

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE No.1711 OF 2013

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 challenging the order, dated 29.05.2013, passed in CrI.M.P.No.23 of 2012 in C.C.No.25 of 2010 on the file of the learned I Additional Special Judge for C.B.I. Cases, Visakhapatnam, wherein the petition filed by the petitioner, under Section 239 read with Section 227 Cr.P.C. to discharge her for the offences punishable under Section 13(2) read with Sections 13(1)(c) & (d) of the Prevention of Corruption Act, 1988 (for short, "the P.C. Act") and Sections 471 and 477-A I.P.C., was dismissed.

2. Heard both sides and perused the record.

3. Learned counsel for the petitioner/accused would contend that there is no sanction to prosecute the petitioner for the offences under Section 13(2) read with Sections 13(1)(c) & (d) of the Prevention of Corruption Act, 1988 and Sections 471 and 477-A I.P.C.; that aggrieved by the order of dismissal of the petition, she filed an appeal before the authority concerned and the same is pending and in view of that, sanction is necessary as required under Section 19 of the P.C. Act; that even if the petitioner is charge sheeted without following the procedure contemplated under Section 19 of the P.C. Act, the prosecution suffers from mis-joinder of parties, who prepared vouchers, cheques etc., and for these reasons, the Court below ought to have

discharged the petitioner under Section 239 Cr.P.C., and ultimately, prayed to allow the revision.

4. On the other hand, the learned Special Public Prosecutor for C.B.I. Cases appearing for the respondent would contend that since the petitioner/accused was dismissed from service before taking cognizance and filing of charge sheet and she ceased to be a public servant as on the date of taking cognizance, no sanction is required under Section 19 of the P.C. Act; that there is ample record to substantiate the accusation against the petitioner and due procedure was followed; that the Court below rightly dismissed the application filed by the petitioner for discharge, and ultimately, prayed to dismiss the same.

5. Upon hearing the submissions of the learned counsel on both sides, the point that arises for determination is:

“Whether the order, dated 29.05.2013, passed in Crl.M.P.No.23 of 2012 in C.C.No.25 of 2010 on the file of the learned I Additional Special Judge for C.B.I. Cases, Visakhapatnam is liable to be set aside and the petitioner is liable to be discharged as contended?”

6. **POINT:-** As per the material placed on record, the petitioner/accused is being prosecuted for the offences punishable under Section 13(2) read with Sections 13(1)(c) & (d) of the P.C. Act and Sections 471 and 477-A I.P.C. It is appropriate to refer to the provision of Section 19 of the P.C. Act, which reads as under:

“19. Previous sanction necessary for prosecution.—

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.”

7. In the light of the above provision, the prosecuting authority has to obtain sanction from the competent authority to prosecute a public servant. Admittedly, there is no sanction to prosecute the petitioner/accused. As per the records placed before the Court, the petitioner was dismissed from service on 03.06.2008. The charge sheet was filed against her for the aforesaid offences on 03.10.2008 and the Court below had taken cognizance of the offences against the petitioner under Section 13(2) read with Sections 13(1)(c) & (d) of the Prevention of Corruption Act, 1988 and Sections 471 and 477-A I.P.C. on 11.08.2010. The filing of charge sheet and taking of cognizance are much after the dismissal of the petitioner from service. By the date of filing of the charge sheet and taking cognizance, the petitioner ceases to be a public servant. While analysing the entire evidence on record, the learned Special Judge had taken a view that no sanction is required under Section 19 of the P.C. Act to prosecute the petitioner. In view of the mandate given under Section 19 of the P.C. Act, no sanction is required to prosecute the petitioner when she was dismissed from service much before filing of the charge sheet as well as taking cognizance by the Special Court. Therefore, the contention of the learned counsel for the petitioner that the petitioner was charge sheeted without following the due process of law is unsustainable.

8. Secondly, as per the material placed on record, there are allegations against the petitioner that she abused her position as a public servant; wilfully and dishonestly entered into a criminal conspiracy with unknown persons; and fraudulently withdrew an amount of Rs.3,98,509/- from LIC A/c by debiting SSS collection,

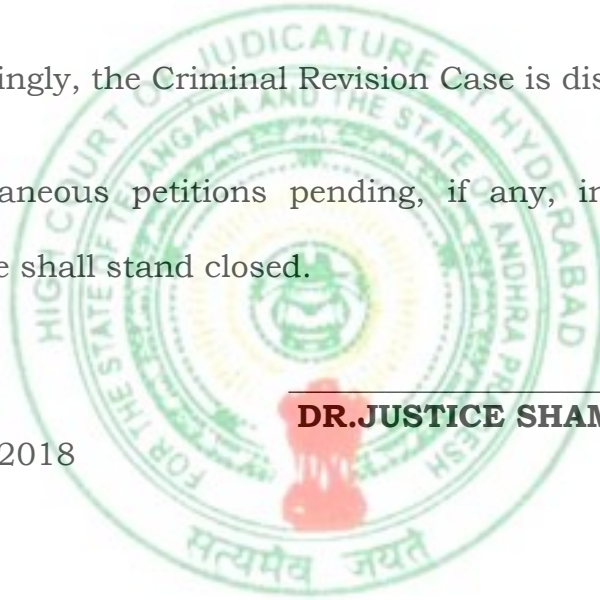
deposit and premium account's amount by preparing false vouchers and used the said vouchers as genuine and falsified the accounts with an intention to cheat the LIC, Port Branch, Visakhapatnam during the period 2001 to 2003. In view of that, the Special Court cannot be faulted for taking cognizance for the offences punishable under Section 13(2) read with Sections 13(1)(c) & (d) of the Prevention of Corruption Act, 1988 and Sections 471 and 477-A I.P.C. on 11.08.2010. The Special Court had dealt with all the contentions and assigned reasons. For the aforesaid reasons, there are no merits to allow this revision.

9. Accordingly, the Criminal Revision Case is dismissed.

10. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

Date : 09.08.2018
AMD

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