or in denial of the prosecution allegations. That is in fact though one of the considerations in granting or refusing pardon from perusal of the same and from reading of prosecution case material, it no way anywhere reflected in the impugned order, in its dismissal, saying the Court is of the opinion that the petitioner will not make full and true disclosure of the whole circumstances out of his knowledge relating to the evidence.

9) The law fairly settled including from the expressions referred to in the impugned order of the lower Court that the Court can specify what are the facts from the prosecution material, within the knowledge of the accused from his application as to what he discloses, in according sanction in arriving at truth. What he stated for his seeking to accord sanction is not relevant, as simply he can say that he is ready to make full disclosure of facts known to him. It is only after disclosure from the provisional permission to accord permission for pardon even after his disclosure and also from the hearing of public prosecutor concerned, if the Court comes to the conclusion that he did not make a full disclosure, he has to face the trial and the provisional order can be cancelled.

10) Once such is the case, since learned counsel for the revision petitioner wants to avail fresh opportunity by full disclosure; to sub-serve the ends of justice, this Court closes the revision

without expressing anything on merits, giving him opportunity to the petitioner to file fresh petition in compliance with what is required by the provisions of Section 5 of P.C Act read with Sections 307 and 308 Cr.P.C.

11) Consequently, pending miscellaneous petitions, if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:24.01.2017

Note: Issue CC by 25.01.2017

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Crl.R.C. No.141 of 2017

Dt.23.01.2017

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