HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.12606 of 2015

ORDER:

This criminal petition, under Section 482 of Cr.P.C., is filed to quash the proceedings against the petitioner in C.C.No.15 of 2004 on the file of the Special Judge for C.B.I. Cases, Visakhapatnam, for the offences punishable under Sections 120-B, 416, 420, 468, 471 of IPC, Sections 13(2) and 13(1)(d)(iii) of Prevention of Corruption Act, 1988 and Sections 5 (2) and 5(1)(d) of Prevention of Corruption Act, 1947.

The petitioner is arrayed as A-5 in the charge sheet on the complaint lodged by the 2nd respondent on 07-04-1997 in pursuance of the direction issued by this Court in W.P.No.4362 of 1997. Along with the petitioner other 13 persons were also arrayed as accused. A-1 was the Chairman of Visakhapatnam Port Trust, A-2 was the District Collector, Visakhapatnam, A-3 was the Joint Collector, Visakhapatnam, A-4 was the Mandal Revenue Officer, Bhimunipatnam, A-5 was the Estate Manager, Visakhapatnam Port Trust, A-6 to A-14 were shown as land owners and A-15 was the competent authority under Urban Land Ceiling, Visakhapatnam. During the year 1972, piece of land was proposed to be acquired for construction of staff quarters of Visakhapatnam Port Trust and a notification under Section 4(1) was issued. Thereupon a negotiation committee was constituted for deciding the compensation amount payable to the landowners i.e., the persons interested and initial compensation was fixed at Rs.350/- per Sq. Yard and it was in the meeting held on 04-10-1995 by the Negotiation Committee, this petitioner appeared before the committee on behalf of the Visakhapatnam Port Trust and during negotiation compensation was enhanced from Rs.350/- to Rs.800/- per square yard. Thereupon a writ petition was filed by same association in W.P.No.4362 of 1995, wherein this Court issued a direction to initiate criminal proceedings and on the basis of such order the present case was registered and filed charge sheet after completion of investigation.

The only allegation based on investigation is that the petitioner failed to protect the interest of Visakhapatnam Port Trust in fixing compensation amount during negotiations held on 04-10-1995 in respect of lands in Sy.No.1/2 and on 23-01-1997 to 25-01-1997 in respect of lands in Sy.Nos.3/1, 3/2 and 4 of Kancharapalem, Visakhapatnam, since the petitioner failed to insist the compensation payable by Visakhapatnam Port Trust should be as per the preliminary valuation but agreed to the rate of Rs.900/- per square yard during negotiations on 25-01-1997. But as per the material he raised protest also.

As seen from the allegations made in the charge sheet at page No.7 (1st paragraph) the petitioner/A-5 being representative of Visakhapatnam Port Trust requested the District Collector and Joint Collector to apprise the compensation about the enhancement at Rs.900/- per square yard to the Chairman, Visakhapatnam Port Trust. Thus, the petitioner did not readily accept for enhancement of compensation from Rs.350/- per square yard to Rs.800/- per square yard or to any extent but requested the Chairman of negotiation committee to apprise, the proposed enhancement to the Chairman of Visakhapatnam Port Trust. In that view of the matter, it is evident that this petitioner did not participate as mute spectator before the negotiation committee, therefore, there is no prima facie material to proceed against this petitioner and requested this Court to quash the proceedings against this petitioner. Even though the allegations made in the charge sheet if taken on its face value as true it would not constitute any offence against the petitioner.

During hearing, while reiterating the above contentions, Sri C.B. Ram Mohan Reddy, learned counsel for the petitioner/A-5, would draw the attention of this Court to the various orders passed by the Courts discharging A-1 to A-3 by order in Crl.R.C.Nos.534, 605 and 606 of 2010, dated 13-07-2010 and SLPs filed against discharge was also dismissed. A13 filed Crl.R.C.No.1404 of 2011 and it was allowed on 09-04-2013. A-7 to A-11 were discharged vide orders in Crl.R.C.Nos.16 and 1140 of 2013, dated 22-07-2015. Proceedings against A4, A6, A12, A14 and A16 were abated as they expired during the pendency of the proceedings. Therefore, except the proceedings against this petitioner, proceedings against all other accused were neither quashed nor abated on account of orders passed by the Court and death.

It is also contended that when the other accused were discharged, the question of convicting this petitioner for the offence punishable under Section 120-B of IPC does not arise and he would draw the attention of this Court to the judgments of Hon'ble Apex Court in ***Fakhruddin v. the State of M.P.***[1] and ***B.H. Narasimha Rao v. Government of A.P. represented by C.B.I.***[2]

On the strength of the principles laid down in the above two judgments and basing on the material available on record, learned counsel requested this Court to quash the proceedings against this petitioner.

