THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVSION CASE No.2941 of 2016

ORDER:

This criminal revision case, under Section 397 read with 401 of the Code of Criminal Procedure, 1973 ('the Code', for short), is filed by the petitioner-accused assailing the orders, dated 08.09.2016, of the learned Special Judge for trial of SPE & ACB Cases, Kurnool, passed in Crl.MP.No.73 of 2016 in CC.No.2 of 2015.

2. I have heard the submissions of *Sri M. Ravindra,* learned counsel for the petitioner, and of *Sri Udaya Bhaskara Rao,* learned Standing Counsel for ACB representing the respondent. I have perused the material record.

3. To begin with, it is to be noted that the petitioner is facing trial in the afore-stated Calendar Case for the offences punishable under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 ['the Act', for short]. In the said CC he filed the afore-stated MP under Section 239 of the Code requesting for his discharge. The ACB filed counter resisting the application. On merits and by the orders impugned in this revision, the said petition was dismissed by the Special Court. Therefore, the petitioner-accused is before this Court.

4. From the contentions of the petitioner, it appears that the request for discharge is based on two fold contentions.

4.1 Firstly, he contends that he is not a public servant. In support of his said contention, he submits as under: 'He is not a public servant within the meaning of the provisions of the PC Act. As per the provisions of the Co-operative Societies Act, the Co-operative Society registered under the Co-operative Societies Act and not owned or controlled or substantially financed by the State or Central Government would not fall within the definition of public authority as defined under Section 2(h) of the Right to Information Act, 2005. Only such registered Co-operative Societies which are owned, controlled and substantially financed by the State or Central Government would fall within the definition of public authority as defined under Section 2(h) of the RTI Act. The petitioner is employed in A.P.Co-operative Housing Societies Federation Ltd., [hereinafter, 'A.P. House Fed'] as Assistant Registrar/Recovery Officer. The said A.P. House Fed in which the petitioner is working will not come within the definition of public authority. The said A.P. House Fed is registered under the A.P.Co-operative Societies Act, but, it is not owned or controlled or substantially financed by the State or Central Government. As such, the same would not fall within the definition of public authority. Hence, the petitioner is not a public servant.'

4.2. Per contra, the case of the respondent-ACB, is this: - 'The accused worked as Assitant Registrar/Recovery Officer in A.P.House Fed from 21.10.2009 to 03.05.2013. He was an officer of Co-operation Department. Soon after his trap, he was surrendered to his parent department by the A.P.House Fed, Anantapur, under FR.127 terms. Thereafter, the Additional Registrar, Disciplinary Authority, Commissioner and Co-operation and Registrar of Co-operative Societies placed the accused under suspension in terms of Sub Rule 2(a) of Rule 8 of A.P. Civil Services (Classification, Control & Appeal) Rules, 1991, till further orders and issued proceedings, on 13.05.2013. The facts of the prosecution case as are evident from the pre trap, trap and post trap proceedings clearly reflect that the petitioner committed the offences under the provisions of the PC Act as stated in the charge sheet supported by material documents and evidence collected. The petitioner is relying upon the definition of Public Authority as defined under Section 2(h) of the RTI Act but not on provisions of the PC Act. The public servant as defined in the PC Act clearly discloses that any person who is a President, Secretary or other office bearer of a registered co-operative society engaged in Agriculture, Industry, Trade or Banking receiving or having received any financial aid from the Central Government or a State Government or from any Co-operation established by or under a Central Provincial or State Act or any authority or a body owned or controlled or aided by the Government or a Government company as defined under Section 617 of the Companies Act are public servants. The definition of a public servant is very wide. The accused officer is employed as an Assistant Registrar/Recovery Officer in the A.P. House Fed, which is an authority or a body owned or controlled or aided by the Government in terms of sub clause (iii) of clause (c) of Section 2 of the PC Act and, therefore, he clearly falls within the definition of public servant. The definition is a comprehensive definition. The housing department is functioning at Secretariat, A.P., Hyderabad. The object of the said department is to provide shelter to shelter-less poor both in rural and urban areas and the department is having administrative control over the following wings for attending to the set objectives: (i) weaker section Housing Programme (WSHP); (ii) A.P. Housing Corporation Ltd., (APSHCL); (iii) A.P. Housing Board (APHB); and (iv) A.P. Housing Federation Ltd (APHOUSEFED). The subject A.P. House Fed is formed as an Apex Co-operative Society under APCS Act, (Act 7 of 1964) (TA337) during the year 1968 and its operation is extended to entire State of A.P. The core activity of A.P House Fed is to advance loan to the members of the primary housing societies in the State of A.P by availing loans from LIC of India, Mumbai, and HUDCO. Hence, the officers working in the A.P. House Fed are public servants within the meaning of sub clause (ix) of sub section (c) of Section 2 of the PC Act. For prosecuting the accused officer, Government issued sanction orders *vide* G.O.Ms.No.61, Agriculture & Co-operation Department, dated 15.12.2014, which itself shows that the accused officer is a Government Servant. Hence, the contention that he is not a public servant is not correct. It is settled law that Co-operative Societies engaged in Trade or

Business is a Corporation within the meaning of clause (c) of Section 2 of the PC Act.'

