THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2334 of 2017

ORDER:

Aggrieved by the order dated 13.06.2017 passed in Crl.M.P.No.711 of 2015 in C.C.No.60 of 2014 by the I Additional Special Judge for SPE and ACB Cases-cum-V Additional Chief Judge, City Civil Courts, Hyderabad, preferred this revision under Section 397 and 401 of Code of Criminal Procedure (for short "Cr.P.C.") and prayed to set aside the said order and discharge the petitioner/accused No.1 for the offences punishable under Sections 7, 12, 14 read with 13 (1) (d) read with section 13 (2) of Prevention of Corruption Act, 1988 and Section 120-B, 34, 109 of Indian Penal Code (for short "I.P.C.") read with Section 41 of A.P. Excise Act, 1973 read with read with rule 9, rule 14 (10) of A.P.Excise (Lease of Right of Selling by Shop and Conditions of Licenses) Rules, 2005.

The petitioner filed petition under Section 239 of Cr.P.C. to discharge him from all the charges referred above in the above said case. The petitioner/accused No.1 is alleged to have committed the offences punishable under Sections referred above, but no grounds are existing for presuming the commission of offences alleged against the petitioner and no *prima facie* case is made out against the petitioner herein to proceed further. Material on record did not disclose the commission of offence under Prevention of Corruption Act and the petitioner cannot be proceeded further in the trial.

Even if the allegations made in the complaint are taken on their face value, they are not substantiated by any material and no document is produced along with the final report to establish the complicity of the accused for the offences punishable under Prevention of Corruption Act. The charge sheet does not disclose any act of the petitioner/accused No.1 abetting the offences punishable under Sections 7 and 11 of Prevention of Corruption Act, 1988 and the allegations made against the petitioner/accused No.1 are vague in nature and do not disclose the role of the petitioner/accused No.1 in the commission of offences alleged. Based on such vague allegations, the Court cannot proceed against the petitioner for the serious offences punishable under Sections referred above and requested the Court to discharge the petitioner for all the offences both under Prevention of Corruption Act and I.P.C.

The respondent filed counter denying the material allegations interalia contending that during the course of investigation of case in Crime No.7/RCO-HR/2012 of Hyderabad range, it came to their notice that several irregularities have taken place in the auction process of wine shops in Mahabubnagar district for the lease period 2010-2012, searches were conducted at the offices of Excise Superintendents of Mahabubnagar, Nagarkurnool and Gadwal on 05.03.2012 and the auction files of wine shops for the lease period 2010-2012 were seized under the cover of panchanama in the presence of the officials mediators and on scrutiny of the auction files, it came to the light that as per Rule 33 of A.P.Excise Act, 2005 one person should not possess more than a shop. In the said rules, it was clearly mentioned that no person shall submit tender on behalf of any other person unless he holds a power of attorney from such person. The seized records were analysed and the analysis disclosed that 21 license holders of wine shops formed themselves into an informal association/syndicate and the accused No.1 was designated as the leader of the said syndicate and that few persons who have major stake in liquor business in the districts decided to gain control over substantial number of wine shops for which auction was conducted in June, 2010. They arranged participation of persons over whom they have control and also arranged the necessary support including financial assistance and according to their plans, some persons who were not financially sound and possessing white ration cards were made to participate in the auction process and obtained licenses in their names to run the wine shops. As the seized documents disclosed collusive corruption, a case in Cr.No.7/RCO/HR/2012 was registered by the Inspector of Police, ACB, Mahabubnagar range on 23.04.2012 against five license holders. The petitioner herein is a syndicate leader having 21 wine shops located at various places in Mahabubnagar District. Investigating Officer conducted detailed investigation and examined 42 material witnesses and recorded their statements and also collected relevant documents about the involvement of the petitioner herein. The petitioner herein stood as surety for license holder Nos.54 and 73. Petitioner herein had frequent contacts over cell phones with the wine shops license holders and the investigating officer has collected call details of the concerned. The evidence collected during investigation clearly established that the petitioner abetting the offences punishable under Sections 7, 14, 13 (1) (d) read with Section 13 (2) of Prevention of Corruption Act and Sections 120-B, 34 and 109 of I.P.C. and also punishable under A.P.Excise Act and rules. Material collected during investigation prima-facie disclosed the involvement of the petitioner in commission of offence punishable under Sections referred above.

Witnesses examined during investigation clearly stated that they are benamies of the petitioner herein though the licenses were obtained in their names, in fact all liquor shops were arranged by the petitioner herein. The statements furnished by the bank officials clearly show about the *prima facie* involvement of the petitioner in this case. Thus, there is *prima facie* material against the petitioner to proceed further by framing charges and that the prosecution is based on substantial evidence and thereby at this stage, the petitioner cannot be discharged for the offences referred above.

