THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.1656 OF 2017

ORDER:

This criminal revision case is filed by the State, ACB, represented by the Deputy Superintendent of Police, Anti Corruption Bureau, Kurnool Range, challenging the order passed in Crl.M.P.No.276 of 2014 in C.C.No.10 of 2014 filed under Section 239 Cr.P.C, whereby, the respondent/Accused Officer-2 was discharged for the offence punishable under Sections 12 r/w 7 & 13(1)(d) of Prevention of Corruption Act, 1988 (for short 'Act').

In the charge sheet filed by the petitioner, one S. Mahammad Baba, Sub Inspector of Police, Allagadda was arrayed as Accused Officer-1 and V.C. Satyanarayana, Head Constable, respondent herein was arrayed as Accused Officer-2. It is alleged that the respondent allegedly committed offence punishable under Sections 12 r/w 7 & 13(1)(d) the Act. The allegation made against A.O-1 is that, he received illegal gratification and the respondent allegedly abetted him and committed an offence punishable under Sections 12 r/w 7 & 13(1)(d) of the Act. The Court below took cognizance of the offence against the respondent as he abetted A.O-1 to commit the offence punishable under the provisions of the Act. Therefore, he is also liable to be proceeded.

The respondent filed Crl.M.P.No.276 of 2014 in C.C.No.10 of 2014 under Section 239 of Cr.P.C before the Special Court for Trial of ACB, Kurnool, to discharge him for the offence punishable under Sections 12 r/w 7 & 13(1)(d) the Act, on the ground that there is no *prima facie* material to proceed against the respondent/A.O-2 for the offences mentioned supra and that mere counting of money which A.O-1 allegedly received as a bribe would not amount to abetment and therefore, requested the Court below to discharge him.

The petitioner herein filed counter before the Court below, opposing the discharge application on the ground that the respondent/A.O-2 was caught red-handedly while counting the illegal gratification received by A.O-1 and A.O-2 is the person who aided/instigated A.O-1 to receive illegal gratification and therefore, respondent/A.O-2 is also equally liable for punishment.

It is the case of the petitioner herein from the beginning that one Nagamaddaiah, owner of taxi ran over his vehicle over cattle, for which A.O-1 registered crime against Nagamaddaiah. Further, A.O-1 demanded Rs.5,000/- as bribe from the said Nagamaddaiah for not seizing the crime vehicle and also for not laying charge sheet. As demanded, Nagamaddaiah paid Rs.5,000/- as illegal gratification to A.O-1 and in-turn A.O-1 asked the respondent/A.O-2 who is working as a Head Constable in the same police station to count the amount received as illegal gratification. While counting, trap party raided and caught both A.O-1 & 2 red-handedly. When the petitioner herein trapped both A.O-1 & respondent/A.O-2, the respondent was counting the amount after A.O-1 received the amount directly from Nagamaddaiah and later necessary tests were conducted and found the tests positive.

Therefore, filed charge sheet against A.O-1 and respondent/A.O-2. Statement of decoy witness was recorded under Section 164 Cr.P.C and the same is in corroboration of commission of an offence by the petitioner, as contended by the learned Public Prosecutor.

As seen from the material on record, the respondent herein was attending to work on the computer at the time when the decoy entered into the room and handed over cash of Rs.5,000/- towards illegal gratification for the purposes referred supra. The respondent went to A.O-1 on his request, sat beside him, received the money and started counting the amount and in the meanwhile, the trap party came caught them red-handedly. It is not the case of the petitioner that the respondent/A.O-2 had knowledge about receipt of illegal gratification or share in the amount received, or he knew the nature of the amount as bribe. Further, the statement of decoy witness recorded by the Magistrate under Section 164 Cr.P.C also does not disclose any offence about either, direct or indirect involvement of the respondent. Except the trap proceedings, no material is produced before the Court to rope him with the offences stated supra. Thus, except trap proceedings, no other material is available either directly or indirectly connecting the respondent with the offences punishable under Sections 12 r/w 7 & 13(1)(d) of the Act. Even the allegations made in the charge sheet would disclose that the respondent herein never demanded or shared the amount received as bribe for official favour from A.O-1. Therefore, an allegation is made that the respondent is the abettor who committed the offence. Whether such act would fall within the definition of abetment is again a question.

Section 107 of The Indian Penal Code defined Abetment of a thing and it is as follows:

107. Abetment of a thing.—A person abets the doing of a thing, who—
(First) — Instigates any person to do that thing; or
(Secondly) —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
(Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

So, there must be an instigation by any person or engagement by several persons in any conspiracy for the doing illegal act and thirdly, intentionally aids, by any act or illegal omission, the doing of that thing, constitutes abetment.

Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in I.P.C. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence. (vide **Amalendu Palalias Jhantu v. State of West Bengal**[1] and **Sanju alias Sanjay Singh Sengar v. State of Madhya Pradesh**[2]**).**

---
[1] AIR 2010 SUPREME COURT 512

In **Gangula Mohan Reddy v. State of A.P**[3], the word Instigation is defined as to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect. or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out.

In **Shri Ram vs. The State of U.P**[4] the Supreme Court had an occasion to interpret the word 'intentional aiding'. In order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of Section 107.

---

[2] AIR 2002 SUPREME COURT 1998
[3] AIR 2010 SUPREME COURT 327
[4] AIR 1975 SUPREME COURT 175

If, this principle is applied to the present facts of the case, the respondent herein was asked by A.O-1 to sit by his side and requested him to count the currency notes allegedly received by A.O-1 as an illegal gratification and charge sheet does not disclose anything about intentional aiding from instigating of A.O-1 by A.O-2 prior to commission of offence i.e. receiving illegal gratification for official favour. Therefore, to constitute an offence, there must be intentional aiding or instigation of a person who committed a crime. But, it is not at all the case of the prosecution/petitioner herein that the respondent/A.O-2 instigated or intentionally aided A.O-1 to commit such an offence.

In **Jamuna Singh v. State of Bihar**[5], the Supreme Court held that, in law that a person cannot ever be convicted of abetting a certain offence when the person alleged to have committed that offence in consequence of the abetment has been acquitted. The question of the abettor's guilt depends on the nature of the act abetted and the manner in which the abetment was made. Under Section 107 I.P.C. a person abets the doing of an act in either of three ways which can be : instigating any person to do an act; or engaging with one or more person in any conspiracy for the doing of that act; or intentionally aiding the doing of that act. If a person instigates another or engages with another in a conspiracy for the doing of an act which is an offence, he abets such an offence and would be guilty of abetment under Section 115 or Section 166 I.P.C., even if the offence abetted is not committed in consequence

---

[5] AIR 1967 SUPREME COURT 553

of the abetment. The offence of abetment is complete when the alleged abettor has instigated another or engaged with another in a conspiracy to commit the offence. It is not necessary for the offence of abetment that the act abetted must be committed.

Though the above judgments are under different issue of abetment to commit suicide by the respondent or his relative, the meaning of the word 'abetment' as defined under Section 107 is applicable even to the provisions of special enactment under Sections 12 r/w 7 & 13(1)(d) the Act. If, these principles are applied to the present facts of the case, the prosecution has to produce material to establish *prima facie* that the respondent herein/A.O-2 instigated or intentionally aided A.O-1 to receive illegal gratification for official favour. In the absence of any allegation in the entire material produced along with charge sheet under Section 173 Cr.P.C, it is difficult to proceed against the respondent/A.O-2. Hence, I find no *prima facie* material for the offences punishable under Sections 12 r/w 7 & 13(1)(d) the Act to proceed against respondent/A.O-2. Therefore, the charges are groundless and such person can be discharged when the Court found no substantial allegations and material in support of alleged charge of abetment under Sections 12 r/w 7 & 13(1)(d) the Act.

In view of the meaning of the word 'abetment' under Section 107 I.P.C, and analysis in the perspective pronouncement of the Apex Court in the above judgments, the Court has to come to an independent conclusion, *prima facie* whether the respondent abetted A.O-1, demanded and received illegal gratification as bribe.

The specific act done by the respondent is counting of amount given by A.O-1 which was handed over by Nagamaddaiah for official favour. Therefore, the role of the respondent commenced only after A.O-1 received illegal gratification and in such case, instigating or aiding A.O-1 to commit offence under Sections 12 r/w 7 & 13(1)(d) of the Act, does not arise, for the reason that, by the time the respondent herein started counting the amount, the alleged commission of offence by A.O-1 was over. Therefore, counting of amount received towards illegal gratification would not constitute abetment to find the respondent guilty *prima facie* for the offence punishable under Sections 12 r/w 7 & 13(1)(d) of the Act.

Similar question came up before this Court in **Sri Yeneti Apparao v. State of A.P**[6], wherein, this Court had an occasion to decide the aspect of what would amount to abetment. This Court after adverting to the definition of 'abetment', under Section 107 I.P.C, and explanations annexed thereto, held as follows:

> "From this it is clear that act, which merely amounts to aiding the commission of an offence, cannot be said to be an abetment as defined under the provisions of law. When looked in that perspective it is clear in the instant case, that A2, who was a Village Administrative Officer and was subordinate to A1 was simply obliging him and no doubt the said obliging would be aiding, but cannot be said to be intentional aiding as it is not the case of the prosecution and that the prosecution has not attributed any malice to A2 and it has come forward with the theory that he was demanding the money on behalf A1. Hence this Court is of the view that A2 is entitled to benefit of doubt."

