THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL PETITION No.5171 of 2011

ORDER:

This criminal petition, under Section 482 of the Code of Criminal Procedure, 1973, ('the Code', for short), is filed by the petitioner-Accused Officer requesting to quash the proceedings against him in Cr.No.21/RCA-ACB-VJA/2010, dated 06.10.2010, of ACB, Vijayawada Range.

2. I have heard the submissions of *Sri C. Nageswara Rao*, learned senior counsel representing *Sri Kuriti Bhaskara Rao*, learned counsel appearing for the petitioner-accused officer, and of *Sri Udaya Bhasakara Rao*, learned Standing Counsel for ACB representing the 1st respondent-State. I have carefully perused the material record.

3. The introductory facts are as follows: "The petitioner-accused officer worked as Deputy Commissioner of Commercial Taxes, Kadapa, at the time of registration of the crime. He is a native of Ramakrishnapuram village, Bapatla Mandal, Guntur District. He joined Government service, on 07.11.1981, as Assistant Commercial Tax Officer and worked at various places. He was promoted as DCTO, on 25.07.1992. He worked in that capacity also at different places. He was later promoted as Commercial Tax Officer, on 17.01.1994. In that capacity, he worked at Madhapur, Ranga Reddy District and Kurnool District. He was later promoted as Assistant Commissioner and worked at various places in that capacity. He was further promoted as Deputy Commissioner during the year 2006 and worked at Tirupati Urban from 2006 to 20.08.2008 and as Deputy Commissioner, Guntur Division-I, from 20.08.2008 to 20.06.2010. One Prameela is his wife. The accused officer and his wife were blessed with one son, Bhanu Pradeep, aged 26 years, and one daughter, Nirupama, aged 21 years, as on the date of the registration of the crime."

4. The case of the petitioner in support of his request to quash the proceedings against him in the afore-said crime, in brief, is as follows: "The afore-stated crime was registered against him for the offences punishable under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988, ['the PC Act', for short]. Earlier to this crime, a case in Crime No.6/RCA-TPT/95 was registered against him, on 21.12.1995, for the offences punishable under Section 13(2) read with 13(1)(e) of the PC Act. The check period in that case was from 07.11.1981 to 30.12.1995. However, the Government of Andhra Pradesh by memo No.4706/Vig.1(1)/1996-15, dated 07.08.2003, dropped further proceedings in that case. Therefore, the 2nd respondent/Range Inspector-II, ACB, developed a grouse against this petitioner and implicated him in the present crime with an ulterior motive to harass this petitioner-accused. The check period in the present crime is from 07.11.1981 to 05.10.2010. Thus, the check period in the present crime encompasses the check period in the previous crime also. Therefore, this petitioner-accused is being tried twice for the same offence. The investigation is hit by the principle enshrined in the doctrine of double jeopardy. In the earlier investigation conducted into the earlier crime, it was stated that this petitioner's father joined as Peon during 1968 with basic pay of Rs.55/- per month in Veterinary College, Bapatla, and afterwards he got promoted as Record Assistant and Fieldman/sub-Assistant and that subsequently he worked as Sub Assistant in Citrus Improvement Project, Agricultural College, Tirupati. But, in the present crime the investigating officer falsely stated that this petitioner's father is an agriculturist and that he used to work as a temporary night watchman in a school. The retirement benefits and savings from the incomes of this petitioner's father were spent on the construction of the first and second floors of the house bearing No.20-3-15/1, Sivajyothi Nagar, Tirupati, which stands in the name of the mother of this petitioner. In the earlier crime record it was stated that the mother of this petitioner loved the father of the petitioner and

