THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL APPEAL No.1305 OF 2016

JUDGMENT:

The three appellants, who among respondents 1 to 8 including accused officer of Crime No.1/RCA-KUR/2013 on the file of the Judge, Special Court for Trial of ACB Cases in Rayalaseema Region, Kurnool, registered for the offences punishable under Section 13 (2)read with Section 13 (1)(e) of Prevention of Corruption Act, allegedly acquired assets disproportionate to his own source of income during the check period from 01.03.1985 to 10.01.2013, from the interim attachment of the properties, sought to be made absolute by the investigating officer, by order dated 23.09.2016, in Crl.M.P.No.299 of 2014 of the said crime, where they contested that the properties are not that of the charged officer, particularly so far as the appellants/respondents 6 to 8 are concerned for certain items, having been went unsuccessful by impugning the said order of the learned Special Judge negating their contention and making attachment absolute, maintained the appeal.

2. The grounds of appeal *vis-a-viz* the submissions of learned counsel for the appellants are that learned Special Judge failed to consider the objections raised by them in respect of item Nos.1 to 4 in Annexure 6, which transactions were no way connected with accused officer and they filed sworn affidavits before the learned Special Judge and they categorically deposed that the properties belonging to them were purchased by them having sufficient funds to purchase as they were in real estate business, they cannot be treated as binamidars of the charged officer to claim as if the

properties belong to the charged officer within the purview of the disproportionate assets of the charged officer, learned Special Judge ought to have seen that nobody will keep the valuable property in the name of third parties by giving absolute rights and that too when the third appellant/respondent No.8 is shown about 73 years and no one will keep the property benami in the name of such an age old person and in the event of his demise his legal representatives could succeed and claim and so far as second appellant is concerned, he is also nowhere connected in any manner and he belongs to a different caste and community and the learned Special Judge mechanically passed the order and made the attachment absolute by clubbing both movable and immovable properties including of the son of the charged officer particularly third parties to the appellants by ignoring their claim without any basis and the learned Special Judge ought to have seen that the investigating officer did not come forward with clean hands in including their private properties as if their benami and learned Special Judge also erred in holding the properties to third parties by clubbing and seeking attachment or in making the said attachment absolute by learned Special Judge. Learned Special Judge ought to have seen that the total disproportionate value is Rs.43,82,000/- out of which in the name of accused officer, the property of Rs.73,25,237/- and of which the property of worth Rs.43,082/- belongs to the appellants 1 to 3, by name D. Sekar, A. Murali Krishna Murthy and K. Naganna, who were wrongly impleaded and thereby sought to set aside making the attachment absolute as if of the charged officer particularly in relation to items 1 to 4 of Annexure 6 and allow the same by considering the claim by excluding from the scope of attachment but not that of the charged officer.

3. However, it is the submission of learned Standing Counsel for Anti Corruption Bureau (ACB) that the order of learned Special Judge, dated 23.09.2016 referred supra is a well considered and reasoned order with right conclusions scanning the facts in law in coming to a right conclusion having fresh in mind of the facts with regard to the evidence of the investigating officer of the ACB as PW.1 with reference to Exs.P1 to P37 and also of the three appellants as DWs.1, 3 and 2 respectively with reference to Exs.D1 to D8 and no vendors of the so-called sale transactions in favour of the appellants covered by Exs.D2, D3, D6, D7 or D8 were examined and there is no explanation even in the counter filed by them before the lower Court in support of their respective claims as to why the original documents of title of their property is lying with the accused officer, so also in their evidence in chief and any sale in the cross examination cannot be countenanced with any credence as rightly concluded by learned Special Judge in making the attachment absolute holding the properties belonging to the charged officer since stand in the name of the appellants in respect of items 1 to 4 of Annexure 6 referred to supra and thereby sought for dismissal of the appeal.

4. Heard both sides and perused the material on record including the appeal grounds and the impugned order of the lower Court.

5. Sections 2 to 6 of the Benami Transactions (Prohibition) Act, 1988 (for short, 'the Act') read under:

2. Any transaction in which property is transferred to one person for a consideration paid or provided by another person is a benami transaction.

3. Prohibition of benami transactions.—

No person shall enter into any benami transaction. 1[(2) Nothing in sub-section (1) shall apply to—
(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;
(b) the securities held by a—
(i) depository as registered owner under sub-section (1) of section 10 of the Depositories Act, 1996
(ii) participant as an agent of a depository. Explanation.—The expressions "depository" and "Participants shall have the meanings respectively assigned to them in clauses (e) and (g) of sub-section (1) of section 2 of the Depositories Act, 1996].
(3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.
(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under this section shall be non-cognizable and bailable.

4. Prohibition of the right to recover property held benami.—

(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.
(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.
(3) Nothing in this section shall apply,—
(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or
(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.

5. Property held benami liable to acquisition.—
(1) All properties held benami shall be subject to acquisition by such authority, in such manner and after following such procedure, as may be prescribed.