---

[6] 2007 (1) ALD (Crl.) 83 (AP)

In the facts of the above case, Mandal Revenue Inspector-A-1 and V.A.O-A-2 demanded and accepted Rs.1,000/- as bribe for issuing 'no objection certificate to P.W.1, agriculturist for sale of teakwood trees in his field. This Court held that the conduct of A-1 in asking PW1 to pay bribe amount in office room and later asking PW1 to go out of office room and pay amount to A2 though strange, cannot be said to be unnatural because psychology of individuals differs from person to person. Though A-1 was rightly convicted, there was no case of prosecution that A-2 was hand in glove with A-1 and got a share in bribe amount. A-2/V.A.O being subordinate to A-1 was simply obliging him and it cannot be said that A-2 was guilty of abetment and the Court concluded that A-2 is entitled to benefit of doubt and set-aside the conviction of A-2.

However, the learned Public Prosecutor for ACB contended that the order passed by the Court below is apparently erroneous and this Court while exercising jurisdiction under Sections 397 & 401 Cr.P.C can set right such an error. Even otherwise, the Court is required to verify the evidence produced along with the charge sheet, but not the defence set up by the respondent herein/A.O-2 while deciding application filed under Section 239 Cr.P.C. Learned Public Prosecutor contends that, in view of the limited jurisdiction conferred on the Court under Section 239 Cr.P.C, the order passed by the Court below is erroneous apparently and this Court can set-aside the order and permit the petitioner herein to proceed against the respondent herein/A.O-2 also for the offence punishable under Sections 12 r/w 7 & 13(1)(d) of the Act.

The Court below considered that there is no *prima facie* material on record to proceed further against the respondent for the offence punishable under Sections 12 r/w 7 & 13(1)(d) of the Act, analysing the documents produced by the Investigating Agency under Section 173 Cr.P.C and the allegations made in the charge sheet, taking its face value, concluded that that alleged act of counting the amount received by A.O-1 as illegal gratification from Nagamaddaiah would not *prima facie* constitute an offence. When the Court below recorded such fact finding, the jurisdiction of this Court is limited and normally this Court cannot interfere with such fact findings recorded by the Courts below while exercising jurisdiction under Sections 397 & 401 Cr.P.C, except where the Court finds that the findings recorded by the Court are manifestly perverse or apparently erroneous.

Section 239 of Cr.P.C. deals with discharge of the accused, and 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 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 of the evidence if needed. The word "groundless" would mean the absence of reasonable ground to expect a 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 238 and 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**[7].

Therefore, in view of the judgment of this Court and meaning of the word 'abetment', as explained in the judgments referred supra, a person who had no knowledge in abetting would not constitute an offence punishable under Sections 12 r/w 7 &

---

[7] AIR 2010 SC 663

13(1)(d) of the Act. The present facts are worse than the facts in **Sri Yeneti Apparao**[1] case. It is not the case of the prosecution at any time that the respondent aided or instigated before receiving illegal gratification by A.O-1 allegedly. If the respondent received and counted the amount covered by illegal gratification and handed over to A.O-1, then it amounts to aiding directly or indirectly in receipt of illegal gratification by A.O-1. The commission of offence is completed immediately on receipt of illegal gratification by A.O-1. Therefore, subsequent act of counting cash received by A.O-1 as illegal gratification would not constitute an offence punishable under Sections 12 r/w 7 & 13(1)(d) of the Act. Therefore, there is absolutely no *prima facie* material against the respondent herein to proceed against him for the offence punishable under Sections 12 r/w 7 & 13(1)(d) of the Act.

In view of the law laid down by the Apex Court in **P.Vijayan**[2] case supra, the allegation made against the respondent and the material produced before the Court under Section 173 Cr.P.C does not disclose commission of any offence punishable under Sections 12 r/w 7 & 13(1)(d) of the Act, *prima facie*. Therefore, the contention of the learned Public Prosecutor for ACB is without any substance, since the alleged act of counting is subsequent to completion of commission of offence by A.O-1 allegedly. Therefore, I find no substance in the contention raised by the leaned Public Prosecutor to proceed against the respondent for the offence punishable under Sections 12 r/w 7 & 13(1)(d) of the Act.

In view of my foregoing discussion, I find no ground to interfere with the order impugned in this revision and consequently, the criminal revision case is liable to be dismissed.

In the result, the criminal revision case is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:15.09.2017

SP