HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.16963 of 2016

ORDER :

The petitioner/Accused – Mohd. Raheemuddin, a retired District Revenue Officer (RDO)-cum-Special Deputy Collector, impugning the cognizance by the Principal Special Judge for SPE & ACB Cases, Hyderabad, vide C.C.No.4 of 2014 for the offences punishable under Section 13(2) r/w. Section 13(1)(e) of Prevention of Corruption Act, 1988 (for brevity "the Act") against him, which is the outcome of Crime No.13/ACB-CR-1/2010, dated 30.07.2010, of Anti-Corruption Bureau, City Range-I, Hyderabad, for the alleged disproportionate assets possessed by him to a tune of Rs.73,07,460/-, has filed the present Criminal Petition under Section 482 of Cr.P.C. to quash the proceedings in the aforesaid C.C.No.4 of 2014.

2. The contentions in the quash petition are, that the petitioner joined the Government Service in the year 1978 as a Junior Assistant in the Revenue Department and retired from service on 31.08.2013 as a District Revenue Officer and he reached to such a stage because of his honesty, sincerity, hard work and efficiency with no complaints or adverse remarks whatsoever throughout, that while working as RDO, Nagarkurnool, he made a complaint to the Station House Officer, Nagarkurnool Police Station, against one Dr. Nagam Janardhan Reddy, MLA, and his associates for his high-handed obstruction of his official duties in the process of Elections to the Local Bodies in the year 2006, which resulted in issue of FIR.No.81 of 2006, dated 20.06.2006, for the offences punishable

under Sections 143, 147, 448, 146, 353, 504 and 290 of IPC r/w. Section 149 IPC and the police filed charge sheet against the said Dr. Nagam Janardhan Reddy and his associates, due to which, he bore grudge against the petitioner and made attempts to get him transferred invain, and later some anonymous petitions were organised against him and consequently the ACB officials conducted indiscriminate rides and implicated him by falsely foisting cases at the instance of Dr. Nagam Janardhan Reddy and the ACB officials took nearly 4 years to complete investigation and filed charge sheet, deliberately after his retirement from service, on 31.08.2013 by making him a scapegoat.

3. As per the charge sheet, the assets of the petitioner and his family members are valued at Rs.57,97,386/-, while their income at Rs.69,96,692/- and the expenditure of him and his family members is calculated at Rs.85,06,767/- in charging him for disproportionate assets to a tune of Rs.73,07,460/- supra, that his name was under consideration as a Special Grade Deputy Collector in the Panel of the year 2009-10 and the items and figures shown by the ACB officials are manipulated contra to actual facts and they deliberately suppressed several items of him and his family members by tagged the assets of others, that his wife purchased with her own source of income the assets in her name and in the name of their children and what all the gold, jewellery and silver articles found are her *Stridhana* property and the Investigating Officer boosted the value of the expenditure to a tune of Rs.18,77,146/- in the charge sheet when compared to the notice issued to him, that the entire material on record, either collected by the Investigating Officer or furnished by the petitioner along with

his explanation, if taken into consideration, no case is made out to attract the penal provisions and even un-controverted allegations made against him in the FIR and charge sheet no way disclose commission of any offences, even on the face value, for no *prima-facie* case made out to charge and it is unfair to compel him to undergo rigmarole of a criminal trial in the absence of making out any allegation to attract the penal provisions and the FIR and charge sheet are oppressive, vexatious and nothing to connect him with any crime and continuation of the proceedings thereby nothing but abuse of the process of law and are liable to be quashed, in seeking to quash the proceedings therefrom.

4. In the counter affidavit filed on behalf of the State of Telangana, through ACB, City Range-I, Hyderabad, by the Inspector of Police, ACB City Range-I, Hyderabad, as the successor to the Investigating Officer, from the material on record and in saying that, after ascertaining the facts from the authorities concerned, in nutshell are, that the quash petition averments are unsustainable and baseless and untrue and the quash petition is liable to be dismissed in *limini*, for no legal grounds to entertain. It is stated that it is on credible information that the petitioner acquired disproportionate assets to his known sources of income by adopting corrupt and dubious means while working as a Public Servant, a crime was registered with due permission and after investigation, including by searches pursuant to the warrants obtained from the Court, several incriminating material and documents pertaining to the assets, income and expenditure were recovered/seized and after a detailed investigation, including on the value of assets, income and expenditure and after completion of

investigation, after notice issued and called for his explanation in regard to his possession of disproportionate assets arrived at and on consideration of the same, to the extent possible where there are documents, from the investigation discloses that he acquired assets disproportionate to the known sources of income to a tune of Rs.73,07,460/-, which is 104.4% of his total income, a charge sheet was filed and cognizance of the same was taken by the learned Principal Special Judge on 18.03.2014 and when the case is pending, the petitioner filed the present quash petition.