4.3 It is to be noted that the petitioner-accused officer worked as Assistant Registrar/Recovery Officer in A.P. House Fed, Anantapur, from 21.10.1009 to 03.05.2013. According to the prosecution case, the trap was successfully laid on 03.05.2013 and the accused was trapped when he demanded and accepted the bribe amount of Rs.10,000/- from LW1-informant. The petitioner contends that he is not a public servant whereas the respondent contends that he is a public servant as defined under Section 2(c) of the PC Act and that the competent authority, *vide* G.O.Ms.No.61, dated 15.12.2014, accorded sanction for prosecution of the petitioner for the offences punishable under the provisions of the PC Act. In this regard, it is necessary to note that the petitioner contends that he submitted an application under the provisions of the RTI Act to the Managing Director, A.P. House Fed, Hyderabad, to inform as to whether or not as per the judgment of the Supreme Court in Civil Appeal Nos.9020, 9029 & 9023 of 2013, dated 07.10.2013, the A.P. House Fed is a public authority. It is his further contention that the Supreme Court held in its judgment that Co-operative Societies, which are registered under the Co-operative Societies Act and not owned , controlled or substantially financed by the State or Central Government would not fall within the definition of public authority as denied under Section 2(h) of the RTI Act. He would contend that AP House Fed is a co-operative society which will not come under the definition of public authority as defined under Section 2(h) of the RTI Act. Hence, he contends that he is not a public servant.

4.4 However, learned Standing Counsel places reliance on Section 2(ix) of the PC Act, which reads as under:

> "any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central

> Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)."

Learned Standing Counsel contends that a plain reading of the definition coupled with the sanction order for prosecution would *prima facie* make it evident that the petitioner is a public servant subject, however, to the decision to be finally made in the calendar case after full fledged trial.

4.5 In this regard, it is to be noted that the learned Standing Counsel placed reliance on the following decisions:

Government of AP and others v. P. Venku Reddy[1]. In this decision, the Supreme Court while referring to the provisions of Section 2(c)(iii) and (ix) of the PC Act held as follows:

> From the above quoted Sub-clause (ix) of Clause (c) of Section 2 of the 1988 Act, it is evident that in the expansive definition of 'public servant', elected office-bearers with the President and Secretary of a registered co-operative society which is engaged in trade amongst others in 'banking' and 'receiving or having received any financial aid' from the Central or State Government, are included although such elected office-bearers are not servants in employment of the co-operative societies. But employees or servants of a co-operative society which is controlled or aided by the Government, are covered by Sub-clause (iii) of Clause (c) of Section 2 of the 1988 Act. Merely because such employees of co-operative societies are not covered by Sub-clause (ix) along with holders of elective offices, the High Court ought not to have overlooked that the respondent, who is admittedly an employee of a co-operative bank which is controlled and aided by the Government, is covered within the comprehensive definition of 'public servant' as contained in Sub-clause (iii) of Clause (c) of Section 2 of the 1988 Act. It is not disputed that the respondent/accused is in service of a co-operative Central Bank which is an 'authority or body' controlled and aided by the Government.

In State of Maharashtra and others v. Brijlal Sadasukh Modani[2], the facts disclose that the High Court quashed the notice issued by the DSP, ACB, to the respondent, who is General Manager of Co-operative Bank, requiring him to give details of property acquired by him having recorded following findings:

[1] (2002) 7 SCC 631
[2] (2016) 4 SCC 417

'that the respondent was not a public servant; no deep and pervasive control was exercised by authorities over the bank; its day to day activities and internal management were not governed and controlled by Government or its authorities; Bank was not aided or funded in any manner by Government or its authorities; nor were service conditions of employees were regulated by them.' The Supreme Court having referred to the afore-stated decision in P.Venku Reddy (1st supra) held as follows:

> Therefore, we are of the convinced opinion that it was entirely unnecessary on the part of the High Court to enter into elaborate deliberation to arrive at the conclusion that the Respondent was not a public servant. Regard being had to the facts of the case, we think it would be apposite that it is left to be dealt with in the course of trial whether the society concerned has ever been granted any kind of aid or not.

