

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.4127 of 2015

ORDER:

This petition is filed under Section 482 Cr.P.C. by the petitioner/sole accused of crime No.19/RCA-ACB-VJA/2008 dated 27.04.2009 under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act (for short 'the Act') for the alleged disproportionate assets against known source of income during the check period 01.07.1982 to 14.02.2008 and the police after investigation filed the final report. During investigation show cause notice dated 27.04.2009 was issued to the petitioner by the I.O. saying the disproportionate assets in his possession against known source is ranging to Rs.63,23,956/- and from the material seized during investigation, it disclosed including from income and expenditure after taken consideration and in view of the above, he is required to be reminded with a request to offer his explanation for consideration before finalization against him. Impugning the same, he maintained CrI.P.No.3460 of 2009 under Section 482 Cr.P.C. to quash the FIR and consequently statutory notice supra, the same was disposed of by this Court on 31.01.2011 and the operative portion reads as follows:

"Since the FIR has not reached finality, the investigating officer is directed to consider regarding the properties owned by the accused officer's wife, value of the same and also the properties acquired by her by way of dispossessing the properties acquired at the time of marriage. This Court is of the definite view that the investigating officer after completion of the investigation will forward a letter to the accused officer to explain his sources of income regarding the disproportionate assets concerned so that the accused officer will have a right to explain his submissions even prior to filing of charge sheet, if any. In view of the same, the

investigation officer is directed to consider all the documents and explanations submitted by the petitioner herein and decide the issue in accordance with law.”

It is subsequent to the direction supra dated 31.01.2011, the I.O. issued another notice dated 13.09.2011 to offer his explanation with documentary proof if any to verify and to decide the issue in accordance with law also by referring to the direction of this Court dated 31.01.2011. Against which, he maintained C.C.No.1305 of 2011 and the same was disposed of on 22.09.2011 with observations:

“This Court perused the said order.

In the said order, this Court observed that it is the normal procedure in case of disproportionate assets that after completion of investigation, the Investigating Officer has to get explanation from the accused officer regarding his assets and the source by which he accumulated the same. The said order is not in the nature of any direction. But, it is an opinion expressed by this Court.

Learned counsel for the petitioner vehemently contended that even though this is an observation, it should be considered in letter and spirit by the Officer concerned and hence the concerned Officer committed contempt of the order of this Court.

Having perused the impugned order, this Court is of the view that the said act of the investigating officer cannot be called as a contempt, but at the same time, the petitioner, if aggrieved over the investigation of the case and non-calling for of any explanation from the accused officer, he is at liberty to challenge the charge sheet filed by the Investigating Officer, if he so desires.”

Subsequently, the ACB officials from the investigation filed the final report dated 22.03.2012. The learned Special Judge from the final report taken cognizance for the offence supra against the accused and after supplying of copies contemplated by Sections 207/208 Cr.P.C. and after hearing, charges were framed on 19.06.2014. The charge reads as follows:

“I, Sri Alapati Giridhar, Special Judge for SPE & ACB Cases-cum-III Additional District & Sessions Judge, Vijayawada hereby charge you, Sri Bayyapu Subba Rao S/o. Dharmaraju, 50 years, Inspector of Police, Marine Police Station, Gilakaladindi, Machilipatnam, Krishna District, as follows:

That you, being public servant employed as Inspector of Police at Marine Police Station, Gilakaladindi, Machilipatnam, you possessed assets disproportionate to your known source of income to a tune of Rs.21,80,172/- for the check period from 01.07.1982 to 14.12.2008 and thereby committed criminal misconduct, offence punishable u/s 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, and within the cognizance of the Court of Sessions.

And I hereby direct that you be tried on the said charge.”

The accused did not file any separate application under Section 239 Cr.P.C. for discharge. No doubt he can argue without filing of such application and in the charge framed there is no any order as to what are the arguments propounded by both sides if any, though it is the contention that it was raised before considering the framing of charge in the course of hearing contemplated by Sections 238 to 240 Cr.P.C. It is thereby the present application is filed to quash the cognizance taken as C.C.No.14 of 2013 for the offence supra against the accused. As referred supra, the charge sheet filed, the copies supplied, he participated in the enquiry for hearing before charges and it is long after framing of charges, the petitioner has filed Crl.P.No.4127 of 2015. No doubt as raised the contentions in the application for quashing of the cognizance and subsequent proceedings including the charges framed supra, from the reading of the police final report, there is nothing reflects as to consideration specifically of the contentions raised regarding the known disproportionate assets had it been properly considered of what is claimed by wife of the charged officer of her properties and her means. However, the

learned Standing Counsel for ACB in the course of hearing submits that the very charge sheet abstract of assets particularly item No.6 is part of consideration to said material thereby deleted the site of 700 square yards of Bhavanipuram as property of the charged officer by considering as that of his wife in considering the source of the income of the charged officer vis-à-vis as his wife as the case may be. The counter filed on behalf of the respondent Inspector of Police for ACB representing the State mentions consideration however as stated supra that is not reflected.

The Apex Court in **Rukmini Narvekar Vs. Vijaya Satardekar and Others**¹ particularly in Paras 21 to 24 observed that in very rare cases, defence material also can be permitted to be considered if it is unimpeachable so that the accused unnecessarily face the trial irrespective of the three Judge bench expression of the Apex Court in **State Of Orissa Vs. Debendra Nath Padhi**² saying only on the face value of the prosecution material in its entirety alone can be fallen for consideration in framing of charges or not. Though it is not an exceptional case the facts lead to consider the same as such because there was already a specific direction by the Court to consider and in a contempt application filed what the self same learned Judge of this Court observed is it is an opinion expressed as part of the duty of the I.O. in normal consideration of such matters in investigation. Even therefrom as it is their duty to not only consider but also reflect the consideration that is totally lacking, but for reflected in the counter as an explanation from the investigation material, liberty is given

¹ (2008) 14 SCC 1

² (2005) 1 SCC 568

to the petitioner to invoke Section 216 Cr.P.C. and file application before the lower Court though earlier not specifically filed such application under Section 238 to 240 Cr.P.C. and place material what the petitioner supposed to place for consideration if necessary to alter or delete the charge or to uphold the charge framed as the case may be on own merits.

With these observations, the petition is disposed of.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

Date: 03.03.2017
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