HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.3222 of 2016

ORDER:

The revision petitioner is the 2nd accused of S.C.No.108 of 2015 on the file of learned Metropolitan Sessions Judge, Hyderabad. It was for the offence under Section 3 of the Prevention of Money Laundering Act, 2002 (for short 'PML Act').

A perusal of the enactment shows it was passed in the year 2002 as Act No.15/2003 and came into force with effect from 01.07.2005 pursuant to the Central Government notification No.GSR/436(E) of that date as per Section 1(3) of the PML Act.

The only thing to be considered is whether the penal provisions of the Act are prospective or retrospective. There is nothing to indicate retrospective in operation specifically that too by virtue of Article 12 of the Constitution of India, it cannot be retrospective in operation. The alleged act of A.2 i.e., Mr. Ashok Kumar Jain with a fraudulent and dishonest intention negotiated with the officials of the Government of Andhra Pradesh insisted to invest in a Special Purpose Vehicle (SPV) to be incorporated by M/s. Volkswagon AG, Germany as equity participation and to release Euro 2 Millions into the account of Vasishta Vahan Private Limited, the proposed SPV and that he was instrumental in the account opening of Vasishta Vahan Private Limited in HSBC Bank. The alleged transfer of Rs.3,89,891/- by M/s. Vasishta Vahan Private Limited into the account of the revision petitioner A.2 was prior to the Act came into force with effect from 01.07.2005 as it was the so called amounts transferred to a tune of Rs.11,67,40,000/- that received by HSBC Bank account of M/s. Vasishta Vahan Private Limited was on or before 13.01.2005. On transfer from the account of M/s. APIIC, it is the allegation to attract the penal provision under Section 3 of the Act that the funds transferred individually or from companies including to A.2. Once the provisions of the Act not given effect as on the date of the alleged act and it is not specific mention of retrospective in operation, there is no penal consequence under Section 3 of the Act to sustain charge against the petitioner/A.2 thereunder.

Having regard to the above, the discharge application filed in Crl.M.P.No.2227 of 2015 of the petitioner/A.2 ought to have been allowed by the Court below rather than dismissal by impugned order dated 26.10.2016.

Accordingly and in the result, while setting aside the dismissal of the discharge application of the petitioner/A.2, the revision is allowed and A.2 is discharged for the offence under Section 3 of the Act and his bail bonds stands cancelled unless he is required for any other offence thereto.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.03.2017
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