THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.366 OF 2016

ORDER:

This revision is filed, under Sections 397 and 401 Cr.P.C., aggrieved by the order dated 04.12.2015 in Crl.M.P.No.393 of 2013 in C.C.No.18 of 2012 whereby the petition filed under Section 239 Cr.P.C. was dismissed.

The petitioner is the accused in C.C.No.18 of 2012 and filed the said petition under Section 239 Cr.P.C. to discharge him on three grounds i.e., 1) the investigating officer was not authorised to conduct investigation as required under Section 17 of the Prevention of Corruption Act, 1988 (for short 'the Act'), 2) as regards the calculation of amount, presumptive or probable expenses, by the ACB is not in accordance with law and 3) the ACB is not a police station within the meaning of police station, thereby, filing a report under Section 173 Cr.P.C. would not arise and consequently, the Court cannot take cognizance and proceed further.

Learned counsel for the petitioner contended that the prosecution against the petitioner is groundless and there is no *prima facie* material to proceed against the petitioner and prayed to discharge the petitioner for the offences punishable under Section 13(1)(e) read with Section 13(2) of the Act.

The respondent filed counter denying the material allegations *inter alia* contended that the investigating officer was competent to conduct investigation and the ACB is a police station within the meaning of police station and competent to file final report and the Court is competent to take cognizance. So far as cognizance is concerned, it is a question of fact and it has to be decided only after trial and at this stage, the Court cannot discharge the petitioner in a serious crime punishable under the provisions of the Prevention of Corruption Act, 1988 and prayed for dismissal of the petition.

Section 239 of Cr.P.C. deals with discharge of the petitioner or framing of charges and the contention before this Court is that there is no *prima facie* material to proceed against the petitioner besides other contentions.

The power of the Court under Section 239 Cr.P.C. to discharge the petitioner is limited and the Court, at best, has to scrutinise the entire record under Section 173 Cr.P.C. and decide whether there is any *prima facie* material to proceed against the petitioner or the prosecution against him is groundless.

The present revision is filed under Sections 397 and 401 of Cr.P.C. Jurisdiction of this Court under Sections 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 lack of 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.

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 of Cr.P.C. 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 on the evidence if needed. The word "groundless" would mean the absence of reasonable ground to expect 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 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]**.**

In ***Hemchand v. State of Jharkhand***[2]**,** the Division Bench of the Apex Court made it clear that at the stage of framing of charge, the Court will not weigh the evidence. The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidence is brought on record at the trial. The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a *prima facie* case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the Court. It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any.

Thus, it is clear that the basis for arriving such conclusion is the documents filed along with the final report and the Court is required to consider those documents alone at the time of consideration of an application filed under Section 239 Cr.P.C. Therefore, in view of the limited jurisdiction under Section 239 Cr.P.C., the Court has to examine the statements of witnesses recorded under Section 161(2) Cr.P.C. and the other material collected by the investigating agency during investigation but if the

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[1] AIR 2010 SC 663
[2] (2008) 5 SCC 113

contents clearly discloses that there is *prima facie* material to proceed against the petitioner, then the Court may proceed further in framing charge against the accused and at this stage several disputed questions cannot be decided as held by the Apex Court in ***K.P.Timmappa Gowda v. State of Karnataka***[3] and while deciding the petition filed under Section 239 Cr.P.C., the Court has to look into the entire material on record including the evidence oral and documentary, taken together must justify framing of a charge for an offence as held by the Apex Court in ***R.S.Nayak v. A.R.Antulay***[4]. Therefore, keeping in view of the limited scope of enquiry in a petition filed under Section 239 Cr.P.C., now I would like to examine various questions raised before this Court.

(a) The first ground raised before this Court is that the investigating officer, i.e., the Inspector, ACB is incompetent to investigate into the crime as he was not duly authorised as required under Section 17(c) of the Act and the authorisation he produced before the Court is only an authorisation issued by one Sampath Kumar, who is appointed as Officer on Special Duty after his retirement. But the learned counsel for the respondent contended that the Government issued a G.O. authorising all Inspectors of ACB to investigate into the crimes under P.C. Act *vide* G.O.Ms.No.10 General Administration (SC.E) Department, dated 07.01.1999. Undisputedly, G.O. was issued in the year 1999 by the Government of A.P. and notified in the gazette as G.O.Ms.No.10 referred supra authorising the Inspectors of police of Anti Corruption Bureau to conduct investigation of offence under the Act. Such authorisation is sufficient compliance of Section 17(c) of the Act.

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[3] (2011)14 SCC 475
[4] AIR 1986 SC 2045

Learned counsel Sri V.Ravi Kiran Rao, Special P.P. for Telangana ACB drawn the attention of this Court in ***M.China Gopala Krishna v. State***[5] wherein this Court held that:

> "In 1999 the Government of Andhra Pradesh issued a notification through G.O.Ms.No.10, General Administration (SC.E) Department authorising the Inspectors of Police of Anti-Corruption Bureau to conduct investigation of offences under the Prevention of Corruption Act, 1988."

Such blanket order authorises every Inspector in ACB as competent authority to investigate.

