

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.10423 OF 2017

ORDER:

When the learned II-Additional Special Judge for CBI Cases, Visakhapatnam, by his order dated 12.10.2017, in Criminal M.P.No.1624 of 2017 in C.C. No.14 of 2010, filed under Section 243 (2) of the Criminal Procedure Code, 1973 (for short, 'the Code') read with Section 22 of Prevention of Corruption Act, 1988, requesting to issue summons to the Sub-Registrar, Pithapuram, East Godavari District, to cause production of the documents described in a table shown in paragraph-11 of the order rejecting it by giving liberty to file certified true copies and directed to mark them as exhibits by examining himself as a defence witness subject to proof and relevancy, the petitioner got aggrieved and filed the present Criminal Petition.

2. Heard Sri G. Narender Raj, learned counsel for the petitioner/accused and Sri K. Surender, learned Special Public Prosecutor for CBI.

3. The learned counsel for the petitioner would submit that the accused cannot be compelled to stand as defence witness and that has been the basic theme of the fundamental right of liberty enshrined in the Constitution, besides there being a statutory bar under Section 21 of the Prevention of Corruption Act, 1988.

4. What has been stated by the learned counsel for the petitioner is correct as clause (a) of Section 21 of Prevention of

Corruption Act, 1988, provides prohibition that any person charged with an offence punishable under the Act, shall be a competent witness for defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial shall not be called as witness except at his own request. When such a bar is enacted, the learned Special Court is not justified in directing the petitioner/Accused No.2 to examine himself as a defence witness and mark certified copies or true copies of the documents sought to be produced by the Sub-Registrar as exhibits.

5. Therefore, to the extent of that observation compelling the petitioner to examine himself as a defence witness is hereby set aside as it is patently illegal to give such a direction.

6. Both the learned counsel for the petitioner and the learned Special Public Prosecutor for CBI Cases are in agreement that the petitioner can invoke the provisions of Section 294 of the Criminal Procedure Code by resorting to the procedure prescribed therein. Observing as such, giving liberty to the petitioner to invoke the provisions of Section 294 of the Code, the present Criminal Petition is allowed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 31.10.2017
gbs