married him during 1959 and that she secured a job as a Higher Grade Teacher in Tirupati Municipality, on 1.11.1973, and that she died on 24.01.1987. Whereas in the present crime it is falsely stated that she is a house wife and that the petitioner has not inherited any properties from his father and mother while in-fact this petitioner inherited properties as well as death service benefits of his parents. This petitioner's wife is an income tax assessee and filed IT returns from 1996-97 to 2009-10 on the agricultural income. Her incomes were not taken into consideration despite her protest. Her assets were also included in the assets of this petitioner mentioned in the abstract of assets annexed to the FIR. This petitioner's wife owns Ac.17.75 cents. She purchased the lands in the years 1988 and 1995 and raised commercial crops like Turmeric and Mirchi in the said lands at Emani village of Guntur District. She has independent sources of income and her income was developed from time to time. The assets of this petitioner's wife ought not to have been included in the assets of this petitioner without properly verifying and considering her assets, income and savings and also the fact that she filed income tax returns and returned her income and expenditure. The assets of the married sister of this petitioner are also included in the abstract of assets annexed to the FIR. The ancestral properties devolved upon this petitioner ought not to have been included as the assets acquired by this petitioner during the check period mentioned in the statement of assets. The son of this petitioner was employed at Scotland and the daughter of this petitioner is a software engineer. They both draw considerable salaries. They contributed for the development of the family and family assets. The calculations of salaried income and income from other sources made by the investigating agency are incorrect. From the date of entering into service till the last date in the check period, the salaried income was arrived at Rs.28.00 lakhs; but, in fact the total salaried income from the date of entry into service upto the last date of the check period is more than rupees one Crore. The income was mischievously reduced. The expenditure was exaggerated. Thus, the investigation in the present crime is motivated and *mala fide*. In the present investigation record, the investigating officer made false statements. His statements in the present crime record are contrary to the facts stated in the record of the earlier crime in which the proceedings were dropped against the petitioner. The investigation officer has been and is acting in a biased manner and with a prejudicial mind. If the incomes and expenditure of this petitioner and his assets and incomes from assets and savings are properly arrived at and if the incomes and assets and savings of his wife are properly arrived at and the assets of third parties-family members are excluded from the assets and income of this petitioner, there will not be any assets disproportion to the known sources of income of this petitioner-accused. Hence, the case against the petitioner is liable to be quashed."

5. The case of the respondent/ACB, in brief, is this: 'The present crime was registered against the Accused Officer under the provisions of the PC Act as he is having assets which are disproportionate to his known sources of income during the check period from 07.11.1981 to 05.10.2010. During searches several incriminating documents were seized, on 08.10.2010. As per the investigation done until the stay orders are granted by this Court and as per the scrutiny of records, it was found that the accused is possessing disproportionate assets to a tune of Rs.3,85,54,754/- and that the percentage of disproportion is 753% to the known sources of income of the Accused Officer. He acquired huge assets after closure of the earlier disproportionate assets case of Tirupathi Range, that is, after the year 2003. Taking advantage of dropping of action against him in the earlier disproportionate assets case, the accused with a *mala fide* motive and corrupt means & methods periodically acquired movable and immovable assets in his name and in the names of his family members, after 01.01.1996. After registration of the present crime, the petitioner-accused officer was in judicial custody from 09.10.2010 to 08.12.2010. During the said

period, the family members of the petitioner-accused officer with a *mala fide* intention have withdrawn a total amount of Rs.1,06,75,904/- from various banks. It is absolutely false to allege that the amounts, which were in the names of the petitioners family members in various banks are their personal amounts and that they acquired the said amounts in the manner stated by the accused officer. There is unimpeachable evidence against the Accused officer and the investigation so far done, was according to the procedure and law. The claim of the petitioner-accused that the assets in the name of his wife were purchased by his wife and not by him is not true. The wife of the petitioner-accused is only a house wife. She is totally dependent upon the earnings of the petitioner-accused and has no independent source of income. The wife of the petitioner-accused has not filed IT returns except for the year 2003-04. Hence, the contention of the petitioner-accused that his wife filed IT returns from 1996-97 to 2009-10 is false. The properties that were mentioned in the notice pertaining to parents and married sister of the petitioner-accused were subsequently excluded as per the facts that came to light during the course of further investigation. With regard to the earlier crime, the CBI submitted final report stating that the petitioner-accused officer had possessed, for the check period from 07.11.1981 to 30.12.1995, disproportionate assets to a tune of Rs.64,536.33 ps, which is 11.3% of his income as against 20% margin being allowed as per G.O.Ms.No.700/SC-D/89-4, dated 25.02.1989. After examining the material available, the Government accepted the recommendations of the Bureau and dropped further action against the petitioner-accused in that case. In the present case, after completion of the investigation, a notice was issued to the petitioner-accused, on 09.04.2011. Subsequently two reminder notices were also issued, on 23.04.2011 and on 08.05.2011 requiring him to submit his explanation, if any, to consider the same in accordance with law. But, the petitioner-accused did not furnish any reply to the notices issued by the investigating officer to get the version of the petitioner-accused and consider his claims. All the contrary allegations in the petition are false and are denied. The petition may be dismissed.'

