THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE No.1859 OF 2008

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of Code of Criminal Procedure, 1973, is filed by the petitioner-accused, challenging the order, dated 30.09.2008, passed in Crl.M.P.No.180 of 2008 in C.C.No.11 of 2007, by the Special Judge for CBI Cases, Visakhapatnam, whereby, the discharge petition filed by the petitioner was dismissed.

2. Heard the learned counsel for petitioner-accused, the learned Special Public Prosecutor for CBI cases and perused the record.

3. Learned counsel for the petitioner-accused would submit that the finding of the learned Special Judge is not based on facts of the case. The prosecuting agency had not placed the entire material before the sanctioning authority. The prosecuting agency did not file the statements recorded under Section 164 Cr.P.C. If the statements recorded under Section 164 Cr.P.C. are placed before the sanctioning authority, the said authority ought not to have accorded sanction against the petitioner. It is also contended that the sanction was obtained before filing of the charge sheet. Further, it is contended that a few members of the association have deposited an amount of Rs.4,000/- each in Savings Bank Account No.39 of INTUC Unit in Hindustan Shipyard Staff Co-operative Bank Limited, Visakhapatnam. Further, the petitioner-accused is not a Government servant. Therefore, the CBI cannot proceed against

him for any of the offences punishable under Sections 8 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short ‘the Act’). The sanction order dated 28.12.2006 under Section 19(1)(c) of the Act is bad in law and ultimately prayed to allow the revision as prayed for.

4. On the other hand, learned Special Public Prosecutor would contend that the statements of the witnesses recorded under Section 164 Cr.P.C. were not available by the date of sanction. The statements of the witnesses under Section 161 Cr.P.C. as well as other material papers were placed before the sanctioning authority and the sanction was rightly obtained against the petitioner-accused. There is no distinction between the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. While dealing with the matter on that contention, the Special Court had elaborately dealt with the same and rightly rejected the contentions vide impugned order dated 30.09.2008 and ultimately prayed to dismiss the revision.

5. In view of the submissions made by both sides, the point for determination is, whether the order dated 30.09.2008 in Crl.M.P.No.180 of 2008 in C.C.No.11 of 2007 on the file of the Special Judge for CBI Cases, Visakhapatnam is liable to be set aside and the petitioner be discharged.

6. As per the material placed before this Court, the petitioner-accused, without any public interest by abusing his official position, conveyed a meeting with the workmen on 10.07.2006 at his party office and demanded illegal gratification of Rs.4,000/- each from all the eleven workmen for influencing

the higher authorities of Hindustan Shipyard Limited, Visakhapatnam to give promotion to the said eleven workmen and directed them to deposit the illegal gratification in Savings Bank Account No.39 of INTUC Unit in Hindustan Shipyard Staff Cooperative Bank Limited, Gandhigram, Visakhapatnam.

7. In pursuance of the said demand made by the petitioner-accused, seven workmen namely S.Ramana, N.S.Prasada Rao, S.Ramarao, M.Jagannadha Raju, M.H.Sarkar, U.Appala Ramu, Y.Nageswar Rao deposited Rs.4,000/- per head on 13.07.2006 and Ch.Appala Naidu deposited Rs.4,000/- on 14.07.2006 in State Bank Account No.39 of INTUC Unit in HSL Staff Cooperative Bank Limited, Visakhapatnam. The accused acknowledged the said deposits by accepting the counterfoils of the pay-in-slip from the said eight workmen.

8. As per the record, the statements of the witnesses under Section 161 Cr.P.C. along with other material were placed before the Hindustan Shipyard Limited, Visakhapatnam, and sanction was obtained to prosecute the petitioner-accused *vide* order dated 28.12.2006. There is a procedure to promote the candidates for the post of Assistant Supervisor i.e., written examination followed by an interview. When the promotion files were pending for approval in C&MD, the petitioner-accused received the aforementioned amounts from eight members.

9. Receiving gratification, in order, by corrupt or illegal means, to influence public servant is an offence punishable under Section 8 of the Act, which reads thus:

> "Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any

> other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether names or otherwise, to do or to forebear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State or with any local authority, corporation or Government Company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine."

10. As per the allegations, it goes to show that the petitioner-accused demanded illegal gratification of Rs.4,000/- each from all the eleven workmen for influencing the higher authorities of Hindustan Shipyard Limited, Visakhapatnam, to get promotions to them and they deposited the said amount in the Savings Bank Account No.39 of INTUC Unit in Hindustan Shipyard Staff Co-operative Bank Limited, Visakhapatnam. So, the petitioner-accused is liable for the offences punishable under Sections 8 and 13(2) read with Section 13(1)(d) of the Act.

11. There cannot be much distinction between the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. As per the record, sanction was accorded on 28.12.2006. By that time, the statements of the witnesses under Section 164 Cr.P.C. were not recorded. Further, there is record to show that the statements under Section 164 Cr.P.C. were recorded on 24.02.2007, i.e., after according the sanction to prosecute the petitioner-accused. The criminal proceedings are initiated against the petitioner-accused for the offences punishable under Sections 8 and 13(2) read with Section 13(1)(d) of the Act.

When there are specific and grave allegations against the petitioner-accused with regard to collection of amount from the members of association to get a favour as contemplated under Section 8 of the Act by paying gratification and reward for promotion, it cannot be held that there is no *prima facie* case and sanction is bad in law. There is no infirmity in the impugned order. Learned Special Judge has elaborately dealt with all the contentions and passed a reasoned order. The revision is devoid of merit and is liable to be dismissed.

12. In the result, the Criminal Revision Case is dismissed.

Miscellaneous Petitions, if any, pending shall stand closed.

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Dr. SHAMEEM AKTHER, J

Date: 03.08.2018
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