THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITIONS Nos.13171 and 13172 of 2013

COMMON ORDER:

1. Since both the petitions arise out of one Crime, both the petitions are heard together and being disposed of by this Common Order.

2. Crl.P.Nos.13171 and 13172 of 2013 are filed by the petitioner-accused seeking to quash the proceedings against him in C.C.Nos.4 of 2012 on the file of Special Judge for SPE and ACB Cases, Visakhapatnam and C.C.No. 6 of 2012 on the file of Principal Special Judge for SPE and ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad, respectively.

3. The case of the prosecution is as follows:

(i) The petitioner-A1 joined in Police Department on 19.5.1971 as Reserve Sub-Inspector and later, he got promotions. He worked as D.C.P. Traffic-II, Hyderabad from 17.6.2004 to 25.10.2004 and worked as D.C.P., Traffic, Cyberabad from 26.10.2004 to 16.5.2006 and as Superintendent of Police, Visakhapatnam District from 17.5.2006 to 28.4.2007.

(ii) On credible information that the petitioner-A1 being a public servant acquired assets by corrupt practices and on the information furnished in the Government Memo No.242/SC.D/A1/2007-6 of G.A. (SC.D) Department, dated 24.4.2007 of Chitharangajan Diswal, Principal Secretary to Government, Political, Andhra Pradesh Hyderabad, a case in Crime No.11/ACB-CIU-HYD/2007 for the offence under Sections 13(2) r/w 13(1)(d) & (e) of the P.C. Act was registered against the petitioner on 26.4.2007 and investigated into. For the purpose of investigation, the period, from the date of joining to the date of search in the house of A1, was taken as check period, It was found that total value of assets acquired by A1 in his name and in the names of his dependent family members is at Rs.2,33,43,931/-. The income of A1 from all his known sources during the check period was Rs.72,68,931/- and the total expenditure incurred by A1 during the check period was Rs.1,67,53,919/-. It was also found that A1 spent more than his income, and that the excess expenditure made by A1 is over and above his income. Thus, the investigating agency found A1 in possession of assets disproportionate to his known sources of income to a tune of Rs.3,28,29,019/- viz., total assets + excess expenditure.

(iii) Further, the investigation discloses that A2, who is the son of A1, studied Master in business systems at Monash University, Melbourne Victoria State, Australia during the year 2002-04 and thereafter, he returned to India. A2 did not conduct any worth mentioning business to earn huge profits. A2 utilized the ill-gotten wealth of A1 and joined as a partner in M/s Sri Sai Mourya Homes, Bangalore and M/s. M.S. Land Developers, Builders and Ritz International Resorts and pumped huge amounts into the business by way of capital. The total amounts investigated by A2 is Rs.2,06,04,000/- . A2 is not financially independent and there are no other sources of income to A2 to mobilize such huge amount. A2 paid an amount of Rs.3 lakhs to T. Shanker Reddy, who is the business partner in M/s. M.S. Land Developers, Builders & Ritz International Resorts. As such, A2 abetted the offence of acquiring disproportionate assets to the known sources of income by A1. A2 got 33% share in M/s. M.S. Land Developers, Builders and Ritz International Resorts firm. The said firm has a current account in Andhra Bank, JP Nagar Branch, Bangalore vide Current A/c No.CA/01/00000378. The current account statement discloses that a cheque No.75388 was credited to the said account on 29.11.2006 for an mount of Rs.23,50,000/-. The cheque was issued by A3 of M/s. Indira Marketting Agncies on 20.11.2006 drawn on Bank of India, Ramkote Branch, Hyderabad. On receipt of notice from the investigation officer under Section 160 Cr.P.C., A3 appeared and informed that he has issued the cueque at the request of A2 as loan in the name of M/s. M.S. Land Developers, Builder and Ritz Internal Resorts with a condition to repay the same within a period of one year. He also submitted a letter purported to have been prepared on 23.11.2006 containing the details of cheque for Rs.23,50,000/- to A2. Immediately, searches were conducted at the office of A3 to unearth the financial transactions between A2 and A3 and during searches the Central Processing Unit of the computer used by A3 was seized. On examination of CPU, a report was given by APFSL. As per the report, the matter in the letter dated 23.11.2006 was actually typed on 28.5.2007 i.e., after registration of the case against A1, and the matter was deleted subsequently from the CPU. After registration of crime, the letter was prepared by A3 with a view to help A2. A2 and A3 having common intention committed the offence of forgery and used the forged documents as genuine for the purpose cheating and thus, they committed the offence under Sections 465, 468, and 471 r/w 34 IPC.