6. At the hearing, learned counsel for both the sides advanced arguments in line with the pleadings of the parties.

7. Learned senior counsel for the petitioner forcefully contended as follows: - 'The fixing of the check period in the present crime from 1981 to 2010, which encompasses the previous check period of the previous crime is itself illegal as the proceedings in the earlier crime related to the check period from 1981 to 1995 were dropped by the Government vide proceedings in memo dated 07.08.2003. Therefore, the check period in the previous crime should not have been made part of the check period in the present crime. It would amount to double jeopardy and the present attempt is an attempt to try the accused for the same offence a second time. The investigation was done and is being done with prejudicial mind and in a biased manner as the 2nd respondent is having a grouse against the petitioner in view of the fact that the earlier proceedings in former crime were dropped by the State Government. The material record clearly establishes that the investigating officer made false allegations and that the said allegations are obviously contrary to the facts stated during the investigation into the earlier crime. The investigating officer exaggerated the expenditure and assets of this petitioner by including the assets of other family members, who are having their independent sources of income. The investigating officer had not properly determined the salary from the date of entering into service upto the last date of the check period. He falsely showed the entire income as Rs.28 lakhs while in fact the income was more than one crore of rupees. The investigating officer intentionally failed to consider the facts that the wife of the petitioner is an income tax assessee and filed income tax returns from 1996 onwards covering the entire check period

also and that she owned Ac.17.75 cents of land at Emani village and that in her said lands she raised commercial crops and earned independent income from her independent sources. The investigating officer falsely and dishonestly included the assets of the wife of the petitioner in his assets. If the contentions of the petitioner which are genuine are accepted it is apparent that the charge is groundless.'

8. The learned standing counsel while reiterating the case of the respondent, which is stated in the counter, *inter alia* contended as follows: "The present crime was registered, on 06.10.2010, following all statutory measures and is being investigated into. The investigation so far revealed that the accused officer is having assets, which are hugely disproportionate. Even while the investigation is in progress, the petitioner approached this Court by way of this criminal petition and obtained interim stay orders, on 09.09.2011. The stay orders are in force till date. Therefore, there was no further progress in the investigation and the final report/charge sheet could not be filed. Merely on apprehensions, the present criminal petition is filed without allowing the investigation to proceed on proper lines. Merely because the check period in the present crime includes the check period related to the previous crime in which the proceedings are dropped, the proceedings in the present crime cannot be quashed. The accused is admittedly a public servant. At the conclusion of the investigation, the entire evidence will be available and till the entire evidence collected by means of investigation is examined, the investigating officer cannot formulate a final opinion. Further, based on the conclusions of investigation, he would be required to file charge sheet/final report depending upon the result of the investigation. The contentions of the petitioner cannot be prejudged even without the investigating officer completing the investigation in all respects. As per settled law, the investigation shall not be interdicted when it is at a preliminary stage. The petitioner-accused as well can submit his documents along with the

explanation, if any, to the investigating officer for proper consideration as already notices were issued to him requiring him to submit his explanation, if any, to consider the same in accordance with law. He cannot be permitted to approach the Court and seek quashment of the proceedings even without allowing the investigation to progress and even without submitting his explanation, if any. He cannot ask the Court to conduct a mini trial at a preliminary stage. The accused will have an opportunity to make all his submissions and offer his explanation during the course of investigation and before the investigating officer finalises his opinion before filing the final report/charge sheet. Further, the accused will have also an opportunity to raise his defence at the stage of hearing of charges. The petition is misconceived and is liable to be dismissed."

