HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2906 of 2016

ORDER:

The revision petitioner Samiullah Shareef since retired as Joint Sub Registrar is the 1st accused in C.C.No.24 of 2010 on the file of Principal Special Judge for SPE & ACB cases, Hyderabad. It is outcome of crime No.15/ACB-CR/II/2009 for the offences punishable under Sections 7, 12, 13(2) read with 13(1)(d) of Prevention of Corruption Act (for short 'PC Act'), along with 2nd accused a private person by name Mahesh, a tea vendor and it is based on the report of the defacto complainant Smt. Shaheen Jahan.

2. The English typed report dated 16.07.2009 of her to the DSP, ACB, City Range-II, Hyderabad, reads in nutshell that her husband, his brother and his 2 sisters are having house with appurtenant site, bearing door No.4-1-538, Lot No.3, Troopbazar, Hyderabad, and her husband died in 1986 and she is his 1st wife and she got share in the property. She intended to dispose of her share of property therein to the prospective vendee Mohammad Bin Salam and on 10.07.2009 she went to the Registrar Office at Red Hills, Hyderabad, and purchased required stamps got prepared a document through the Scribe there and on 15.07.2009 she paid requisite stamp duty and registration charges and the Joint Sub Registrar-I Sri Samiullah Shareef-A.1 issued receipt No.3349 dated 15.07.2009 and she met him and requested for registration and release of the document and for that he demanded Rs.2,000/- as bribe and she expressed her inability. Samiullah Shareef stated that he would effect the

registration of the document, however release of document is only on payment of the bribe amount demanded. On 16.07.2009 she once again approached him and requested to release the document and he reiterated his demand and as she is unwilling to pay, she approached the DSP, ACB supra in presenting the report to take action. It was received on 16.07.2009 at 04.30 PM and arranged pre-trap proceedings on 17.07.2009 from the contents of the complaint on verification found constituting offence under Section 7 of the PC Act with permission of the competent authority to lay trap. The crime was thus registered on 17.07.2009 at 10.00 AM.

3. From the enquiry, it reveals the accused officer is not enjoying good reputation. The pre trap proceedings conducted and trap laid on that day i.e., 17.07.2009 at the Office of the Joint Sub Registrar-I Hyderabad. The post trap proceedings show the defacto complainant and her son as per the pre trap proceedings and instructions went to the Office of the Joint SRO-I, Hyderabad (Red Hills) and approached the A.1 at the 1st floor of the building by entering into his chamber and A.1 asked them to wait at the staff lunch room and after couple of minutes he came to the staff lunch room and sat in a chair and enquired the complainant as to whether she brought the amount and on her affirmative reply, he called A.2-Mahesh, Tea vendor, in the premises and asked the defacto complainant to pay said bribe amount to Mahesh, then she picked up the currency notes from the side pocket of her vanity bag and paid the same to A.2-Mahesh, who accepted with his right hand and having counted and informed the figure to A.1 and A.1 informed the defacto

