

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition Nos.15773 and 16282 of 2016

COMMON ORDER:

These two applications are maintained u/sec. 482 CrPC, one (CrI.P.No.15773 of 2016) by the so called third party to the case in Cr.No.10/ ACB-CR-I/ 2013 against one J.Venkateshwarlu-Sub Registrar under suspension, for the offence punishable under Section 13(1)(e) r/w 13(2) of the Prevention of Corruption Act, 1988, and the other (CrI.P.No.16282 of 2016) by the State represented by the Inspector of Police ACB, City Range, Hyderabad, impugning the order of the learned Principal Special Judge for SPE and ACB case-cum- IV Additional District Judge, CCC, Hyderabad dated 27.08.2016 in CrI.M.P.No.298/ 2016 in the crime supra where said Haribabu claimed for return of the property claiming that it is his own. The learned Special Judge by the impugned order allowed the application in answering the point No.1 para-10 which reads as follows:-

“This petition is allowed. Return the original papers of Swift Car bearing No.AP 10 AW 2899 and original sale deed bearing document No.8603/2012 of SRO, Rajendranagar and original sale deed bearing document No.8602 of 2012 of SRO, Rajendranagar to the petitioner on his executing a bond for Rs.3,00,000/- with one third party surety i.e. FDR worth Rs.13,50,000/- for a likesum to the satisfaction of the Court by raising the attachment order passed in CrI.M.P.No.312 of 2014 to the extent of Annexure III only appended to the attachment petition on compliance of the above condition. Issue necessary directions to the Investigating officer for the return of the above said three original documents to the petitioner on payment of requisite fee”.

In fact, on perusal of Section 5 of the Ordinance, in particular which is the heart and soul of the Ordinance 1944, once there are petitions filed for the

claim, an enquiry elaborately is contemplated to proceed as if it is a suit by recording evidence. In this case the same was not done.

Having regard to the above, the impugned order goes without further discussion on merits with a direction to re-determine though appeal is the proper remedy and in the quash proceedings, once the inherent power which inheres on the Court despite alternative remedy available, one shows the order is per se not sustainable under law, this Court in exercise of the power can set aside the same.

Accordingly, with the power supra, both the revisions are allowed to the extent of setting aside the impugned order of the learned Special Judge, with a direction to follow the procedure contemplated by the Section 5 of the Ordinance and if at all any person aggrieved by any such order and the remedy, appeal is provided under Section 482 of CrPC, and the same is also answered by this Court in CrI P No.15192 of 2016 dated 05.01.2017 in A.Sambaiahnaik Vs. State of Telangana rep. by the learned Public Prosecutor for SPA/ACB cases.

Consequently, miscellaneous petitions, if any, pending in these two revisions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:09.02.2017
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