

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL REVISION CASE No.1906 of 2017

ORDER:

The challenge in this revision, at the instance of petitioner/accused, is order dated 20-6-2017 in CrI.M.P.No.284 of 2016 in C.C.No.41 of 2015 passed by the learned Special Judge for SPE & ACB Cases-cum-II Additional Sessions Judge, Nellore whereunder learned Judge allowed the petition filed by the prosecution under Section 216 Cr.P.C. and framed additional charge under Section 13 (2) read with 13 (1) (d) of P.C. Act against the petitioner/accused in addition to the charge framed under Section 7 of the P.C. Act.

Petitioner is facing the trial for the offence under Section 7 of the P.C.Act on the allegation that the petitioner being M.A.O. in Giddalur demanded an illegal gratification other than the legal remuneration for issuing a duplicate pattadar pass book and title deed to the defacto complainant and in that context, he was allegedly trapped and got red handed. Initially, trial court took cognizance against the accused for the offence under Section 7 of the P.C Act.

It appears even before commencement of trial, prosecution filed CrI.M.P.No.284 of 2016 requesting the court to frame additional charge against the petitioner/accused under Section 13 (2) read with Section 13 (1) (d) of the P.C. Act. The petitioner/accused

opposed the petition on the main contention that earlier he filed a petition in Crl.M.P.No.61 of 2016 under Section 239 of Cr.P.C. seeking to discharge him and after enquiry, the court found that there was ample material against him to frame charge under Section 7 of the P.C. Act alone and the court did not contemplate at that time to frame charge under Section 13 (2) read with 13(1) of the Act and in that view of the matter, without there being any additional material either documentary or oral, the court can not frame additional charge as requested by prosecution. The trial court, as can be seen from paras 13 and 14 of the impugned order, having perused the various decisions of the different High Courts and Supreme Court, has come to a conclusion that a court, on a consideration of broad probabilities of the case based upon the total effect of the evidence and documents produced, if satisfied that any addition or alteration of charges necessary, can appropriately act as the exigency of the case warrants or necessitates.

The trial court found that so far as the distinction between Sections 7 and 13 of the P.C. Act is that whereas Section 7 of the P.C. Act bars the demand and Section 13 prohibits obtaining of pecuniary advantage and both are distinct offences in which case though same set of facts constitute the distinct offences, there cannot be a bar to try the offender for both the offences. The trial court thus ultimately came to a conclusion that it was empowered under Section 216 Cr.P.C. to frame additional charge under Section 13 (2) read with

Section 13 (1) (d) of the PC Act and thereby, allowed the petition and framed additional charge under Section 13 (2) read with Section 13 (1) (d) of the P.C.Act in addition to already framed charge under Section 7 of the PC Act. Hence, the Criminal Revision Case.

Heard.

Vehement contention of the learned counsel for the petitioner is that at the time of enquiry in Crl.M.P.No.61 of 2015 which was filed under Section 239 Cr.P.C. at the instance of the petitioner/accused to discharge him, the trial court having regard to the material on record contemplated to frame a charge under Section 7 of the PC Act alone and it did never occur to the trial court to frame a charge under Section 13 (2) read with 13 (1) (d) of the Act and in that view of the case, without there being any additional material on record, the trial court cannot frame additional charge under Section 13 (2) of the P.C. Act. This argument though apparently looks sound but it holds no substance as the trial court has already answered this aspect.

Whereas Section 7 speaks of offence of taking or accepting the gratification other than the legal remuneration for doing an official act by way of demand, Section 13 speaks of the same offence in different form. Section 13 deals with the offence of criminal misconduct by a public servant. Section 13 (1) (a) (b) (c) (d) (e) of the Act deal with different types of misconduct. Section 13 (1) (i) deals

with the offence of a public servant obtaining by corrupt or illegal means for himself or any other person any valuable thing or pecuniary advantage; Section 13 (1) (d) (ii) deals with offence of abusing the position as a public servant and obtaining for himself or for any other person any valuable thing or pecuniary advantage; Section 13 (1) (d) (iii) deals with offence, while holding office as public servant obtains for any person any valuable thing or any pecuniary advantage without any public interest.

A conjunctive study of Section 7 and Section 13 (1) (d) would show that section 7 is contained in Section 13 (1) (d) itself. Therefore, when a public servant is charged under Section 7 of the offence on the material available on record, the court has power to frame a charge against him for the offence under Section 13 (1) (d) of the Act also. However, it appears inadvertently, the trial court at the time of framing charges, framed only one charge under Section 7 of the P.C. Act. On being reminded by the prosecution by way of separate application, it appears the trial court embarked upon framing additional charge under Section 13 (2) read with Section 13 (1) (d) of the P.C. Act also. Lack of additional material will not preclude the court from framing additional charge. As already stated supra, the charge under Section 13 (2) read with 13 (1) (d) is included in charge under Section 7 of the Act.

I find no illegality or irregularity in the order impugned.

Accordingly, this Criminal Revision Cases is dismissed.

As a sequel, miscellaneous applications pending if any, shall stand closed.

JUSTICE U.DURGA PRASAD RAO

Dated 22nd January, 2018

Dvs



HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO



CRIMINAL REVISION CASE No.1906 of 2017

Dated 22nd January, 2018