(iv) The investigating agency filed charge sheets in the Special Courts at Visakhapatnam and Hyderabad and the Special Courts at Visakhapatnam and Hyderabad took cognizance of the same and numbered as C.C.Nos.4 of 2012 and 6 of 2012 respectively.

4. The case of the petitioner is as follows:

(i) It is stated that during the year 2007, certain anonymous complaints were made against the petitioner to the Government and then, the Government issued a memo dated 24.4.2007 to register a case and investigate into the allegations and that without enquiring into the veracity or otherwise of the allegations made in the said complaints, the ACB authorities acted in a hasty manner and raided the houses of the petitioner at Hyderabad and Visakhapatnam. The ACB authorities did not get any material in respect of the allegations contained in Memo dated 24.4.2007. It is alleged that the petitioner has acquired a Flat in Yousufguda, a flat in Jubilee Hills and Agricultural land in Nalgonda District all worth about Rs.50 lakhs and that the petitioner is in possession of Assets worth Rs.37,50,000/- disproportionate to his known source of income, whereas in remand report, it is alleged that assets of the petitioner (including his wife and son) would be of a value of Rs.67,45,000/- and his total income would be Rs.40 lakhs and his expenditure would be Rs.30 lakhs. In the report, it is alleged that the petitioner possessed disproportionate assets to a tune of Rs.54,47,000/-. The allegations in the FIR were totally given up when the remand report was filed.

(ii) Both the C.Cs arose out of one and the same crime and no separate crime was registered against the petitioner. Without there being any crime, the ACB authorities filed charge sheet before two Courts viz., the Special Court at Visakhapatnam and the Special Court at Hyderabad. The investigation was completed in the year 2009. But the ACB authorities filed charge sheets in the year 2012. The petitioner retired from service on 31.3.2012. The ACB authorities did not file the charge sheets while the petitioner was in service as the Government refused to accord sanction for prosecution vide Memos dated 18.5.2010 and 14.10.2010 . The ACB authorities waited till the retirement of the petitioner and filed the charge sheets in the above two special Courts.

(iii) The ACB authorities included the assets standing in the name of the wife and son of the petitioner and they did not give the full income particulars of wife and son of the petitioner. Further, they added the assets of the registered firm, in which the son of the petitioner is a partner, as the assets of the petitioner. The son of the petitioner took an unsecured loan of Rs.23 lakhs from T. Girija Reddy and T. Sekhar Reddy and he started a quarry business and suffered loss and the said loss was shown as expenditure of the petitioner. The son of the petitioner invested his share in a partnership business by raising loans. The son of the petitioner had shown the said amounts in the IT returns. The ACB authorities gave false and fictitious figures for charge sheeting the petitioner.

(iv) The above crime was registered against the petitioner on 26.4.2007 and charge sheet was filed after a lapse of 5 years. Basing on the charge sheet, the Special Judges for SPE & ACB Cases, Visakhapatnam and Hyderabad issued summons to the petitioner. Further, the charge sheets were filed without there being a sanction for prosecution of the petitioner. The authorities of ACB requested the Government to accord sanction. But the Government refused to accord sanction. While so, the Director General, ACB addressed a letter to the Government requesting the Government to issue speaking orders for not according sanction. The Government after considering the matter and after careful examination of the matter, issued Memo No.242/SC-D/A1/2007-19, dated 8.10.2013 declining the request of the ACB authorities for prosecuting the petitioner under Sections 13(2) r/w 13(1)(e) of P.C. Act. Further, the Government decided to entrust the matter to the Commissioner of Enquiries on all the allegations. The Government further directed the Director General, ACB to furnish the draft articles of charges for initiating departmental action against the petitioner. Meanwhile, the petitioner retired from service on 31.3.2012 on attaining the age of superannuation. In view of the memo dated 8.10.2013, the proceedings in the above CCs are liable to be quashed.

