HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.3042 OF 2017

ORDER:

Requesting to quash the charge framed under Section 13 read with 13 (1) (e) of the Prevention of Corruption Act, 1988 (for short 'Act, 1988') in Calendar Case No.10 of 2016, on the file of the Special Judge for SPE & ACB Cases, Nellore, and also to direct the learned Special Judge to afford an opportunity to the petitioner to have him heard under the provisions of Section 239 of the Code of Criminal Procedure, 1973 (for short 'Code'), the present Criminal Petition, under Section 482 of the Code, is filed.

2. The relief sought for by the petitioner in the present Criminal Petition is as under:

> "For the various above said reasons it is prayed that this Hon'ble Court may in the interests of justice be pleased to quash the Order dtd.15th July 2016 in C.C.NO.10 of 2016 on the file of the Court of the Special Judge for SPE & ACB Cases, Nellore, framing charges against the Petitioner and direct the Hon'ble Learned Special Judge to afford an opportunity to the Petitioner to have him heard under the provisions of Sec.239 Cr.P.C., and pass such other further orders as are deemed just and necessary in the circumstances of the case."

3. Looking at the allegations levelled in the charge sheet filed by the Inspector of Police, Anti-Corruption Bureau (ACB), Tirupati

Range, Tirupati, Andhra Pradesh State, the petitioner - Accused Officer is found to have acquired assets disproportionate to his known sources of income to a tune of Rs.75,97,670/-, for which he could not satisfactorily account. The check period taken by the Investigating Agency was between 15.11.1984 and 25.05.2006.

i) According to the Investigating Agency, the petitioner acquired and possessed assets worth Rs.61,18,770/- and the income derived by him was Rs.10,97,432/-, whereas the expenditure was Rs.25,76,232/- as per the Annexures - A, B and C, respectively, and it was revealed in the investigation that he had incurred excess expenditure to the tune of Rs.14,78,900/-..

ii) The learned Special Judge framed the following charge on 15.07.2016:

> "**CHARGE :** U/s. 13(2) r/w 13(1)(e) of P.C. Act: That you, Agnihothram Sanath Kumar Acharyulu @ A. Sanath Kumar, 56 years, S/o.A.L. Narasimha Acharyulu, Assistant Engineer, Quality Control, TTD, Tirupati, being a public servant, acquired assets worth Rs.61,18,770/- and your income was Rs.10,97,432/- and expenditure was Rs.25,76,332/- during the check period i.e. from 15.11.1984 to 4.5.2006 and thus you are found in possession of assets worth Rs.75,97,670/-, disproportionate to your known source of income and you failed to satisfactorily account for possession of assets worth Rs.75,97,670/- and thereby you committed an offence punishable **under Section 13(2)**

r/w 13(1)(e) of Prevnetion of Corruption Act, 1988
and within my cognizance.

And I hereby direct that you be tried before me on the said charge."

4. Heard Sri V. Pattabhi, learned counsel for the petitioner - accused officer, and Sri P. Udaya Bhaskara Rao, learned Special Public Prosecutor for ACB Cases, State of Andhra Pradesh.

5. The learned counsel for the petitioner advanced the following two-fold submissions:

i. The requirement of Section 239 of the Code was not complied with. In the sense, the opportunity of being heard before framing charge was not afforded to the petitioner which is *sine qua non*, as per Section 239 of the Code; and

ii. Framing of charge is defective since the possession of assets disproportionate to known sources of income is shown as Rs.75,97,670/-, as the petitioner – accused officer has to explain or account for each pie shown in excess of the alleged possession of assets disproportionate to his known sources of income.

6. The learned counsel for the petitioner to substantiate that no opportunity was afforded, has submitted a copy of computerized case details generated from the Internet and shown that from 08.07.2016,

on which date, the Calendar Case was coming up for consideration of charge, posted to 15.07.2016, indicating consideration of charge and on the next date of hearing i.e., 24.10.2016, it is indicated that it was posted for trial. Basing on the entries therein under the column 'purpose of hearing', he would submit that it reveals that no chance was afforded for hearing to the petitioner, thereby the petitioner was subjected to deprivation of his right to file an application for discharge, as when charge is framed, the said right gets extinguished.

