

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Revision Case No.1941 of 2014

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of Cr.P.C., is filed by the petitioner/A.1, challenging the order, dated 31.07.2014, passed in CrI.M.P.No.700 of 2013 in C.C.No.13 of 2011 on the file of the Principal Special Judge for CBI Cases, Visakhapatnam, whereby, the application filed by the petitioner/A.1 under Section 239 Cr.P.C. seeking his discharge, was dismissed.

2. Heard the learned counsel for the petitioner/A.1, the learned Special Public Prosecutor for CBI Cases representing the respondent-State and perused the record.

3. The learned counsel for the petitioner/A.1 vehemently contended that Section 8 of the Prevention of Corruption Act, 1988 (for short, 'P.C.Act') has no application against the petitioner/A.1 in the instant case. There is no official by name L.K.Mishra in CBI at the relevant point of time. No ingredients of Section 8 of the P.C.Act are made out against the petitioner/A.1. The de-facto complainant himself had approached the A.2 in this case. The entire prosecution case is false and ultimately prayed to set aside the order under challenge and discharge the petitioner/A.1 from the subject Calendar Case.

4. On the other hand, the learned Special Public Prosecutor for CBI representing the respondent-State would contend that there are specific and grave allegations against the petitioner/A.1 with regard to taking gratification of Rs.3,00,000/- to influence a public

servant. The petitioner/A.1 was caught red-handed. There are SMS messages etc., to make out a *prima facie* case against the petitioner/A.1 under Section 8 of the P.C.Act and Sections 120B read with 419 of I.P.C. The said gratification was collected by the petitioner/A.1 to influence the CBI officials and hence, the ingredients of Section 8 of the P.C.Act would apply. There are no merits in this Criminal Revision Case and ultimately prayed to dismiss the same by confirming the order under challenge.

5. In view of the above rival contentions, the points that arise for determination in this Criminal Revision Case is whether the impugned order passed by the Court below is sustainable (or) whether the petitioner/A.1 is liable to be discharged as contended?

6. There is no much contest with regard to the application of Sections 120B read with 419 of I.P.C. against the petitioner/A.1. The contest is only with regard to application of Section 8 of the P.C.Act against the petitioner/A.1. As per the material placed on record, an amount of Rs.3.75 lakhs was received by the petitioner/A.1 from the de-facto complainant to influence the CBI officials in order to remove the name of the de-facto complainant from the watch-list of the CBI and the said amount was deposited in HDFC Bank by way of F.D.R. The said amount was recovered by the CBI officials and the petitioner/A.1 was caught red-handed for receiving another sum of Rs.3,00,000/- from the de-facto complainant. The CBI officials collected the SMS messages alleged to have sent through the mobile phone of petitioner/A.1 to prove the alleged offences against the petitioner/A.1. The specific case of the prosecution is the petitioner/A.1 induced the de-facto

complainant-Venkateswara Rao to pay Rs.6.75 lakhs as gratification for paying the same to one L.K.Mishra, a public servant, in order to remove the name of the de-facto complainant from the watch-list of the CBI.

7. The very title of Section 8 of the Prevention of Corruption Act, 1988, reads as "Taking gratification, in order, by corrupt or illegal means, to influence public servant". It is not appropriate to record a finding with regard to the application of Section 8 of the P.C.Act against the petitioner/A.1, as the same is required to be determined after due trial. But since the specific case of the prosecution is that the petitioner/A.1 had collected some amount from the de-facto complainant to influence the CBI officials in order to remove the name of the de-facto complainant from the watch-list of the CBI, it is not a fit case to delete Section 8 of P.C.Act or any other offences under which the petitioner/A.1 is being proceeded with. While dealing with the subject matter, the learned Special Judge for CBI Cases, Visakhapatnam, refrained from recording any finding with regard to the application of Section 8 of the P.C.Act against the petitioner/A.1 holding that it is a matter of trial. The learned Special Judge for CBI Cases, Visakhapatnam, cannot be faulted for recording such a finding. There is no error manifest to interfere with the impugned order passed by the Court below in exercise of power conferred under Sections 397 & 401 of Cr.P.C. The Criminal Revision Case is devoid of merit and is liable to be dismissed.

8. In the result, the Criminal Revision Case is dismissed, confirming the order, dated 31.07.2014, passed in CrI.M.P.No.700

of 2013 in C.C.No.13 of 2011 on the file of the Special Judge for CBI Cases, Visakhapatnam.

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

Dr. SHAMEEM AKTHER, J

23rd October, 2018
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