4.6 Further, the learned Special Judge, having analysed the facts of the case and the case law has noted in the impugned order that the decision on the question – 'whether the AP House Fed is aided by the Government or not' has to be left open to be dealt with in the course of trial and not while considering the application filed by the petitioner for discharge. In view of the facts of the case and the legal position obtaining, this Court is in agreement with the said considered view of the learned Special Judge. Therefore, on the first ground the petitioner is not entitled to seek discharge as the said issue 'whether he is a public servant', which requires to be examined on merits, after full fledged trial, cannot be pre-judged at this stage.

5. The next contention of the petitioner-accused is that as on the date of laying of the trap no official favour is pending with the petitioner. His specific case on this aspect is as follows: - 'The important ingredients for constituting an offence under Section 7 of the P.C. Act is pendency of an official favour with the accused. No official favour is pending with the petitioner-accused on the date of the alleged trap. Hence, there is no *prima facie* case against the petitioner. According to the case of the informant, his aunt, Mohamada Bee

took a loan of Rs.87,000/- from the A.P. House Fed for construction of a house and that in that connection an amount of Rs.2,95,099/- was due from her by 01.03.2012 and that by August, 2012, the said property came for auction and that on 08.10.2012 the informant approached the higher officials of the A.P. House Fed and presented a representation for one time settlement and that after negotiations he was asked to pay Rs.1.00 lakh and that he accordingly paid the said sum on 09.10.2012 but the settlement orders were not received by his aunt and hence he submitted another representation to the Chairman of the A.P. House Fed on 29.12.2012 on behalf of his aunt. Further, the Chairman of the A.P. House Fed forwarded the representation to the Regional Manager for remarks and in turn he sent the same to the petitioner and the petitioner submitted his remarks on 14.02.2013, that is, three months prior to the alleged date of trap, that is, 03.05.2013. The petitioner mentioned that Smt. Mohammada Bee did not pay single rupee towards the loan amount and that she is a wilful defaulter and her whereabouts are not known to him. When such is the case, there is no official favour pending with the petitioner. Thus, there was no official favour pending with the petitioner as on the date of his trap in the case.'

5.1 Per contra, the case of the prosecution is as follows: - 'Under Section 7 of the PC Act, there must be motive or reward for an official act. The word motive evidently refers to a future act while the word reward is manifestly intended to apply to a past service. Further, payment of a sum to a public servant whether paid before or after the doing of the official act would constitute bribe under law. The material brought on record after investigation by the prosecution is sufficient to frame a charge against the petitioner and try him for the offences against him and there is no legal force or acceptable merit in any of the contentions of the petitioner.'

5.2 The contention that no official favour is pending with the petitioner need not detain this Court for long for the reason that as rightly urged by the learned Standing Counsel, under Section 7 of the PC Act there must be motive or reward for an official act and that the word motive evidently refers to a future act while the word reward is manifestly intended to apply to a past service and, therefore, the payment of a sum as bribe to a public servant whether paid before or after the doing of the official act would constitute bribe under law.

6. The next contention of the petitioner-accused is that even otherwise also there is no *prima facie* case against the petitioner-accused and that even upon consideration of the record and the documents submitted therewith, there are no sufficient grounds for proceeding against the petitioner and hence he is entitled to be discharged. Per contra, the learned Standing Counsel submits that if the material on record including the first information, mediators report 1 & 2, sanction orders, seized documents etcetera are examined to the extent permissible, it is obvious that not only a *prima face* case but also a strong case exists for framing charges and proceeding against the petitioner-accused in the Calendar Case.

6.1 Before proceeding further, it is profitable to first refer to the legal position obtaining. Section 239 Cr.P.C reads as under: - "When accused shall be discharged: If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing." Section 227 Cr.P.C., reads as under: - 'Discharge: - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.' Thus, a charge can be framed against an accused in a case where the prosecution has placed on record sufficient evidence to show a prima facie case against him/her under a particular provision of law. In case the prosecution fails in its primary duty to show a prima facie case to proceed against the accused i.e., when the Court comes to the conclusion that there is no sufficient ground to proceed against the accused, he/she shall be discharged forthwith under Section 227 Cr.P.C. It is a well settled principle of Criminal Jurisprudence that a Court would not require the prosecution to prove its case beyond any shadow of doubt at the time of framing of the charge as it is required to do so only at the time of conclusion of its case in order to bring home the guilt of the accused. At the stage of framing of charge, the prosecution is under an obligation to place only that much of material against the accused which may be sufficient enough in the circumstances of a given case to draw a presumption that the accused has committed an offence. Further, in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others [1990 Cri L.J. 1869], the Supreme Court held as follows: "From the above discussion it seems well settled that at the Section 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients Constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case." In Union of India v. Prafulla Kumar Samal and another [1979CriLJ154], the Supreme Court held as follows: "The Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under Section 227 the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

6.2 Here itself, it is also necessary to note that the learned counsel for the petitioner-accused relied upon the following decisions:

(i) P.Vijayan v. State of Kerala and another[3] is relied upon in support of the proposition that if two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal and that the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution and that in

[3] (2010)2 SCC 398

assessing this fact it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts. This decision is also relied upon in support of the contention that while considering the present request of the petitioner, the Court is entitled to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused.