7. The aforesaid entries have been disputed by the learned Special Public Prosecutor stating that the petitioner ought to have filed certified copy of the docket entries that were actually recorded by the learned Special Judge. This apart, the learned Special Public Prosecutor would submit that the relevant details have been supplied in the counter, and averments in paragraph No.4 of the counter would clearly demonstrate that the learned Special Judge taken cognizance for the offence under Section 13 (2) read with 13 (1) (e) of the Act, 1988 against the petitioner, issued summons to him, posted to 13.05.2016, on which day, the petitioner was present, and since the Presiding Officer was on vacation, again posted to 30.05.2016, on which day, the petitioner was present and he was furnished copies of documents and case was posted for consideration to 16.06.2016. On 16.06.2016, the petitioner was present and his counsel filed a memo of appearance on his behalf, and for consideration, it was again posted to 30.06.2016. On 30.06.2016, the petitioner was present and it was

posted to 08.07.2016 for consideration. From 08.07.2016, it was posted to 15.07.2016, and even on that day, the petitioner was present and he was examined and the aforesaid charge was framed against him.

i) It is, therefore, his submission that it cannot be said that the petitioner was not afforded chance of being heard and, therefore, there is no substance in the said submission made by the learned counsel for the petitioner.

8. The case details generated from the Internet relate to status of the case only. In fact, the docket proceedings alone would indicate the real picture and what has transpired actually in the Court Hall. The case details are in concise form without referring to the actual details.

9. Now, turning to the submission made by the learned counsel for the petitioner, the details furnished in paragraph No.4 of the counter would unmistakably point out that the Calendar Case came up for consideration, for the first time, after service of summons on the petitioner on 13.05.2016. It was adjourned to 30.05.2016 and he was furnished with copies of documents and again posted for consideration to 16.06.2016. His counsel filed a memo of appearance on 16.06.2016, again posted to 30.06.2016, and on 30.06.2016, again it was adjourned to 08.07.2016 for consideration, again it was adjourned to 15.07.2016. So, from the date of filing memo of appearance by the learned counsel for the petitioner on 16.06.2016,

the Calendar Case was adjourned thrice before the charge was framed, and it was coming up for consideration. The word **"consideration"** clearly indicates that the petitioner was given opportunity, at least, on four adjournments. When the learned counsel filed memo of appearance for the petitioner, and when the Calendar Case came up for consideration, neither the learned counsel for the petitioner, nor the petitioner was precluded from filing a petition for discharge and tendering arguments thereon. Having failed to do so, now hurling comment at the Court that no opportunity of being heard, was afforded to the petitioner before framing the charge is incorrect and not tenable. Thus, these events would completely belie the first submission made by the learned counsel for the petitioner, besides exposing shallowness in the submission made.

10. Turning to the second submission that the charge is defective, the learned Special Public Prosecutor contended that the learned counsel for the petitioner has not pointed out on what basis the charge framed was defective. It is, according to the learned Special Public Prosecutor, that the assets worth Rs.61,18,770/-, when added to the expenditure of Rs.25,76,332/- during the check period, it would work out to Rs.86,95,102/-. When the income of Rs.10,97,432/- earned during the check period is deducted from the aggregate amount, the possession of assets, would work out to Rs.75,97,670/-, as mentioned in the charge and accounts for disproportionate to the known sources of income of the petitioner - accused officer, but failed

to satisfactorily account therefor. Therefore, it is his submission that the contention of the learned counsel for the petitioner is without any merit.

11. It is true, what has been mentioned in the charge cannot be either faulted or commented. The charge is correctly framed as could be seen from the figures mentioned therein towards assets acquired, expenditure incurred and income source during the check period, leaving the balance of possession of assets worth Rs.75,97,670/-, which according to the prosecution, the petitioner failed to satisfactorily account for.

12. Therefore, both the grounds urged by the learned counsel for the petitioner lack merit. Thus, the present Criminal Petition fails and, consequently, dismissed.

13. It is desirable to observe that the learned Special Judge would dispose of the Calendar Case uninfluenced by any of the observations made hereinabove.

As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand closed.

A. SHANKAR NARAYANA, J

November 15, 2017.
Mgr