5. Learned Counsel for the petitioner submitted that no prima facie case is made out against the petitioner and that while the petitioner was in service, the Government declined to grant sanction for his prosecution and in spite of such refusal, the action of the respondent in filing the charge sheets after his retirement having waited for his retirement is deprecated. He further contended that the filing of the discharge application or dismissal thereof would not debar filing of a quash petition under Section 482 Cr.P.C. In support of his contentions, the learned Counsel for the petitioner relied upon the judgment of the Apex Court in Dilawar Singh Vs. Parvinder Singh @ Iqbal Singh & another[1]; Chittaranjan Das Vs. State of Orissa[2]; V. Suryanarayana Vs. State[3] and G. Sagar Suri Vs. State of U.P. and others[4].

6. In reply, it is the contention of the learned Standing Counsel for ACB that when once an employee ceased to be a public servant on attaining the age of superannuation by the date of taking cognizance of the alleged offence by the Court, sanction of the Government is not necessary under the provisions of the Prevention of Corruption Act.

7. On the basis of the above rival contentions, the following point arises for consideration:

(i) Whether the petitioner can be prosecuted after his retirement, when once the Government declined to grant sanction for prosecution of the petitioner while he was in service and Whether the continuation of the proceedings in C.C.6/2012

[1] AIR 2006 Supreme Court 389
[2] 2011 (7) SCC167
[3] 2014(2) ALD (Crl.) 617
[4] 2000 (1) ALD (Crl.)362 (SC)

on the file of the Principal Special Judge for SPE and ACB cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad, and C.C.No:4/2012 on the file of the Special Court, Visakhapatnam, can be sustained?

8. **POINT NO:1**: In order to adjudicate the issue as to whether previous sanction to take cognizance of the offence is warranted in this case, it is relevant to extract the provisions of Section 19 of the Prevention of Corruption Act, 1988 which reads thus:

> 19. Previous sanction necessary for prosecution.—
> (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—
> (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
>
> (c) in the case of any other person, of the authority competent to remove him from his office.
>
> (2)Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

9. It is the case of the petitioner that prior sanction is necessary as the petitioner is alleged to have committed the offence under the PC Act during the course of his employment, whereas it is the case of the learned Standing Counsel that as the petitioner retired from service by the time of filing of charge sheet, no such sanction is required.

10. In the instant case, the charge sheets were filed against the petitioner after his retirement. Since the petitioner ceased to be a public servant on the date when the Courts below took cognizance of the offence, sanction for prosecution is not necessary as rightly contended by the learned Standing Counsel. However, the situation on account of which the respondent filed the charge sheets after the retirement of the petitioner is deprecated. The Memos issued by the Government dated 18.5.2010 and 14.10.2010 coupled with the very object of "Prosecution Sanction", it can be said that the action of the respondent in filing the charge sheets against the petitioner after his retirement is not sustainable.

11. At this stage, it is relevant to extract the memos of the Government dated 18.5.2010 and 14.10.2010. Memo No.242/SC.D/A1/2007-17, dated 18.5.2010 reads as follows:

> "Sub:-Public Servants – All India Services –Allegations of disproportionate assets from the known sources of income against Sri J.G. Murali, IPS (SPS:95) formerly Superintendent of Police, Visakhapatnam (Rural)-Reg.
>
> Ref: 1. Govt. Memo.242/SC.D/A1/2007-2, dated 24.4.2007.
> 2. From the D.G., A.C.B, A.P., Hyderabad, letter No.65/RCA-CIU/2007, dated 20.5.2009.
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> * * * *
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> Government after careful examination of the report submitted in the reference 2nd cited have decided to initiate departmental action against Sri J.G. Murali, IPS, formerly Superintendent of Police, Visakhapatnam (Rural). The Director General, Anti-Corruption Bureau, A.P., Hyderabad is requested to furnish draft articles of charges, Statement of imputations of misconduct or misbehaviour, List of documents by which and list of witnesses by whom the articles of charges are proposed to be sustained along with original records for framing charges immediately.
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> 2. The Director General, Anti-Corruption Bureau, A.P., Hyderabad is further requested to release the seized documents/properties and hand over to the MoS and submit a compliance report to the Government."