5. It is stated that the check period for ascertaining the disproportionate assets of him was taken from 25.11.1978 to 31.07.2010, that the so-called giving of a complaint by him against Dr. Nagam Janardhan Reddy in the Election process covered of Crime No.86 of 2006 with investigation and filing of charge sheet against the said Dr. Nagam Janardhan Reddy is nothing to do with the present case on hand and the allegations contra to the same are at his instance are untrue, that during 2012-13 all the ACB officials were directed to cause investigation in all Liquor Syndicate cases pertaining to several Districts of the composite State pursuant to the Public Interest Litigation filed in High Court, which monitored the above cases and this case and many other cases pending were thereby kept aside, because of busy in investigation with Liquor Syndicate cases, apart from lot of material to be collected and several people are to be examined with regard to the assets, income and expenditure of the petitioner, it was taken time from the date of registration of the crime in July, 2010 to the time of filing of charge sheet in March, 2014 and, in the meantime, the petitioner retired from service on 31.08.2013 and the allegation

contra that the officials made to wait till his superannuation in making him a scapegoat without taking sanction is untrue. It is also contended in the counter affidavit that the petitioner violated the Conduct Rules and never submitted any value of the Property Returns during his service, except for the year 2008-09 and did not obtain any prior permission from the competent authorities for acquiring movable and immovable properties and not even intimated to the competent authorities after acquisition, that the proposals submitted to the Government to conduct Departmental enquiry against him as per the Conduct Rules is pending with the Government, that the allegations that the ACB officials manipulated the value of the properties or expenditure etc., are untrue, as it is the outcome of sincere and full-fledged investigation for ascertaining the value of assets, income and expenditure, the figures are arrived in showing disproportionate assets to known sources and of contrary allegations are untrue, that even to claim that his wife got *Stridhana* in purchasing the properties in her name and children, his marriage with Smt. Syeda Aliya Siddiqua, D/o. Syed Haleemuddin, was performed on 20.06.1982 and she is only a housewife and she is dependent on him and never had any income of her own, that there is no evidence produced even to claim that she got any known sources of income or any *Stridhana* and he has not informed any sources of income of his wife in his entire service to the competent authorities, besides not submitted the actual Property Returns reflecting the same and did not even file I.T. Returns of his income during the check period and the contra contentions are thereby baseless. It is also contended in opposing the petition that from the crime registered, investigation done and the material collected in filing the final report, which establishes the case made out against the petitioner for the offences punishable mentioned supra and the contra allegations are vexatious and malafide, being incorrect.

6. It is contended that even in the quash petition, though the burden is on him in disproportionate assets case, he could not produce any material to substantiate any of his contentions of no any disproportionate assets, in the absence of which, his contentions cannot be given credence, that G.O.Rt.No.73, Irrigation & CAD (Vig.I) Department, dated 11.08.2014, issued in favour of one Sri G.S.N.V. Anjaneya Babu, formerly Section Officer, General-III Section, Irrigation & CAD (Projects Wing) Department, A.P. Secretariat, Hyderabad, is no way relevant, as the facts of that case and the facts of the present case are different each other, that the petitioner herein filed a writ petition being W.P.No.45305 of 2016 in the High Court, which is pending, seeking to issue a Writ of Mandamus to declare inaction of respondent – ACB City Range in dropping further action against him with regard to disproportionate assets in terms of Rule 9(2)(b)(ii) of A.P. Revised Pension Rules, 1980, inspite of written representations dated 19.01.2015 and 22.04.2015, as illegal, arbitrary and unjust and consequently, sought a direction to the respondents to drop further action against him, that the petitioner also filed a discharge petition in Crl.M.P.No.669 of 2014 before the trial Court under Section 239 Cr.P.C., which is adjourned from time to time and pending by posted to 02.03.2017, that all the facts are not mentioned by him, that even there is no bar or prohibition imposed on the State Government in the A.P. Revised Pension Rules for initiating or

continuing criminal action against a Public Servant under Prevention of Corruption Act, thereby the present quash petition is liable to be dismissed.

7. Heard both sides pursuant to the above pleadings, at length, and perused the material available on record.

8. In the aforementioned writ petition, there is a petition being WPMP.No.55851 of 2016 filed by the petitioner, wherein an exparte interim order dated 26.12.2016 granted by this Court, pending notice to the Principal Secretary, Revenue Department; and Director General, Anti-Corruption Bureau, Hyderabad, as respondents, which is to the effect that, pending further orders, the first respondent was directed to consider the petitioner's representations dated 19.01.2015 and 22.04.2014, within six weeks from the date of receipt of a copy of the said order and communicate his decision to the petitioner. The direction given was to consider and pass appropriate orders on his representations. This no way connected to the case on hand muchless helpful to the petitioner in seeking for discharge of him.

