

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.2044 of 2017

ORDER:

This criminal revision case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, ['the Code', for brevity] is filed by the petitioner-A2 assailing the order, dated 13.04.2017, of the learned Principal Special Judge for CBI Cases, Visakhapatnam, passed in CrI.MP.No.486 of 2017 in CC.No.5 of 2016.

2. I have heard the submissions of *Sri Raja Reddy Koneti*, learned counsel for the petitioner-A2, and of *Sri K. Surrender*, learned Special Public Prosecutor for CBI representing the respondent. I have perused the material record.

3. At the outset it is to be noted that the petitioner-A2 filed the afore-stated MP, under Section 91 of the Code, *inter alia*, contending as follows: - 'The prosecution has filed sanction order, dated 21.12.2015, whereby sanction was said to have been granted for prosecuting the petitioner-A2. The investigating agency/ CBI has not sent any material to the competent authority for according sanction. The competent authority without applying its mind issued sanction orders simply basing on the specimen sanction order sent by the investigating agency. In the circumstances, the petitioner-A2 is seriously disputing the sending of the entire case material to the sanctioning authority and also the application of mind by the said authority while according sanction and issuing sanction orders. Therefore, to establish the said defence of the petitioner-A2 it is necessary to place before the Court of the learned Special Judge, the entire file relating to the sanction orders said to have been sent by the CBI to the sanctioning authority to enable the learned Special Judge to examine the contentions of the petitioner and the validity of the sanction order and also to find out as to whether or not the sanctioning authority has really gone through the material or mechanically signed and issued the sanction order

based on the specimen sanction order sent by the investigating agency. Unless the entire file relating to the sanction is produced and the sanctioning authority is summoned & examined, the truth or otherwise of the contentions of the petitioner-A2 cannot be decided. In view of the settled legal position, it is necessary to summon the entire file relating to the sanction order said to have been sent by the CBI to the sanctioning authority while seeking sanction for prosecuting the petitioner-A2 to enable the special Court for CBI cases to decide the validity of the sanction order while framing charges. Hence, it is in the interests of justice to direct the Government of India, Ministry of Information and Broadcasting, New Delhi, to cause production of the entire file said to have been sent by the CBI, Visakhapatnam, in RC.04(a)/ 2015-CBI, ACB, VSP while seeking sanction order against the petitioner-A2.'

4. Per contra, the case of the CBI in the counter filed before the Special Court, in brief, is this: - 'After completion of investigation, the investigating agency sent a copy of first information report, copies of statements of witnesses, copies of documents collected during investigation, pre-trap & post-trap memoranda and other relevant records & material to the sanctioning authority for issuance of sanction order. The allegations to the contra in the petition of the petitioner-A2 are false. The competent authority issued sanction order, dated 21.12.2015, for prosecution against the petitioner-A2 and it is signed by a competent officer, that is, Under Secretary Government of India, Ministry of Information and Broad Casting, New Delhi, in the name of the President of India. After receiving the said sanction order, the charge sheet has been filed against the petitioner-A2. The sanction order was issued BY ORDER AND IN THE NAME OF THE PRESIDENT OF INDIA and the same is valid. The contentions and apprehensions of the petitioner that the CBI has not sent any material to the competent authority and that the competent authority without applying its mind has issued sanction orders simply basing on the specimen sanction order sent by the CBI are false and baseless. The Under

Secretary, Government of India, as per Business Rules signed the sanction order on behalf of the President of India after according approval for the issue of the sanction order by the then Ministry of information and Broadcasting as per Constitution of India. The issuance of the sanction order is an official act of Government of India. The provision of law in Section 114(e) of the Indian Evidence Act provides for presumption that judicial and official acts have been regularly performed. As per the judgment of the Supreme Court, the validity of sanction order cannot be looked into during the pre-trial stage. The sanctioning authority in the sanction order, dated 21.12.2015, specifically mentioned that the sanction order was issued after going through FIR, the copies of statements of witnesses recorded under Section 161 of the Code by the investigating officer, the copies of documents collected during the investigation, pre-trap & post-trap memoranda, chemical examination report and call details and after application of mind. The petition seeking to summon the documents before framing of the charges is improper and is not maintainable. The sanction order is a speaking order. There are no tenable grounds in the petition. The petition may be dismissed.'