Learned Special Public Prosecutor for CBI supported the proceedings against the petitioner stating that though the

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[1] Air 1967 SC 1326
[2] AIR 1996 sc 64

other accused were acquitted still there is material to proceed against the petitioner and requested this Court to dismiss the petition.

The first and foremost contention raised before this Court is that when all the accused were either discharged or died during the pendency of the proceedings, it is sufficient to quash the proceedings against this petitioner, since the petitioner alone would not be made liable for the criminal conspiracy as defined under Section 120-A of IPC for the offence punishable under Section 120-B of IPC and apart from that the allegations made in the charge sheet would not constitute any offence even if the allegations made in the charge sheet are true or acceptable as it is.

The jurisdiction of this Court under Section 482 of Cr.P.C., is limited and this Court can exercise its inherent jurisdiction only to give effect to any orders under this Court or to prevent abuse of process of any of the Court or to secure ends of justice. While exercising jurisdiction under Section 482 of Cr.P.C., the High Court would not ordinarily embark upon a roving enquiry whether the evidence in question is reliable or not on a reasonable apprehension on which acquisition would not be suspended. The ends of justice would be better served if valuable time of the Court is spent on hearing those appeals rather than entertaining petitions under Section 482 of Cr.P.C., inter alia, such complaint filed with same motive in order to circumvent the prescribed procedure or to delay the time which enable to winover the witnesses or may dishonest in giving evidence, intimately resulting in miscarriage of justice as held in ***Hamida v. Rashid alias Rasheed and others***[3], wherein paragraph No.6 reads as under:

> *"6. We are in agreement with the contention advanced on behalf of the complainant appellant. Section 482 Cr.P.C. saves the inherent powers of the High Court and its language is quite explicit when it says that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A procedural Code, however exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that every court must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. It is well-established principle that every Court has inherent power to act ex debito justitiae to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. As held by the Privy Council in Emperor v. Khwaja Nazir Ahmad AIR 1945 PC 18 with regard to Section 561-A of the Code of Criminal Procedure, 1898 (Section 482 Cr.P.C. is a*

[3] 2008 (1) SCC 474

verbatim copy of the said provision) gives no new powers. It only provides that those which the Court already inherently possesses shall be preserved and is inserted, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Code and that no inherent power had survived the passing of the Act."

The law is settled on the powers as to when such inherent power under Section 482 Cr.P.C. can be exercised and cannot be exercised in various perspective pronouncements of the Apex Court. The leading case on this aspect is "***State of Haryana v. Bhajanlal***[4]", wherein the Apex Court laid down the following seven guidelines:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

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[4] 1992 Supp.(1) SCC 335

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Earlier to the Judgment in "**State of Haryana v. Bhajanlal**" (referred supra), in "***R.P. Kapur vs. State of Punjab***[5]" the Apex Court laid down the following guidelines:

"(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."

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[5] AIR 1960 SC 866

The same principle was reiterated in "***Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy & Ors.***[6]**"** In the said Judgment, the Apex Court categorically held that inherent power can be exercised to prevent abuse of the process of court where the court finds that the ends of justice may be met by quashing the proceedings. Thus, the Apex Court held that Section 482 of Cr.P.C., empowers the High Court to exercise its inherent power to prevent abuse of process of Court in proceedings initiated by complaint. Exercise the inherent power to quash the proceedings is call for only in case where the complaint does not disclose any offence, frivolous, efficacious or apprehensive if the allegations set out in the complaint do not constitute the offence of which the situation is taken by the Magistrate, it is open for the High Court in exercise of power under Section 482 of Cr.P.C. It is not however necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case ended in conviction or not the complaint has to be read as a whole if it appears on the consideration of the allegation in the light of the statement of other on the complaint that the ingredients of the offence are disclose and there is no material to show that the complaint is a malafide and frivolous. In that view of the matter, there should no

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[6] 2011(12) SCC 437

justification for interference of the High Court. Keeping in view the principles laid down in the above judgments, this Court has to exercise its inherent power conferred on it by Section 482 of Cr.P.C.

In view of the law declared by the Hon'ble Apex Court, if the Court finds that the allegations made in the charge sheet would not constitute any offence on its face, this Court can exercise its inherent jurisdiction and in the present case the only allegation made against this petitioner is that he did not raise any objection for enhancement of compensation from Rs.350/- per square yard to Rs.900/- per square yard during the meeting held by Negotiation Committee on 04-10-1995.