(ii) B.S.Neelakanta and another v. State of Andhra Pradesh and another[4] is relied upon in support of the proposition that unless the suspicion that exits is strong and grave the Court would not be justified in framing the charge against the accused and that for taking a decision whether the grounds exist to frame a charge or discharge the accused it is not enough on the part of the trial Court to merely peruse the final report or the complaint but it has to examine all the material placed along with the final report or complaint and that only after considering the entire material available on record, the Court shall either proceed to frame a charge or discharge the accused and that while discharging the accused the Court shall record reasons for doing so. In the cited decision of this Court, the decision of the Supreme Court in Sajjan Kumar v. CBI [(2010) 9 SCC 368] and CBI v. K. Narayana Rao [(2012) 9 SCC 512] are followed.

6.3 Be it now noted that in the first information lodged with the ACB, the informant stated as follows: ' His aunt(mother-in-law) was granted housing loan to a tune of Rs.1,25,000/- from A.P. House Fed on 09.10.2000 for construction of a house. She received only Rs.87,500/-, that is, an amount of Rs.37,500/- and Rs.50,000/- in two spells and constructed the house,. She could not repay the loan amount due to her poverty. When open auction notice was issued by the A.P. House Fed, Anantapur, in August, 2012, stating that the loan amount due and payable is Rs.2,95,099/- including interest and penal interest, the

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[4] 2014(1) ALD (Crl) 611 (AP)

informant approached the petitioner-accused, who is the Assistant Registrar/recovery officer, A.P. House Fed on behalf of his mother in law. He was advised to repay the loan amount of at least Rs.1.00 lakh. Thereafter, the informant submitted an application, on 08.10.2012, to the Managing Director, A.P. House Fed on behalf of his mother in law requesting to reduce penal interest on the loan amount by means of one time settlement. He paid Rs.1.00 lakh on the next date, that is, 09.10.2012. As settlement orders are not received he submitted another application to the Chairman, A.P. House Fed on 29.10.2012. In January, 2013, he approached the petitioner at his house after coming to know that the file pertaining to one time settlement is with him. The petitioner also stated that the file is with him and demanded bribe of Rs.20,000/- for writing report in favour of the mother in law of the informant. He was unwilling to pay the bribe amount. When he again approached the petitioner he stated that he forwarded a report favouring his mother in law and demanded the informant to pay an amount of Rs.20,000/- for having forwarded the report in their favour for getting favourable orders from the head office at Hyderabad. As the petitioner was unwilling to pay the bribe amount he returned back. Again when he met the petitioner, he vehemently demanded the bribe amount for getting favourable orders from the head office. He was informed that he will not get favourable orders unless the bribe amount as demanded is given to the petitioner. When he accepted to pay the bribe amount he was asked to pay the bribe amount on 03.05.2013 and pay the same to the petitioner at the place stated by him. He eventually lodged the first information requesting to trap the petitioner-accused.'

6.4 I have gone through the entire record. As per settled law, there is no need at this stage to form an opinion that petitioner-A3 is certainly guilty of the offence alleged against him and a charge can be framed against accused in a case where the prosecution has placed on record sufficient evidence to show a *prima facie* case against the accused under a particular provision of law and the prosecution is not required to prove its case at this stage beyond shadow of doubt. In the case on hand, the prosecution, in the considered view of the Court, placed sufficient material against the accused which is sufficient in the circumstances of this case to draw the necessary presumption and proceed against the accused after framing the necessary charge/s. This Court examined the issue involved keeping in view the limited span of interference and the restricted scope of jurisdiction and also the precedential guidance in the aforestated decisions and the decision in State of Rajasthan v. Fatehkaran Mehdu[5]. On consideration of the broad probabilities of the case, the total effect of evidence including the documents produced before the Court and in the absence of any basic infirmities in the case warranting acceptance of the request of the petitioner-accused and also in view of the limited scope of jurisdiction, which vests with the Court, it is noticeable that this is a case where a final adjudication of the charge against the petitioner-accused has to be made only after oral and documentary evidence is adduced in a full-fledged trial.

7. On the above analysis and for the reasons assigned supra, this Court finds that the request of the petitioner-accused does not merit consideration and that the order of the learned Special Judge, which is sustainable, brooks no interference. However, it is needless to state that this Court did not express any opinion on the merits of the matter and it is always open to the accused herein to raise before the Special Court all the defences, which the facts and law permit.

8. In the result, the Criminal Revision Case is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

01.09.2017
Vjl

[5] 2017 (1) ALD (Crl) 842 (SC)