The Court below dismissed the petition holding that there is sufficient material to proceed against the petitioner for various offences, with which he is charged and he cannot be discharged for the offences punishable under Sections 7, 12, 14 read with 13 (1) (d) read with section 13 (2) of Prevention of Corruption Act, 1988 and Section 120-B, 34, 109 of I.P.C. read with Section 41 of A.P. Excise Act, 1973 read with read with rule 9, rule 14 (10) of A.P.Excise (Lease of Right of Selling by Shop and Conditions of Licenses) Rules, 2005.

Aggrieved by the order passed by the I Additional Special Judge for SPE and ACB Cases-cum-V Additional Chief Judge, City Civil Courts, Hyderabad, the present criminal revision case is filed. The main ground urged in the grounds is that the prosecution is 'groundless' and that no *prima facie* material is available on record to proceed further against the petitioner herein and if the prosecution is proceeded against him, it amounts to subjecting the petitioner to harassment and requested this Court to allow the revision setting aside the order passed by the Court below. It is further contended that the statements of various witnesses recorded by the investigating agency are not sufficient to establish the alleged fraud in the auction of wine shops for the lease period 2010-2012 and corruption attributed to the petitioner, but the Court below did not consider the entire allegations made in the charge sheet and the contents of statements recorded by the investigating agency and committed error in dismissing the petition.

During hearing, Sri M.V.Subba Reddy, learned counsel for the petitioner, would contend that the basis for filing charge sheet against the petitioner herein is the alleged fraud in the auction of wine shops in Mahabubnagar District for the lease period 2010-2012, but none of the witnesses examined during investigation by the investigating agency did not disclose any material about the alleged fraud committed by the petitioner herein, but still the Court below declined to discharge the petitioner for the offences punishable under I.P.C. or at least for the offences punishable under Prevention of Corruption Act. He drew attention of this Court to the statements recorded by the investigating agency during investigation, more particularly statements of L.Ws.21 to 38, and they did not state anything about the fraud or corrupt practices adopted by the petitioner allegedly in conducting auction of wine shops. Therefore, proceeding against the petitioner for various offences under the Prevention of Corruption Act, I.P.C. and A.P.Excise Act and Rules framed thereunder, in the absence of any material is nothing but harassing the petitioner and prayed to discharge the petitioner for the offences referred above by setting aside the impugned order passed by the Court below.

Sri P.Nageswara Rao, Special Standing Counsel for SPE and ACB Cases (Telangana State), supported the order in all respects and drew the attention of this Court to the statements of various witnesses, who specifically stated about forming into syndicate and the wine shops being run by the petitioner obtaining license in the name of benamies, the call data collected by the investigating agency and the alleged payment of mamools etc. as directed by the petitioner herein to the Excise and Police Officials would also disclose that the petitioner abetted the witnesses examined by the investigating agency to indulge in corrupt activities, he is also an abetter to such corruption, thereby he cannot be discharged for the offences referred above at this stage.

Considering rival contentions and perusing material available on record, the point that arises for consideration is as follows:

"Whether the prosecution against the petitioner herein is groundless, if not, whether the Court below can proceed against the petitioner for the offences punishable under Sections 7, 12, 14 read with 13 (1) (d) read with section 13 (2) of Prevention of Corruption Act, 1988 and Section 120-B, 34, 109 of I.P.C. read with Section 41 of A.P. Excise Act, 1973 read with read with rule 9, rule 14 (10) of A.P.Excise (Lease of Right of Selling by Shop and Conditions of Licenses) Rules, 2005?"

P O I N T:

The present criminal revision case is filed under Section 397 and 401 of Cr.P.C. Jurisdiction of this Court under Section 397 and 401 of Cr.P.C. is limited and the High Court may exercise such power only when the Court found that there is a manifest perversity in the order or the finding recorded by the Court is without any evidence or material, though section 401 of Cr.P.C. confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity or procedure, neglect or proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. The revisional power conferred on the High Court by Section 401 of Cr.P.C. is discretionary power, has to be exercised in the aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon facts and circumstances of each case? The discretion conferred on the High Court by Section 401 of I.P.C. has to be exercised judicially, on judicial principles and not arbitrarily. Therefore, keeping in mind the scope of revision, I would like to decide the present issue before this Court.

According to section 239 of Cr.P.C. if the Court is of the opinion upon considering the police report and documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate or Sessions Judge thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate or Sessions Judge considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing.