Admittedly, the petitioner appeared before the committee as representative of Visakhapatnam Port Trust. But as per the allegations made at 1st paragraph in page No.7 of charge sheet it is clear that he objected for enhancing compensation from Rs.350/- per square yard to Rs.900/- per square yard and requested the District Collector and Joint Collector to apprise about the proposed enhancement of compensation to the Chairman of Visakhapatnam Port Trust. This itself is sufficient to disbelieve the allegation that prima facie the petitioner being the representative of Visakhapatnam Port Trust failed to protect the interest of Visakhapatnam Port Trust who is beneficiary of the acquisition for construction of staff quarters. Though the investigating agency noted about the request made by the petitioner to the Chairman of the committee i.e., District Collector and Joint Collector still made serious allegations that the petitioner did not protect the interest. The allegation made in the charge sheet would itself disclose that the petitioner discharged his duty as representative of Visakhapatnam Port Trust, therefore, the allegation made against this petitioner, if accepted, would not constitute an offence punishable under Sections 13(2) and 13(1)(d)(iii) of Prevention of Corruption Act, 1988 and Sections 5 (2) and 5(1)(d) of Prevention of Corruption Act, 1947.

Yet, the other contention is that when the proceedings against the other accused were ended either due to discharge or due to abatement, this petitioner alone cannot be proceeded for various offences mentioned above.

One of the major offence allegedly committed by the petitioner is offence punishable under Section 120-B of IPC i.e., criminal conspiracy. As on today, the Court proceeding against this petitioner alone after discharge of other accused and dismissal of complaint as abated against some of the accused. When the petitioner alone is facing serious charge of Section 120-B of IPC, he cannot be convicted for such offence when the case against other accused was either abated or discharged for the same charge.

Learned counsel for the petitioner placed reliance on the judgments of Hon'ble Apex Court, referred supra, wherein the Hon'ble Apex Court while deciding a similar fact held that the offence of conspiracy cannot survive on acquittal of alleged co-conspirators. The same view was expressed by the Hon'ble Apex Court in latter judgment in ***B.H. Narasimha Rao's*** case also.

If the principles laid down in the above judgments is applied to the present facts of the case when A-1 to A-3 by order in Crl.R.C.Nos.534, 605 and 606 of 2010, dated 13-07-2010 were discharged and SLPs filed against discharge was also dismissed, discharging A13 vide orders in Crl.R.C.No.1404 of 2011, dated 09-04-2013 and discharging A-7 to A-11 vide orders in Crl.R.C.Nos.16 and 1140 of 2013, dated 22-07-2015 and abating the proceedings against A4, A6, A12, A14 and A16 as they expired during the pendency of the proceedings, after passing various orders, referred supra, only person facing trial is petitioner/A-5. When all the other accused were either discharged or proceedings against them were abated the proceedings against this petitioner for the offence punishable under Section 120-B of IPC does not survive in view of law declared by the Hon'ble Apex Court.

The other contentions raised by the learned Special Public Prosecutor is that the conduct of maintaining silence before the Negotiation Committee as a representative of Visakhapatnam Port Trust would indicate that he is also one of the conspirators and he committed the other offences punishable under various provisions of IPC.

In fact, as per the allegations made in the charge sheet he requested the District Collector and Joint Collector to appraise the Chairman of Visakhapatnam Port Trust about the proposed enhancement but he did not maintain silence and he was not a passive participant in the meeting held on 04-10-1995. Therefore, the genesis for making such allegation is his participation and maintaining silence during negotiations, which is false on the face of the allegations made in the charge sheet. In such case, making such serious attributions against the petitioner would amount to abuse of process of Court and in such case the Court can exercise its inherent power under Section 482 of Cr.P.C., and quash the proceedings.

The petitioner is placed on better footing than the other accused because the petitioner did not enhance the compensation but the revenue officials are the persons who enhanced compensation and they were already discharged from proceedings and they were acquitted. Therefore, the proceedings against this petitioner is nothing but abuse of process of law. Hence, by applying the principles laid down in several judgments referred supra, I find no material against the petitioner, prima facie, to proceed against him for the offences stated above, more particularly, Section 120-B of IPC and the offences under the Prevention of Corruption Act. Since there is nothing on record to suggest that the petitioner gained anything unlawfully out of the enhancement, I find that it is a fit case to exercise inherent jurisdiction under Section 482 of Cr.P.C., to quash the proceedings while finding no merit in the contention of learned Special Public Prosecutor for CBI.

In view of my forgoing discussion, the proceedings against the petitioner/A5 are quashed in C.C.No.15 of 2004 on the file of the Special Judge for C.B.I. Cases, Visakhapatnam, for the offences punishable under Sections 120-B, 416, 420, 468, 471 of IPC, Sections 13(2) and 13(1)(d)(iii) of Prevention of Corruption Act, 1988 and Sections 5 (2) and 5(1)(d) of Prevention of Corruption Act, 1947.

In the result, the Criminal Petition is allowed. The Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

September 07, 2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.12606 of 2015

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