On the letter addressed by the D.G., A.C.B, A.P., Hyderabad, dated 28.5.2010 requesting the Government to issue revised orders granting sanction for prosecution of the petitioner, the Government issued Memo

No.242/SC.D/A1/2007-18, dated 14.10.2010. The said memo reads as follows:

> "Sub:-Public Servants –All India Services –Allegations against Sri J.G. Murali, IPS (SPS:95) formerly Superintendent of Police, Visakhapatnam Rural –Reg.
>
> Ref:-1. Govt., Memo No.242/SC.D/A1/2007-2, dated 24.4.2007.
> 2. From the DG., A.C.B., A.P., Hyderabad, letter No.65/CA-CIU/2007, dated 20.5.2009.
> 3. Govt. Memo No.242/SC.D/A1/2007-17, dated 18.5.2010.
> 4. From the D.G., A.C.B., A.P., Hyderabad, letter No.65/RCA-CIU/2007, dated 28.5.2010.
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> The attention of the Director General, Anti-Corruption Bureau, Andhra Pradesh, Hyderabad is invited to the references cited. He is informed that Government after careful reconsideration of the proposal submitted in the reference 4th cited, have decided to reiterate the earlier orders issued in the reference 3rd cited. Accordingly, the Government hereby order for initiation of departmental action against Sri J.G. Murali, IPS, formerly Superintendent of Police, Visakhapatnam (Rural).
>
> 2. The Director General, Anti-Corruption Bureau, Andhra Pradesh, Hyderabad, shall take necessary action accordingly. He is also requested to furnish draft articles of charges etc., as requested vide reference 1st cited."

The above memos of the State Government go to show that while the petitioner was in service, the ACB authorities applied for prosecution sanction to proceed against the petitioner, and the Government in its Memo No:242/SC.D/A1/2007-17, dated 18.5.2010 directed the Director General of A.C.B. to release the seized documents/properties and hand over to the Member of Service-petitioner. Once again, on 28.5.2010, the ACB authorities sought sanction for prosecution, for which, the Government issued memo No:242/SC.D/A1/2007-18, dated 14.10.2010 directing the ACB authorities to follow the earlier order dated 18.5.2010. Again, the ACB authorities sought sanction of prosecution on two occasions, dated 12.11.2010 and 26.11.2011 requesting the Government to issue speaking order for sanction of prosecution, for which, the Government issued memo No:242/SC.D/A1/2007-19, dated 8.10.2013 declining to concede the request of the ACB authorities for sanction of prosecution of the petitioner. In the meantime, the ACB authorities filed the charge sheets against the petitioner on the ground that the petitioner retired from service and therefore, sanction is not necessary. The relevant portion in Memo dated 8.10.2013 reads as follows:

"Ref:- 1. Govt., Memo No.242/SC.D/A1/2007-2, General Administration, (SC.D) Department, dated 24.4.2007.
2. From the DG., A.C.B., A.P., Hyderabad, letter No.65/CA-CIU/2007, dated 20.5.2009.
3. Govt. Memo No.242/SC.D/A1/2007-17, General Administration (SC.D) Department, dated 18.5.2010.
4. From the D.G., A.C.B., A.P., Hyderabad, letter No.65/RCA-CIU/2007, dated 28.5.2010.
5. Govt. Memo No.242/SC-D/A1/2007-18, General Administration (SC.D) Department, dated 14.10.2010.
6. From the D.G., A.C.B., A.P. Hyderabad, letter No.65/RCA-CIU/2007, dated 12.11.2010.
7. From the D.G., A.C.B., A.P. Hyderabad, letter No.65/RCA-CIU/2007, dated 26.11.2011.