complainant that her document is ready and available with him and asked her to come to his chambers to receive the same and left the lunch room and meantime her son went to the ground floor and given signal to the trap party while she engaged the A.2-Mahesh in conversation, which is at about 13.10 hours from the pre-arranged signal indicating the demand and acceptance, the DSP, ACB with staff and mediators rushed into the building and defacto complainant's son informed about payment to Mahesh-A2 as per the instructions of the AO-1 who was at 1st floor and the trap party proceeded to the staff lunch room and on seeing then and when the DSP questioned A.2-Mahesh he revealed his name and when chemical test conducted to the hands of Mahesh, it yielded positive result and seized the same and when questioned he stated that A.1 and himself belongs to same District and thereby he is doing petty business in the locality in the Registration Office, Red Hills and he was employed by A.1 on daily wages and he called by the A.1 officer to the lunch room and A.1 officer asked him (A.2) to collect the money given by the lady (defacto complainant) and accordingly she paid and he received and counted as found Rs.2,000/-, A.1 officer left the lunch room to his chamber and asked the lady to collect the documents from his chamber. The post trap proceedings further revealed that the DSP proceeded to the AO-1 with staff and mediators and introduced himself and the mediators to A.1 who perturbed on that and he questioned as to whether he demanded any bribe amount and accepted through A.2-Mahesh, AO-1 kept silent for sometime and denied receiving of any amount much less any demand or acceptance through A.2 and the complainant was called and was confronted with denial she categorically stated she paid to A.2 on instructions of A.1 the demanded bribe amount in the presence of A.1 by stuck to her version covered by her report and when DSP questioned A.1 Officer about the document, A.1 called his attender/office subordinate Sri Shivaram to pick up the document from his Almirah and Shivaram opened almarah in front of A.1 and took out the document and handed over to the DSP. It is already a registered document bearing No.1657 of 2009 of Joint SRO-I, which is nothing but agreement of sale-GPA executed by the defacto complainant, her son and daughter in favour of one Md. Bin Salam on 15.07.2009. DSP has taken a Photostat copy after duly attested by mediators and original was returned to the defacto complainant to avoid inconvenience. It is therefrom after investigation, the final report in the form of charge sheet against A.1 & A.2 supra. The learned Special Judge from the investigation material taken cognizance for the offences supra and after securing the presence of the accused and after supply of copies and in the course of hearing before charges, the A.1 officer filed the discharge petition.

4. The averments in the discharge petition in nutshell are that after registration of document, the document will be delivered only to the purchaser/attorney i.e., to Md. Bin Salam and on production of receipt issued in the name of complainant by him and there is no evidence to show that she has taken possession of the receipt No.3349 dated 15.07.2009 without which no one is entitled to take registered document from the Registrar and the AO-1 officer never demanded prior to the date of trap nor accepted any bribe amount much less from Mahesh-

A.2 and he made a representation to the Government on 14.12.2009 to drop the false accusation against him which is before according sanction for prosecution on 01.02.2010 and it is subsequently the Government has withdrawn the prosecution sanction order vide G.O.Ms.No.497 dated 11.06.2010. However it is saying A.1 officer since retired, no sanction order is required apart from withdrawal of sanction already accorded is unsustainable.

5. The counter filed in opposing the quash petition by the ACB officials while reiterating the report of the defacto complainant and pre and post trap proceedings, further show that against filing of the final report despite earlier sanction order withdrawn by the Government while continuing the disciplinary proceedings before the Tribunal, the discharge petition was dismissed before the trial Court in December 2015 and the case is pending for framing of charges from the prima facie accusation as the A.1 officer committed the offence at the stage of framing of charges or even in seeking discharge to consider, the Court cannot weigh the evidence but for to see whether there is any prima facie accusation or not for Court cannot conduct any roving enquiry as to truth of the allegations as held in several expressions of the Apex Court and it is the duty of the Courts in anti corruption matters to interpret and workout to strengthen the fight against the corruption and the discharge application is liable to be dismissed. The discharge application in Crl.M.P.No.890 of 2015 was by the impugned order dated 20.10.2016 ended in dismissal by the learned I Additional Special Judge for SPE & ACB Cases-cum-Principal Special Judge for SPE

& ACB Cases, Hyderabad, with the observation that at the stage of framing charges what is required is prima facie case made out regarding the offences. The question whether charge will eventually stand or not cannot be gone into as it is to be considered from trial and evidence being produced in full fledged trial and there are no sufficient grounds to discharge.

