

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL APPEAL No.1182 of 2017

ORDER:-

This Criminal Appeal, under Section 11(1) of the Criminal Law (Amendment) Ordinance, 1944, and Section 482 of the Code of Criminal Procedure, 1973, is filed by the appellant, challenging the order, dated 20.02.2017, passed in CrI.M.P.No.178 of 2016 by the Special Judge for SPE and ACB Cases at Karimnagar, whereby, the Court below, mainly relying on the judgment of the Karnataka High Court reported in H.C.Sathyan and another Vs. State by Police Inspector, Police Wing, Karnataka Lokayuktha, Mysore¹, raised the attachment already ordered on the application filed by the petitioners under Sections 3 and 4 of the Criminal Law (Amendment) Ordinance, 1944, observing that the order of ad-interim attachment passed under Section 3 of the Criminal Law (Amendment) Ordinance, 1944, will subsist for only one year but the petition is filed after a lapse of four years from the date of order of ad-interim attachment.

2. The main contention raised before this Court in this appeal is that the decision in H.C.Sathyan's case supra cannot be applied to the facts of the present case, since the Court below is competent, by virtue of Section 5 (6) of the Prevention of Corruption Act, 1988; and, by following the decision in H.C.Sathyan's case supra, the Lok Ayukta took up the matter

¹ 2012 CrI.L.J. 387

by drawing a different inference that the power under Section 5(6) of the Prevention of Corruption Act, 1988, is conferred on the Lok Ayukta also, but the Court held that Lok Ayukta was not conferred with power to order attachment under Section 5(6) of the Prevention of Corruption Act.

3. It has to be seen that that the Court below is a Special Court constituted for trial of offences punishable under the Prevention of Corruption Act. Therefore, the decision in H.C.Sathyan's case supra has no application to the facts of the present case. But the trial Court on erroneous appreciation of facts and law, committed error in dismissing the petition filed by the appellant herein, by placing reliance on the decision in H.C.Sathyan's case supra.

4. The other contention raised by Sri Nageshwara Rao Pappu, learned Special Public Prosecutor for ACB Cases is that the ad-interim order of attachment is ceased to subsist on account of lapse of one year time prescribed under Section 3 of the Criminal Law (Amendment) Ordinance, the petition filed by the petitioner should be treated as a fresh application for ordering attachment in pursuance of G.O.Ms.No.42, dated 24.04.2012, but the trial Court, on erroneous appreciation of facts and law, dismissed the petition by observing that the petitioner has to obtain fresh Government Order for filing the application for attachment of the properties.

5. The view of the Court below is not supported by any law. As seen from the provisions of the Prevention of Corruption Act,

1988, once a Government Order authorizing a particular officer of the department is issued, he is competent to file an application; and, merely because the period to seek extension of order of attachment is lapsed, that will not preclude the said officer from filing another application based on the same authorization. Therefore, insisting the officer to obtain fresh orders from the Government for seeking further attachment or extension of time is illegal. The trial Court committed an error in dismissing the petition, passing the impugned order. However, the affidavit filed in support of this petition is silent with regard to the compliance of the procedure.

6. Hence, the impugned order passed by the trial Court is suspended. The petitioner is permitted to file appropriate application before the Court below after compliance of all the requirements contemplated under Sections 3 and 4 of the Criminal Law (Amendment) Ordinance, 1944.

7. With the above observation, this Criminal Appeal is disposed of at the stage of admission.

Miscellaneous petitions, if any, pending in this Criminal Appeal, shall stand closed.

M. Satyanarayana Murthy, J

10th October, 2017
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