The documents referred to in Section 207 of Cr.P.C. also must relate to such documents which can be subsequently transferred into evidence at the time of the trial. Hearing of the prosecution and the accused under this section does not mean the hearing of arguments only, it includes the hearing of the evidence if needed. The word "groundless" would mean the absence of reasonable ground to expect a conviction. "Groundless" is equivalent to saying that there is no ground for framing the charges, which depends on the facts and circumstances of each case. Therefore, only when the Magistrate or Sessions Judge comes to conclusion that there are no grounds to frame a charge for specific offence, the Court can discharge the accused for such offence. Even the scope of Section 238 and 239 Cr.P.C. is limited, such power has to be exercised only when the Magistrate or Sessions Judge came to conclusion that it is groundless, based on charge sheet and documents filed under Section 173 of Cr.P.C.

Consideration of records and documents at the stage of framing charge is for the limited purpose of ascertaining whether or not there is sufficient ground to proceed against the accused. Whether the material at the hands of the prosecution is sufficient and whether the trial will end in conviction or acquittal are not relevant considerations at the stage of framing of charge as held by the Apex Court in "***P.Vijayan v. State of Kerala***[1]"

The Court below normally would discharge the petitioner/accused for any of the offences only when there is no *prima facie* material to proceed against the accused or the prosecution is groundless but not otherwise after examining the entire documents produced before the Court along with final report under Section 173 of Cr.P.C. and the Court is not required to record its finding as to the possibility of getting conviction against the petitioner for any of the offences. If the Court finds *prima facie* material to proceed against the petitioner by framing charges, the accused cannot be discharged for any of the offences.

Petitioner/accused No.1 is native of Gurajala Mandal, Guntur District and his occupation is liquor business, the accused No.2 is Prohibition and Excise Inspector and worked as SHO of Excise Station, Kollapur, Mahabubnagar District from 17.10.2008 to 25.08.2011. The main allegation made against this petitioner is that the petitioner with his associates formed into a Syndicate and petitioner is designated as a leader of the Syndicate and few persons, who have major stake in liquor business in the district decided to gain control over substantial number of wine shops for which

[1] AIR 2010 SC 663

auction was conducted in June, 2010. They arranged participation of persons over whom they have control and also arranged the necessary support including financial assistance. According to their plan, some persons who were no financially sound and possessing white ration cards were made to participate in the auction process and obtained license in their names to run the wine shops. Out of 174 license holders of wine shops in the District, 88 license holders are possessing white ration cards i.e. below poverty line whose income does not exceed Rs.75,000/- per annum. Thus, 52% of license holders are benamies of the petitioner herein and formed into syndicate. The said syndicate succeeded in getting license for more than 40% of the shops in the district in collusion with the Excise Officials, right from the stage of auction and gained substantial share in the liquor business in the District and running business actively. It is also learnt that that Form-a1 and Form-a3 submitted in the names of license holder were attested by the Excise Officials without any proper verification.

On the strength of such information, Crime No.7/RCO-HR/2012 under Sections 465, 473, 471, 120-B, 34, 109 of I.P.C. and Sections 13 (2) read with 13 (1) (d) of P.C. Act, 1988 was registered against five license holders viz.,(1) M.Venkatrami Reddy, Tirumala Wines (G.Sl.No.59) Maddur, (2) V.Karunakar Reddy, Sri Sai Wines (G.Sl.No.110) Yerravalli, (3) V.Pulla Reddy, Kanakadurga Wines (G.Sl.No.111)

Yerravalli, (4) N.Srinivas, Ratna Wines (G.Sl.No.57) Kosigi, (5) K.Anjaiah, New Maharaja Wines (G.Sl.No.37) Shadnagar and took up investigation.

During investigation, 73 witnesses were examined by Inspector of ACB and recorded statements of L.Ws.1 to 44, which reveals that the accused No.1 was the benamidar of 20 liquor shops, L.Ws.2, 3, 5, 7, 8, 11, 13, 15, 17, 18 and 20 are white ration cardholders and some are friends of petitioner/accused No.1. The evidence of other official witnesses would show that 52% of the license holders are white ration cardholders having no sufficient means to maintain themselves.

Specific allegation made against the petitioner herein in the charge sheet is that he being a benamidar of 20 liquor shops with pre-arranged plan, developed illegal nexus with the officials of Excise, Police and others and paid bribes/mamools to them in order to make unlawful gailn in liquor business in violation of conditions of licenses and provisions of Excise Act and Rules.

Thus, the material collected during investigation reveals that the petitioner herein conspired with accused No.2 with common intention of obtaining pecuniary advantage, secured wine shops on benami names by inducing the public servant/accused No.2 to show official favour in ignoring the contraventions of the Excise Laws and Rules and accused No.1 abetted the offence by the public servants. Therefore, petitioner/accused No.1 allegedly committed the offences referred supra.

Further, the petitioner is a license holder, who is in liquor trade, alleged to have committed fraud on the department, which causes serious loss to the State exchequer on account of forming into Syndicate and gaining control over the liquor business in the District, obtaining more than 20 licenses in the name of benamies and he directed his employees to pay bribe to the officials of both Excise and Police departments. Therefore, such allegations certainly would fall within the provisions of Prevention of Corruption Act, since he is an abettor to pay bribe to the officials to run the shops beyond permitted timings and to sell the loose liquor in the shops and to sell the liquor at higher price than M.R.P. rates.