6. The contentions in the grounds of revision vis-à-vis the oral submissions are that the impugned dismissal order is erroneous and contrary to law and facts and by non-application of mind and with no reasons assigned for dismissal in ship shad manner without even verifying the material available on record and in deciding whether sufficient or not from weighing the material. The trial Judge ought to have seen that the contention of the petitioner is that receipt No.3349 dated 15.07.2009 issued at the time of registration to the defacto complainant was not seized from her to approach him as she is not the claimant of document and there is no official favour pending as on the date of trap for registration of the document already done and there is no any proof of direct demand much less acceptance by the accused officer pursuant thereto and there is no prima facie accusation even on face value of the prosecution material to ask the accused to face ordeal of the trial to frame the charges hence to set aside the dismissal order and to discharge the accused by allowing the revision.

7. Whereas it is the submission of the learned Special Public Prosecutor for ACB that the order no way requires interference by this Court while sitting in revision and the defacto

complainant right from the report stated that it is the accused demanded bribe for registration and receiving of document and even she expressed her inability to pay having registered asked to pay amount while taking document and pursuant to which when she reported the same unwillingness to pay the bribe, the trap arranged covered by pre and post trap proceedings and she stated about the demand and also the acceptance of bribe amount by A.1 through A.2 for she paid A.2 at the instructions of A.1 and even the document is in the A.1's Almirah that was seized and thereby the discharge petition no way requires interference, hence to dismiss the revision.

8. Heard and perused the material on record.

9. Even from the very report of the defacto complainant, the document was registered on 15.07.2009 executed by her, her son and daughter in favour of Md. Bin Salam, GPA and agreement of sale holder. A perusal of the document shows the stamp was purchased on 08.07.2009 not in her name but in the name of Mohd. Bin Salam S/o. Late Salam Bin Ahmed. It was executed on 10.07.2009 in his favour by the defacto complainant, her son and daughter, all majors, bearing document No.1657 of 2009 and it was registered by Joint SRO-I. The beneficiary under the document is said Salam. The document clearly shows the photos of the 3 executants and purchaser, all 4 with addresses and thumb impressions obtained as per Section 32-A of the Registration Act as part of the registration of the document which is running 13 pages at page Nos.12 & 13. In the charge sheet filed by the DSP, ACB Inspector, City Range-II against the 2

