

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C.No.404 of 2014

ORDER

This revision under Sections 397 and 401 of Cr.P.C., is filed challenging the order dated 11.02.2014 passed in Crl.M.P.No.491 of 2013 in C.C.No.15 of 2009 by the I Additional Special Judge for C.B.I. Cases, Hyderabad, dismissing the petition filed under Section 239 of Cr.P.C.

2. The petitioner is arrayed as A2 in the aforesaid C.C., and he was engaged by A1 on private employment for collection. The main allegation against the petitioner is that he acted as broker between A1 and the public and therefore, he is implicated as accused in the said case based on the material collected during investigation by the investigating agency. The offences allegedly committed by the accused are punishable under Section 120-B IPC and under Sections 7 and 13(1)(d) of Prevention of Corruption Act, 1988 (for short 'the Act').

3. The material on record shows that A1 was discharged for the aforesaid offences by order dated 09.04.2013 in Crl.R.C.No.1307 of 2011, wherein this Court held that A1 was not a public servant as defined under Section 2(c) of the Act or under Section 21 IPC and he was also exonerated in the departmental enquiry on the same allegations. The main contention before the trial Court was that A1 was discharged for the same offences and the petitioner, who is not a public servant, cannot be proceeded for the alleged offences. But the trial Court dismissed the petition assigning its own reasons.

4. Aggrieved by the order, the present revision is filed mainly on the ground that when A1 was discharged for various offences referred supra, the petitioner being A2, who was assisting allegedly to A1, is also liable to be discharged as he is not a public servant as defined under the provisions referred supra and the trial Court has committed error in dismissing the petition.

5. During hearing, learned counsel for petitioner Sri K. Suresh Reddy, contended that the petitioner is not a public servant and he was only engaged by A1 for different purpose and that when A1, who is the prime accused in the crime, was discharged for the alleged offences, the petitioner is also entitled to be discharged for the said offences by exercising power under Section 239 of Cr.P.C., but the trial Court has committed error in dismissing the petition.

6. Whereas the Public Prosecutor for C.B.I., contended that SLP was filed against the order dated 09.04.2013 in Cr.R.C.No.1307 of 2011 before the Apex Court and the same is pending and therefore, the said order has not attained finality and therefore, the petitioner cannot be discharged for the said offences at this stage and requested to dismiss the petition.

7. The specific allegation made in the charge sheet is that the petitioner was engaged by A1 allegedly for various purposes and he was discharging his duties as Regional Manager in Kendriya Bandar and thereby, he is admittedly not a public servant. But, because of Section 7 of the Act, the petitioner is also arrayed as A2 along with A1. But A1 was discharged for the offences under Section 120-B

IPC and under Sections 7 and 13(1)(d) of the Act and thereby the petitioner cannot be proceeded for the said offences, more particularly, the offence under Section 13(1)(d) of the Act is triable by the Special Judge for CBI Cases.

8. It is an admitted fact that A1 was discharged for the aforesaid offences. When A1 was discharged for the offence under Section 120-B IPC, the question of proceeding against the petitioner for criminal conspiracy does not arise. Hence, the proceedings against the petitioner for the said offences is an abuse of process of the Court and that too he is not a public servant as defined under Section 2(c) of the Act and under Section 21 of IPC and therefore, he is liable to be discharged by exercising power under Section 239 of Cr.P.C. The reason assigned by the trial Court is not satisfactory in view of the discharge of A1 and it has committed error in dismissing the petition. Consequently, the proceedings against the petitioner are liable to be quashed.

9. In the result, the Criminal Revision Case is allowed setting aside the order dated 11.02.2014 passed in Crl.M.P.No.491 of 2013 in C.C.No.15 of 2009 by the I Additional Special Judge for CBI Cases, Hyderabad. Miscellaneous petitions, if any, pending in this revision, shall stand closed.

M. SATYANARAYANA MURTHY, J

10th August, 2018

sj