The attention of the Director General, Anti-Corruption Bureau, Andhra Pradesh, Hyderabad is invited to the references cited wherein he has conducted enquiry into 17 (seventeen) allegations and submitted a report to the Government. The Director General, Anti-Corruption Bureau, A.P., Hyderabad in his report has made the following recommendations:

1. In respect of 3 (three) allegations the Bureau has recommended to drop further action against the MoS.
2. In respect of 10 (ten) allegations, the Bureau has recommended to initiate departmental action against the MoS;
3. In respect of 3 (three) allegations, the Bureau has recommended to prosecute the MoS in a Court of law;
4. In respect of 1 (one) allegation, investigation is under process by the Central Investigation Department, Hyderabad.

As the matter is under examination, Sri J.G. Murali, IPS, submitted a representation to the Government to drop further action against him on the grounds stated therein.

Government after careful examination of the representation submitted by the MoS in the light of the recommendations of the Bureau has observed that since majority of the allegations are recommended to be enquired departmentally, sanction of prosecution in respect of one or two allegations may not be effecting to prove the guilty of the Member of Service.

In view of the above position, Government have decided to decline the request of the Director General, Anti-Corruption Bureau, A.P., Hyderabad to prosecute the Member of Service in a Court of law under Section 13(2) r/w 13(1)(e) of the P.C. Act, 1988 and decided to initiate departmental action against the Member of Service. Taking all the factors into consideration, Government have decided to entrust the matter to the Commissioner of Inquiries on all the allegations."

12. When once the ACB authorities sought for prosecution sanction, it could be understood that the investigation was completed prior to the retirement of the petitioner. While the petitioner was in service, the sanction sought for his prosecution was declined by the Government vide memos dated 18.5.2010 and 14.10.2010. The ACB authorities had not challenged the said action of the Government. No satisfactory explanation is forthcoming in this regard from the respondent-authorities.

13. Further, in response to the letters of the ACB authorities, dated 12.11.2010 and 26.11.2011, the Government issued memo No:242/SC.D/A1/2007-19, dated 8.10.2013 declining to concede the request of the ACB authorities for sanction of prosecution of the petitioner, while deciding to initiate a departmental enquiry. From the memo dated 8.10.2013, it is clear that as the ACB authorities themselves recommended to initiate departmental enquiry in respect of majority of the allegations, the Government having come to the conclusion that sanction of prosecution in respect of one or two allegations may not give any effect to prove the guilt of the petitioner, declined to grant sanction for prosecution. Without waiting for any orders on the letters, dated 12.11.2010, 26.11.2011 and on their own recommendations and without challenging the earlier memos of the Government, the ACB authorities having waited for the retirement of the petitioner, filed the charge sheets immediately after his retirement on the ground that no sanction is necessary. Even though no prosecution sanction is required after the retirement of the public servant, but, at the same time, it should not be lost sight of the fact that the very object of 'prosecution sanction' should not be defeated. In a case in which

sanction sought for is refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after his retirement despite the fact that no sanction is necessary under Prevention of Corruption Act. The judgment relied upon by the learned Counsel for the petitioner (2nd cited supra) is applicable to the present facts of the case.

14. In view of the foregoing discussion, this Court is of the view that the action of the respondent-authorities in filing the charge sheets against the petitioner in spite of refusal to grant of sanction by the Government is deprecated and therefore, the continuation of the proceedings in the above CCs would amount of abuse of process of law. The proceedings in the above CCs are liable to be quashed.

15. Accordingly, both the Criminal Petitions are allowed quashing the proceedings against the petitioner-A1 in C.C.No.4 of 2012 on the file of the Special Judge for SPE and ACB Cases, Visakhapatnam and in C.C.No.6 of 2012 on the file of the Principal Special Judge for SPE and ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated: 19th January, 2017
Nn.

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITIONS Nos.13171 and 13172 of 2013

19.01.2017

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