9. Coming to the reliance placed on Rule 9 of the A.P. Revised Pension Rules, 1980 (for brevity "the Rules"), which speaks about the right of the Government to withhold or withdraw pension, what Rule 9(2)(b) of the aforesaid Rules speaks is, the Departmental proceedings, if not instituted while the Government Servant was in service, whether before his retirement or during his re-employment, shall not be instituted, save with the sanction of the Government and shall not be in respect of any events, which took place more than 4 years before such institution and shall be conducted by

such an authority and in such a place, as the State Government may direct, and in accordance with the procedure applicable to the Departmental proceedings in which an order of dismissal from service could be made in relation to the Government Servant during his service.

10. There is no doubt, an Executive instruction regarding the procedure to be followed to withhold or withdraw pension vide Government Memo No.17757-A/216/A2/Pen-I/94, Fin. & Plg. Department, dated 24.05.1994, referring to the said Rule 9 of the Rules in saying, if the Departmental proceedings had not been instituted while a Government Servant was in service, including the period of his re-employment, if any, proceedings can be instituted under Rule 9(b) of the Rules, subject to the following:

(a) shall be with the sanction of Government;

(b) for a misconduct or misbehaviour in respect of any event which took place not earlier than four years before the institution of such proceedings; and

(c) ....

11. Even a reading of the said Executive Instruction or the said Rule 9(2)(b) of the Rules reproduced above, no way helpful to the petitioner, as it is confined to the Departmental proceedings and not for the offences punishable under the Prevention of Corruption Act. The petitioner could not make out anything *prima-facie* in relation to the charged allegations showing disproportionate assets, by producing any material, particularly of any recorded evidence, in seeking to discharge by exhibiting the charges groundless. The so-called allegation that it is that accusation at the instance of Dr. Nagam Janardhan Reddy, out of his animosity towards him, is no

basis, from the same is even denied by the quash petition respondent – ACB officials.

12. Coming to the decision placed reliance of Jammu & Kashmir High Court in CHUNI LAL RAINA v. STATE OF JAMMU AND KASHMIR[1] in a quash petition of the proceedings under Section 5(1)(d) and 5(2) of the Jammu and Kashmir Prevention of Corruption Act, 2006, with which the quash petitioner was charged as a Headmaster of the Government High School about his drawing of amount from his General Provident Fund Account and the investigation set afoot and the Vigilance Commissioner in the year 1985 wrote to the Government of investigation is closed 'as not proved' and even re-investigation conducted in August, 1994, final report filed, by observing that previous sanction for prosecution of an offence in respect of a retired Public Servant for alleged acts, while in service, falls within Section 6 of Prevention of Corruption Act and Section 197 of Cr.P.C., and the prosecution against him shown pending for more than 13 years.

13. In RAMANAND CHOUDHARY v. STATE OF BIHAR[2], the Apex Court thought it fit to quash the prosecution, thereby accepting the proposition, the proceedings in FIR.No.24/1982 were quashed. In fact, the Constitution Bench expression of the Apex Court in RAMACHANDER RAO v. STATE OF KARNATAKA is very clear of the delay in proceedings is not a ground to quash, more particularly in the severe offences, like under Prevention of Corruption Act. Thereby that decision has no application, at all, to invoke by the petitioner much less as a ground therefrom to seek for quashing.

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[1] 1997 LawSuit (J&K) 41
[2] AIR 1994 SC 948 : 1994 Cri LJ 1221

14. Coming to the other expression of the Apex Court in CHITTARANJAN DAS v. STATE OF ORISSA[3], wherein sanction for prosecution was sought twice and that was denied and notwithstanding the aforesaid refusal of sanction, the charge sheet filed by the ACB officials under Prevention of Corruption Act, 1947 Section 5(2) r/w. Section 5(e) of the said Act, alleging acquisition of disproportionate assets to known source and cognizance taken after the said Public Servant retired from service, when he challenged the same as bad in law, it was observed that sanction is not required for a retired Public Servant, however, when State Government refused to grant sanction for his prosecution and thereafter declined to reconsider its decision, even further having declined to grant sanction for prosecution, his prosecution is itself illegal in quashing the proceedings.

15. Here, it is not even the case of the petitioner that there is any refusal of sanction to prosecute him when applied, much less while he was in service, in the absence of which, once even from this decision for a retired Public Servant, sanction is not required, that decision has no help to him.

16. Having regard to the above, the present quash petition has no grounds to consider much less to quash the proceedings in C.C.No.4 of 2014 on the file of the Principal Special Judge for SPE & ACB Cases, Hyderabad.

17. Accordingly and in the result, this Criminal Petition is dismissed. However, it is made clear that any defence, including as

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[3] 2011 LawSuit (SC) 793

to the requirement of sanction, is left open to be raised by the petitioner/Accused during trial for its consideration by the trial Court in the course of trial and in its giving a final decision on merits.

18. As a sequel, miscellaneous petitions pending, if any, in this revision shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

.02.2017
Msr

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