9. I have given earnest and thoughtful consideration to the facts and submissions.

10. As rightly pointed out by the learned standing counsel while the investigation is in progress into the subject crime registered on 06.10.2010, the petitioner approached this court by filing this criminal Petition and obtained stay orders and stalled the progress and completion of investigation. Admittedly the check period from 07.11.1981 to 05.10.2010 includes the check period covered by the former crime in which the proceedings were dropped against the petitioner-accused. In what manner the investigating officer would deal with the matters and evidence relating to earlier check period and also the matters and evidence that may emerge/emerged relating to the present entire check period cannot now be prejudged or visualised. What opinion would eventually be arrived at by the investigating officer on conclusion of the investigation and on examination of the collected evidence and the material, depends upon various factors and the law. What would be the final result and what would be the final opinion of the investigating officer will be known only

on filing of the final report or charge sheet. Making of any observations at this premature stage either in favour of the accused or in favour of the investigating agency would prejudice the interests of one of the parties and would definitely come in the way of the investigating officer formulating an independent opinion at the conclusion of the investigation. The respondents contend that as per the investigation done until stay orders are granted by this Court and as per the scrutiny of records it was found that the accused is possessing disproportionate assets to a tune of Rs.3,85,54,754/- and the percentage of disproportion is 753% to the known sources of the income of the accused officer whereas the accused officer is contending that if the calculations with regard to his income and expenditure are properly done and if only his assets includable are taken into consideration by excluding the assets which are not includable in his assets, his assets would not be disproportionate to his known sources of income. The question as to which one of the two versions would be correct cannot be prejudged more particularly even when the investigation is not completed and the investigating officer has not yet formulated an opinion and filed a charge sheet/final report with his opinion. Only after investigation, the investigating officer would be able to arrive at a final opinion independently. Which of the two rival versions is correct and whether the averments in the charge sheet that may be filed and the evidence that may be produced in support thereof would eventually make out a *prima facie* case or a strong case for proceeding against the accused will have to be decided at a later stage but not in the present quash proceedings. In other words in this instant case there is no need to pre-judge the outcome of the investigation.

11. No doubt, once an FIR is registered, the accused persons can always approach the High Court under Section 482 Code of Criminal Procedure or Under Article 226 of the Constitution for quashing of the FIR. It is also well settled that the power under section 482 of the Code to quash the FIR has to be

exercised either to prevent abuse of process of any Court or to otherwise secure the ends of justice. The Supreme Court also held and reiterated that it may not possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guideline or rigid formula and to give an exhaustive list of myriad cases wherein such power should be exercised. The inherent power in the matter of quashing the FIR has to be exercised sparingly and with caution following the tests suggested in the provision of law. Two of the important illustrative parameters to be taken note of while exercising the inherent power are – (i) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused; And, (ii) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

12. On the above analysis of the facts and the submissions of both the sides, and keeping in view the limited scope of interference, the restricted ambit of jurisdiction and the legal position obtaining, this court finds that the request of the petitioner/accused officer does not merit consideration at this stage and that his petition is liable to be dismissed. Since, the accused officer has got an opportunity to offer his explanation, if he so desires, in reply to the notices issued to him, he can as well state all his contentions in his explanation for appropriate consideration by the concerned as per law. In the same case of the petitioner/accused officer, the Government dropped the proceedings related to an earlier crime when it was noticed that the earlier case was a fit case to do so; and, hence, the accused officer need not have any apprehensions in submitting his explanation, if he desires so to do. Hence, the liberty is reserved to the accused officer to submit his explanation to the concerned. However, he shall do so within a reasonable time of three weeks

from the date of receipt of a copy of this order. It is needless to state that if any such explanation comes to be submitted by the accused officer, the same shall be considered by the authority or officer concerned in a just an fair manner and in accordance with law.

13. In the result, the Criminal Petition is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

11.09.2017
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