Therefore, the authorisation issued by K.Sampath Kumar, Joint Director, ACB is inconsequential, since all the Inspectors were already authorised by issuing G.O.Ms.No.10 in compliance of Section 17(c) Cr.P.C. Therefore, a blanket authorisation was given to all Inspectors of ACB. The contention of the petitioner is that the Inspector, who conducted investigation, was not holding any authorisation in terms of Section 17(c) Cr.P.C. is not acceptable and it is without any substance. On this ground, this Court cannot discharge the petitioner for the offences punishable under Section 13(1)(e) read with Section 13(2) of the Act.

(b) The second ground raised before this Court is that the ACB is not a police station and thereby, the question of filing a report under Section 173 of Cr.P.C. does not arise. The same contention was urged before the trial Court, but the trial Court based on G.O.Ms.No.250 Home PSC Department, dated 12.09.2013 held that the ACB is also declared as police station and when ACB department is declared as police station, it is competent to file a report under Section 173 Cr.P.C. and whether such G.O. is valid or not, is the question to be decided at the trial not at the stage while considering

[5] 2004(2) ALD (CRL) 371 (AP)

the application under Section 239 Cr.P.C. Therefore, on this ground the petitioner cannot be discharged and the trial Court rightly concluded that the ACB is notified as a police station and thereby competent to file a final report under Section 173 Cr.P.C. Hence, I find no substance in the contention raised by the learned counsel for the petitioner in this regard.

(c) The third ground raised by the learned counsel for the petitioner is that there was lot of variation in calculation of presumptive or probable expenditure of the petitioner by the investigating agency. As seen from the Annexures of charge-sheet, the value of assets is assessed at Rs.1,34,22,214/- which is inclusive of the assets registered in the name Kin of the petitioner and it includes both movable and immovable property, whereas the income of the petitioner herein as on the terminal date of check period was Rs.1,38,03,832/- as shown in Annexure-II. Thereby, the total expenditure was arrived at Rs.66,23,604/- for the check period and concluded that the petitioner possessed assets more than the probable savings and acquisition of such property was not explained in the reply to the notice issued to him and those aspects cannot be decided at this stage since the material on record *prima facie* shows that the petitioner and his family members own and possess, the assets disproportionate to the income from the known sources of the petitioner. Therefore, it is difficult at this stage to conclude that there was no *prima facie* material to proceed against the petitioner or the charge is groundless. In such a case, the prosecution is entitled to proceed further against the petitioner.

Learned counsel Sri V.Ravi Kiran Rao further contended that at the time of framing charges only *prima facie* case was made out or not is to be seen and the Court cannot go into the minute details of evidence available on record and he was drawn the attention of this Court in ***State of Maharashtra v. Som Nath Thapa***[6]**,** wherein it was held that:

> "If there is ground for presuming that the accused has committed the offence, a Court can justifiably say that a prima facie case against him exists, and so, frame charge against him for committing that offence. In Black's Law Dictionary word 'presume' has been defined to mean "to believe or accept upon probable evidence". Legal Dictionary has quoted in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged." The aforesaid shows that if on the basis of materials on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

Even by applying the principles laid down by the Court, if a presumption that the petitioner committed an offence punishable under the provisions of P.C. Act based on material the Court can proceed further against such accused officer to frame charges. He also relied on another judgment of Apex Court in ***Supdt. and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and others***[7] wherein it was held that:

> "At the stage of framing charges, the prosecution evidence does not commence. The Magistrate has therefore, to consider the question as to framing of charge on a general consideration of the materials placed before him by the investigating Police Officer. The standard test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of S.277 or 228. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charges against the accused in respect of the commission of that offence."

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[6] AIR 1996 SC 1744
[7] AIR 1980 SC 52

In ***State of Bihar v. Ramesh Singh***[8], the Apex Court held that

> "Reading Ss.227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under S.227 or S.228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction."

In view of the law declared, the Apex Court in both Larger and Full Bench in various judgments referred supra, if there is material to presume that the accused has committed an offence punishable under the provisions of Prevention of Corruption Act, the Court can proceed further against the petitioner-Accused officer under the provisions of the Act.

The trial Court upon considering entire material including the statements recorded by the investigating agency under Section 161(2) Cr.P.C. and other connected material filed along with the final report under Section 173 Cr.P.C. rightly concluded that the petitioner own and possessed assets disproportionate to the income from known sources being a Government employee and on the basis of such material, the Court can proceed further against the petitioner-accused officer. Therefore, based on the law declared by Apex Court, it is difficult to interfere with the order passed by the trial Court, reverse the same and to discharge the petitioner.

Though the learned counsel for the petitioner raised several contentions about the calculations and evidence, those aspects

[8] 1977 CRI.L.J. 1606

cannot be gone into at this stage and this Court cannot undertake calculation of income and value of assets and source of income of kith and kin of the petitioner while deciding an application under Section 239 Cr.P.C.

In view of the limited scope of revision under Sections 397 and 401 Cr.P.C. as discussed above, I find no ground to interfere with the findings recorded by the trial Court at this stage, since there are sufficient grounds to proceed against the petitioner for the offences punishable under Section 13(1)(e) read with Section 13(2) of the Act.

In the result, the Criminal Revision Case is dismissed.

The Miscellaneous petitions, if any, pending in this Criminal Revision Case is closed.

M.SATYANARAYANA MURTHY, J

Dt.18.08.2017
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