accused reveals report of the defacto complainant, pre and post trap proceedings supra saying the accused officer-1 Sri Samiullah Shareef, Joint SRO-I by abuse his official position demanded and accepted the bribe of Rs.2,000/- from the defacto complainant through his assistant A.2-Mahesh for showing official favour for registration and release of the document executed by the defacto complainant and committed the offence and reference about the sanction order dated 01.02.2010 and the memo of evidence shows LWs.1 to 12 of which LW.1 is the defacto complainant, LW.2 her son and LWs.3 & 4 are the mediators to the pre and post trap proceedings and LW.5-Sattu Shivaram speaks about taking out the document No.1657 of 2009 from the Almirah of A.1 on his instructions and handed over the same to the ACB officials and LW.6-Manoj Kumar Mathur, Junior Assistant of the Joint SRO-I Office speaks about scanning of the document on the date of registration i.e., on 15.07.2009 and returning it to the Accused Officer-1 and LW.7-Sri Gulam Qadar Haqqani, District Registrar, speaks about the procedure like presenting and return of documents, safe custody of records and procedure to be followed in case of delay in return of the documents after registration and not allowing the unauthorized persons into the premises unnecessarily. The Section 164 Cr.P.C. statements of LWs.1 & 2 i.e., defacto complainant and her son recorded by I Metropolitan Magistrate, Hyderabad. LWs.4 & 5 employees of Sub Registrar Office Shivaram and Manoj Kumar Mathur statements which are relevant to speak that Sattu Shivaram is working as office subordinate-cum-attender in Joint SRO-I Office, he will look after his work of stamping, returning of documents to parties and handing over of tappal to staff as well as District Registrar Office and on 17.07.2009 he was present in the office and after the ACB Officials caught Joint Sub Registrar AO-1, he was called by AO-1 in the presence of officials and A.1 asked him to take out document pertaining to Smt. Shaheen Jahan, then he opened Almirah which is in front of the seat of Joint SRO-I and took out the registered document No.1657/2009 and handover to the DSP and A.2 moves in the office premises after A.1 officer joined the Office. This statement only speaks the ACB Officials entered the chamber of AO-1 and on the instructions of A.1 from the almirah, said Shivaram took out the document bearing No.1657/2009 and handed over to DSP from this there is no incriminating material against accused persons 1 & 2. Coming to other statement of Manoj Kumar Mathur, Junior Assistant and referred supra in his statement during investigation of the ACB Officials he stated his duty to prepare cheque slips and scanning of document and also take photographs of the persons who come for registration in the absence of Joint SRO-II. Generally when registration is completed the document will be handed over to him for scanning and he will scan the document and return back to the Joint SRO-I on same day and after receipt of the same, a certificate will be appended to the document that document has been scanned as seen from copy of the document No.1657 of 2009 of Joint SRO-I. He can remember that he scanned the document on the same day of registration and returned it to the A.1 on the same day. He further deposed that on the back side of page No.3 of the document Joint SRO-I (A.1) signed with a stamp certifying that the document has been scanned which is on the same day i.e., 15.07.2009. He further deposed apart from scanning on the same day, they also take photographs and finger prints through the system and will take out a print and obtain signatures of parties and keep it with the document along with photo and fingerprint form which was submitted by parties for cross reference and in the instant case no photographs and fingerprints of parties were obtained since he was instructed by A.1 not take photographs and fingerprints for the best reasons known to him. In fact the said version is wrong from what is referred supra on seeing the document at page Nos.12 and 13 shows the continuation of registration of the document with number and mentions the signatures of A.1 and at the same time showing the photos with addresses taken and affixed including the thumb impressions of executants and executee all the four. Even coming to Section 164 Cr.P.C. statement of defacto complainant it is what she reiterated in her report and statement before I.O. covered by facts in the pre trap and FIR and what was happened at the post trap proceedings crucially the defacto complainant did not produce the receipt that to be produced on the date of registration for return of the document for showing the receipt there is nothing even from her report or statement including under Section 164 Cr.P.C. of Accused Officer-1 did not pass on the receipt with an intention to see that the document will be collected by payment of the bribe amount that is one of the crucial aspects in this case. However her report vis-à-vis her statement recorded under Section 164 Cr.P.C. and that of her son show the so called demand for bribe and the acceptance by A.1

Officer not directly but through Mahesh who is employee by A.1 Officer for such proceedings.

10. Coming to the legal position in this regard as to how far this Court in this regard against dismissal of the discharge application by sitting in revision. No doubt there is no direct acceptance of bribe herein by A.1. Whether the said acceptance through A.2 tantamounts to demand and acceptance or acceptance from the presumption under Section 20 of the PC Act is a matter primary for consideration besides other infirmities pointed out supra in the prosecution case. The Apex Court in **D.Velayutham Vs. State**[1] observed that once there is allegation of common or conjoint bribe demand by the Senior Officer and Junior Officer and in those facts there was constructive receipt by Junior Officer A.1 for himself and for the senior Officer A.2 of Rs.1,000/- each from complainant regarding show cause notice for payment of excise duty and in the trap A.2 Officer was got red handed while receiving Rs.2,000/- for both A.1 and A.2, A.1 had left the house alleged to visit his indisposed wife. The conviction by the trial Court from said evidence confirmed by the High Court held confirmed by the Apex Court. The judgment has no direct application to the facts but for a co-accused, accepted for himself and for other absent accused can be relevant upon. Here it is not a case for A.2 any bribe accepted by A.2, but for if at all for A.1 to believe or not of the defacto complainant. No doubt the statement of A.2-Mahesh of the amount accepted on behalf of A.1 at his instructions cannot be admitted because it is before the IO and hit by Section 25 of Evidence Act what is recovered is tainted

[1] (2015) 12 SCC 348

currency shown given by the defacto complainant to A.2. The only circumstance if at all to interfere is A.2 is not directly concerned for registration or for handing over of document but for it at all acted at the instructions of A.1.