> (2) For the removal of doubts, it is hereby declared that no amount shall be payable for the acquisition of any property under sub-section (1).
>
> 6. Act not to apply in certain cases.—Nothing in this Act shall affect the provisions of section 53 of the Transfer of Property Act, 1882 (4 of 1882), or any law relating to transfers for an illegal purpose.

6. Once from the provisions, such is the case, any transfer for illegal purpose by a charged officer in view of the Prevention of Corruption Act for concealing his disproportionate assets from known sources, the provisions of the Act cannot be applied to the claim by the persons in whose name the property stands as owner and even his properties not shown in the actual property statements of the accused officer or the charged offer as the case may be. Thus, the provisions of the Act no way require discussion in answering the *lis*. In view of the above, the case of the charged officer is that the properties belong to him or to the appellants or among others of respondents 2 to 8 in the order covered by learned Special Judge are trustees.

7. Coming to the claim of the appellants, they deposed as DWs.1 to 3 and they relied upon Exs.P2 and P35 to P37, equal to Exs.D2, D3, D6 and D7, which were seized undisputedly from the house of respondent No.1/accused officer, by name, Sri Katti Ngaseshanna during the house search conducted by the ACB officials. The ACB officials after investigation filed the charge sheet (final report) which was taken cognizance by learned Special Judge referred to supra and there was interim attachment of the properties seized in the house search of the charge officer and his daughter and others and those are shown in Annexures 1 to 6 and the Government of Andhra Pradesh by G.O.Ms.No.276, dated

25.07.2014, where interim attachment with authority to approach the Special Judge to decide any claims after notice to make attachment absolute, if any, with reference to the G.O. Now in deciding the appeal, relevancy of the property stands in the name of the appellants and the same is covered by Annexure 6, Exs.P2 and P35 to 37. Four sale deeds stand in the name of Sri D. Sekhar, two sale deeds stand in the names of DWs.1 and 2 by name D. Sekhar and K. Naganna and one in the name of DW.3, by name, A. Murali Krishna Murthy.

8. No doubt, the lower Court observed that immediately after the search and seizure and interim attachment, the appellants to the said claim did not make any claim and the same is impugned, as the outcome of non-application of mind of the lower Court. In the present appeal, unless they got notice the question of their making a claim does not arise and there is nothing to show that they got knowledge but for in the application filed before the lower Court by the investigating officer showing the properties and naming them as co-respondents, a notice was served when they came to know and filed counter making the claim.

9. In fact, from the said counter pleadings, they did not say that under what circumstances and as to what made them to keep the original title deeds with the charged officer which are lying in the house of the charged officer and in the course of the house search since seized as the said properties belong to the charged officer standing benami as part of the disproportionate assets. Even in the chief examination affidavits of DWs.1 to 3, they did not speak as to under what circumstances their title deeds were lying

with the charged officer in his house. These are the crucial aspects which are to be taken note of by the lower Court. In fact, it is the settled law that there is no presumption for registration of documents of the endorsement before the Registrar if they are true and correct. A benami transaction is liable for penal consequences. However, no one can claim as benami for the begotten properties and to that extent the provisions were excluded from the provisions referred to supra. Once such is the case, it is incumbent on the appellants, who are DWs.1 to 3 before the lower Court, to examine at least the vendors of sale transactions as to who paid consideration for the sale transactions and with what proof, if not by the charged officer and claim that those are their properties. No doubt, even what they deposed in the cross examination rightly or wrongly illustrated in showing that the accused officer is an ex-employee of the revenue department and she got acquaintance with several persons to secure prospective purchasers, they kept the title deeds with them and the same is the outcome of the cross examination which is also discussed in the impugned order of the lower Court rightly inspire confidence to give credence or to believe. If at all they want to secure prospective purchasers, they can keep Xerox copies at best and not the original title deeds and even though it is not even by any receipt or acknowledgement and they can secure at best by paper publication any prospective purchaser apart from affixing on a board the properties in question and mere showing that they got financial strength by showing the bank account exhibiting as Exs.D1 and D5 not suffice and in the absence of proof, at least by examination of vendors, it can be known as to whether they paid the consideration and with regard to endorsement before the sub-registrar not even give presumption as per settled law that were not even proved. Once such is the case, the order of the lower Court negating their claim raised in their counter as DWs.1 to 3 with reference to Exs.D1 to D8, for this Court while sitting in appeal no way requires interference. However, it is made clear that none of the observations of the lower Court or of this Court herein shall no way influence the mind of the trial Court in deciding the Calendar Case and also no way prejudice any available defence of the accused.

10. Accordingly, the Criminal Appeal is dismissed.

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

Dr.JUSTICE B.SIVA SANKARA RAO

Date:26.04.2017
KH

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL APPEAL No.1305 OF 2016

Date: 04.2017

KH