Learned counsel for the petitioner made a sincere attempt to demonstrate that the material on record is not sufficient to proceed against the petitioner under the provisions of Prevention of Corruption Act and would draw the attention of this Court to the statements recorded by the investigating agency under Section 161 (2) of Cr.P.C. He totally relied on the statements of L.Ws.21 to 34. The statements recorded under Section 161 of Cr.P.C. are only previous statements, which can be used for contradicting the witnesses. L.W.21 – T.Deerendra Goud categorically stated that he is accountant in “Apoorva Wines”, Kollapur with

G.Sl.No.134, which belongs to J.Laxminarayana, petitioner herein and he used to pay Rs.5,000/- per month towards salary. On the instructions of J.Laxminarayana, petitioner herein, they used to pay the mamools to Excise and Police official and run the wine ship beyond stipulated time, loose sales of liquor to the customers, selling of liquor over and above the MRP rates and allowing consumption of liquor at the premises of the shop and surrounding areas.

Statements of L.W.22 – B.Satyanarayana, L.W.23 – V.Kurumukrthy, L.W.24 – A.Ashok, L.W.25 – K.Anjaneyulu, L.W.26 – K.Mallaiah, L.W.27 – E.Laxmaiah, L.W.28 – T.Arvind Reddy, L.W.29 – B.Ratna Reddy, L.W.30 – C.Krishnaiah, L.W.31 – B.Shivaiah Goud, L.W.32 – V.Narsimha Rao, L.W.33 – P.Linga Rao and L.W.34 – K.Laxminarayana are also on the same lines of L.W.21.

If the statements of L.Ws.21 to 34 are taken as *prima facie* evidence, license holders of various shops are benamies of petitioner herein and virtually he is maintaining shops, paying salary to the accountants and other employees and instigated L.Ws.21 to 34 to pay mamools to Excise and police officials and he is equally liable for prosecution along with the recipients of bribe or illegal gratification and the persons who paid bribe on demand. Therefore, this piece of evidence is sufficient to proceed against the petitioner herein for the offences under the provisions of Prevention of Corruption Act.

The main endeavour of the learned counsel for the petitioner is that the petitioner is not a public servant. Undoubtedly, he is not a public servant, but still he is the person, who abetted to commit offence under Prevention of Corruption Act by the public servant/accused No.2, he is also equally liable for the offences along with recipients of bribe. Therefore, on the ground that the petitioner is not a public servant, he cannot be discharged for the offences punishable under provisions of Prevention of Corruption Act referred above.

As discussed above, only when the court finds *prima facie* no evidence to proceed against the petitioner or prosecution is groundless, the Court may discharge the petitioner by exercising discretion, as proceeding against him may amount to harassment to the petitioner. Here, I find *prima facie* material to proceed against the petitioner for the offences under Prevention of Corruption Act besides the offences under Indian Penal Code and other provisions of the Act.

Since the learned counsel for the petitioner prayed for discharge of the petitioner for the offences punishable under Prevention of Corruption Act alone and confined his arguments to that extent only, I need not adjudicate on the claim of the petitioner to discharge him for the offences under Indian Penal Code and Excise Act.

The evidence collected by the investigating agency would clearly show that the persons, who are white cardholders and below the poverty line also participated in the auction of wine shop for the year 2010-2012 and became highest bidders, obtained license to run several shops. When the life standard of the persons is below the poverty line and enjoying the benefits of welfare schemes of the Government, they are not expected to participate in the auction investing huge amount and became highest bidder and running liquor shops. As the persons are poor, such participation in the auction might be a benami of petitioner or some other person and such question of fact has to be decided only at the trial, but not at this stage of considering the petition under Section 239 of Cr.P.C.

On an overall consideration of entire material on record, statements which the petitioner placed on record, at best show that he is an abetter to bribe the officials of both Excise and Police department for wrongful gain. Therefore, the petitioner cannot be discharge at this stage on the ground that there is no prima facie material to proceed against him or prosecution is groundless. Consequently, I find no substance in the argument advanced by the learned counsel for the petitioner to discharge the petitioner for the offence punishable under Prevention of Corruption Act. Therefore, the Court below rightly dismissed the petition holding that the petitioner is not entitled to be discharged for the offences punishable under Sections referred above.

The Court below also referred various judgments in the impugned order, but they are not much relevant for deciding the present controversy since they are not relied on by either counsel before this Court.

In view of the above discussion, I find no merit in the revision and the same is liable to be dismissed.

In the result, the criminal revision case is dismissed.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

15.09.2017
Ksp