5. As already noted, the learned Special Judge, by the order impugned in this revision, dismissed the afore-said petition.

6. At the hearing, learned counsel for the petitioner while reiterating the pleaded case of the petitioner-A2, which is already stated supra, relied upon the decision in Nanjappa v State of Karnataka¹ in support of the following propositions: - 'The Special Judge is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1) of the P.C. Act. The Special Judge is empowered and is having jurisdiction to pass an order at whatever stage of proceedings holding that the prosecution is not maintainable

¹ 2015 (3) ALT (CrI) 129 (SC)

for want of valid orders sanctioning the prosecution of the accused. When the Special Court comes to a conclusion that the sanction order is invalid, it is having jurisdiction to discharge the accused. In the absence of a sanction order, the Special Court is not competent to take cognizance or try the accused. Any trial by an incompetent Court was bound to be invalid and *nonest* in law.' Having stated the above propositions, it is contended on behalf of the petitioner-A2 that he is entitled to request the Court to direct the Government of India, Ministry of Information and Broadcasting, to cause production of the record as sought for in the petition and that the Special Court erroneously refused to consider the request of the petitioner despite the settled legal propositions and that the Special Court failed to see the very purpose for which the application is filed and further failed to take note of the fact that no prejudice would be caused to the investigating agency if the file pertaining to the sanction order is summoned from the Government of India, Ministry of Information and Broadcasting.

7. I have given earnest and thoughtful consideration to the facts and submissions.

8. The petitioner-A2 is facing trial in the above Calendar Case taken on file for the offences punishable under Sections 7, 13(2) read with 13(1)(d) of the PC Act. The petitioner-A2 is no-doubt seriously disputing the validity of the sanction order, *inter alia*, contending that the investigating agency has not sent any material to the competent authority and that the competent authority therefore has not looked into any material and that without applying the mind and simply basing on the specimen sanction order sent by the CBI, the sanction was accorded and the sanction order was issued and that, therefore, it has become necessary to seek a direction for cause production of the entire file relating to the sanction accorded for prosecution against the petitioner-A2. It is also reiterated at the time of hearing that except a draft sanction order no

other material is sent to the sanctioning authority and as such it is necessary to grant the request of the petitioner. While forcefully repelling the contentions of the petitioner-A2 and while reiterating the case of the respondent and supporting the orders of the Court below the learned Special Public Prosecutor affirmed that the sanction order is a speaking order and that it was issued by a competent authority and it was signed by a competent officer, that is, Under Secretary to Government of India, Ministry of Information and Broadcasting, and that the said officer signed the sanction order in the name of the President of India and that after receiving valid sanction order, the charge sheet has been filed and that every official act shall be presumed to have been regularly performed until the contrary is proved and that even otherwise the investigating agency is going to examine a relevant witness to prove the validity of the sanction order. In the well considered view of this Court as the investigating agency is anyhow required to examine the competent and relevant witness and prove the sanction order and its validity and the petitioner-A2 will have an opportunity, during the course of trial, to cross examine the said witness, on all aspects which are now raised and which the petitioner intends to raise and which the law permits, there is no need at this stage to direct for causing production of the record as sought for by the petitioner herein. Further the Special Court by exercising its discretion, if it so desires, may direct the examination of any listed witness, which the prosecution is required to examine, out of order and in the first instance. Therefore, there is also no need to make any observations on the aspect of the discretionary jurisdiction of the learned Special Judge.

9. Viewed thus, this Court finds that there is no merit in the revision petition and that the order impugned does not brook interference.

10. In the result, the Criminal Revision Case is dismissed reserving liberty to the petitioner to raise all the contentions which are raised before this Court, at the appropriate stage before the Special Court.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M.SEETHARAMA MURTI

04.08.2017

Vjl