11. Coming to the other decision of the Apex Court in **State Vs. A. Arun Kumar and Another**[2], it is observed that when the material on record from its face value on analysis disclose grave suspicion against accused and when Special Court framed charge, revision Court not justified in setting aside and in deciding on the facts. In fact from the expression there is no principle that revision Court cannot reverse the order of framing of charge by the trial Court in all cases but for confined to the facts of that case.

12. Coming to the other decision of the Apex Court in **State of Tamilnadu Vs. N. Suresh Rajan and Others**[3], what was held is for framing of charge or seeking any discharge there is no mini trial contemplated the Court to proceed with assumption that material brought on record by prosecution is true only probative value of material has to be gone into to see if there is a prima facie case for proceeding against accused, Court is not expected to go deep into the matter and held that material would not warrant a conviction if Court on basis of material, thinks that prima facie accusation it can frame charge if not to discharge. The Court at the stage to consider discharge sought for by accused if any if there is no prima facie case for proceeding against the accused. The defective investigation is not even a

[2] (2015) 2 SCC 417
[3] (2014) 11 SCC 709

ground for discharge if there is prima facie accusation. As pointed out there are defects no doubt initially the sanction is accorded to prosecute the A.1 Officer and the same was later withdrawn by the Government when moved for discharge the trial Court dismissed the same for not to discharge. Leave it apart what the Junior Assistant Manoj Kumar stated of on 15.07.2009 on the date of registration photos of the executants and executee and thumb impressions not taken is not correct from perusal of the document as referred supra of the same were taken as it is continuation of the 13 pages at Page 12 that statement of the witnesses prima facie belies what the other office subordinate stated that is Shivaram is only picked up the document from the Almarah of A.1 and handed over to DSP, ACB when asked at the instructions of A.1 from what Manoj Kumar after scanning the document being given to the Registrar for in turn handover to the party. While such is the case the existence of document with A.1 Officer is nothing to find fault much less even it was picked up from the Almirah on his instructions by his office attender, that too when the standing order 717 under the A.P. Registration Manual Diary 2012 in the Part-II covered by SO.717(a) speaks receipts & documents shall be delivered to the parties by the Registering Officer himself. Crucially the receipt being passed on registration of the document for any person to take back either by the executant or executee or authorized persons as the case may be, that receipt is crucial that is not produced herein. However the fact remains the defacto complainant in her report and also in her statement under Section 164 Cr.P.C. so also her son in his statement during investigation of presence at trap proceedings stated about A.1 Officer demanded the bribe for registration and when she expressed her inability, registered and asked to pay at the time of taking of the document there is nothing to brush aside for no prima facie material of the accused even produced to consider if at all of un-impeccable material to receive as an exceptional case from the accused side while sitting against in revision as held by the expression in **Rukmini Narvekar Vs. Vijay Sataredkar**[4] but for the infirmities pointed out supra accused could not produce any independent material. Regarding the procedure in registration of the document and return of the document that is the matter to be appreciated from evidence and in fact a perusal of the record shows trial is in progress. What the material placed of the departmental enquiry proceedings of the statements of the witnesses, but for to produce as part of defence to appreciate cannot prima facie be taken on face value.

13. In view of these and from the limited scope of revision and from the legal position though there is some strong defence in favour of the accused, this Court cannot ignore of the facts that only face value of the allegations of the complaint to be presumed as correct so far as framing of charges concerned and therefrom once trial Court framed charges, this Court is not in a position to set aside the said dismissal but for left open all available defences to the accused during trial to defend by facing.

14. Accordingly and in the result, the criminal revision case is dismissed.

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[4] 2008 (4) JCC 2879

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 24.04.2017
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