

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Petition No.10054 of 2017

Between:

Md. Ghouse Pasha.

... Petitioner/Accused

AND

The State of Telangana
through Public Prosecutor,
High Court at Hyderabad
and another.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 13.06.2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
 2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
 3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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through Public Prosecutor,
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... Respondents

! Counsel for Petitioner : Sri K.R.Srinivas

^ Counsel for Respondents : Special Public Prosecutor for ACB

< Gist:

> Head Note:

? Cases referred:

- 1) W.P.No.4309/2017(GM-Res) connected with CrI.P.No.6886/2016
dt.22.02.2017
- 2) (2002)3 SCC 481
- 3) 2002 (4) CriLJ 4009



HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.10054 of 2017

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioner/AO seeks to quash the proceedings against him in FIR No. 01/ACB-WKH/2017 of ACB, Khammam Range, Khammam, registered for the offence under Section 13(1)(e) r/w 13(2) of Prevention of Corruption Act, 1988 (for short "P.C.Act").

2) The brief allegations in the FIR are that the AO joined in service as Asst. Motor Vehicle Inspector on 11.03.1994 and worked in that capacity at several places for 12 years and got promoted as Motor Vehicle Inspector on 21.12.2006. Presently, he is working as M.V. Inspector of Bhadradi, Kothagudem District. During the check period from 11.03.1994 to 03.02.2017, he acquired assets worth Rs.1,55,45,500/-. His probable income during the check period was Rs.80,00,000/- and his probable expenditure was Rs.55,56,400/-. Hence, his likely savings should be Rs.24,43,600/-. However, his assets are worth Rs.1,55,45,500/- and thus AO is in possession of assets disproportionate to his known source of income worth Rs.1,31,01,900/-. The Inspector of Police, ACB, Khammam Range, Khammam, on authorization issued by the Joint Director (T), ACB Telangana, Hyderabad, vide proceedings C.No.2/ACB-JD(T)/2017 dated 02.02.2017, registered the FIR for the offence under Section 13(1)(e) r/w 13(2) of P.C.Act.

- 3) Investigation is reported to be pending.
- 4) Heard arguments of Sri K.R.Srinivas, learned counsel for petitioner and learned Special Public Prosecutor for ACB (Telangana).
- 5a) The main ground on which learned counsel for petitioner seeks annulment of the FIR is that an Inspector of Police, ACB, has no power to register and investigate any of the offences including the offence under Section 13(1)(e) r/w 13(2) of P.C. Act. He would strenuously argue that as per Section 17 of P.C.Act, only the Deputy Superintendent of Police or Police Officer of equivalent rank shall register and investigate any offence under P.C. Act. Admitting that as per the first proviso to the aforesaid Section, a police officer not below the rank of Inspector of Police can also investigate the offences under P.C.Act, he would however submit that such Inspector of Police shall be authorised by the State Government in this behalf by a general or special order but in the instant case, there is no general or special order issued by the State of Telangana to the Inspector of Police to investigate the present case on hand. Hence, the FIR is liable to be quashed.
- b) Another ground canvassed by him is that even assuming that the State Government have, by notification, authorised the Inspector of Police, ACB, to investigate the offence still, by such authorisation, he is not empowered to “register the crime”. Differentiating between the two acts i.e, registration of FIR and investigation, learned counsel

would argue that ACB Police Stations are constituted under the designation of DSP, ACB and being Station House Officer, he alone shall register the FIR but the Inspector of Police, ACB, who is not designated as the SHO, cannot register FIR though he may have been authorised to investigate the offence by the notification issued by the State Government. Learned counsel relied upon the judgment of Karnataka High Court in *T.R. Shivaramu v. Anti Corruption Bureau*¹.

He thus prayed to quash the proceedings.

6a) In opposition, learned Special Public Prosecutor for ACB (“Spl.P.P”) would argue that in the instant case, the mandate of Section 17 of P.C.Act was strictly followed in the course of registration and investigation of the crime. In expatiation, learned Spl.P.P argued that the Government of A.P have issued notification under G.O.Ms.No.170, General Administration (SC-D) Dept. dt.20.03.1968, whereby it has authorised the Inspectors of Police of ACB of Andhra Pradesh to register and investigate the offences under Prevention of Corruption Act, 1947. The said notification held valid even after the repeal of P.C.Act, 1947 and introduction of new enactment, i.e, P.C.Act, 1988. Therefore as per G.O.Ms.No.170, an Inspector of Police, ACB, is authorised to investigate offences under P.C. Act.

¹ W.P.No.4309/2017(GM-Res) connected with CrI.P.No.6886/2016 dt.22.02.2017

b) Learned Spl.P.P would further submit that with the bifurcation of the-then State of Andhra Pradesh into two States i.e, Andhra Pradesh and Telangana, the Andhra Pradesh Reorganisation Act, 2014 (for short “Reorganisation Act”) was passed. As per Section 101 of the Reorganisation Act, the appropriate Government may, before the expiration of 2 years from the appointed day, make such adaptations and modifications of the law made before the appointed day. He would submit that as per Section 102 of the Reorganisation Act, notwithstanding that no provision or insufficient provision has been under Section 102 for the adaptation of law made before the appointed day, the Courts or other authority for the purpose of facilitating its application in the State of A.P or Telangana, construe the law in such a manner, without effecting the substance, as may be necessary or proper in regard to the matter before the Court, Tribunal or authority. He would thus submit that though a separate notification akin to G.O.Ms.No.170 was not issued by State of Telangana, in terms of Section 17 of P.C.Act authorising the Inspector of Police, ACB (Telangana) to investigate the offences under P.C.Act, still by virtue of Sections 101 and 102 of the Reorganisation Act, the said G.O can be made applicable to the State of Telangana also. In that view, he would argue, the Inspector of Police, ACB, Telangana is competent to investigate the present offence.

c) Learned Spl.P.P would further argue that sofaras second proviso to Section 17 of P.C. Act is concerned, for investigation of an

offence under Section 13(1)(e) r/w 13(2) of P.C. Act, the order of a Police Officer not below the rank of Superintendent of Police is required. In the instant case, the said requirement is also fulfilled inasmuch as the Joint Director (Telangana), ACB, issued proceedings authorising the Inspector to register and investigate the case. Therefore, the statutory requirement under Section 17 of P.C. Act was fulfilled.

d) Nextly, with regard to the argument of the petitioner that Inspector of Police, ACB is not competent to register the FIR, learned Spl.P.P would argue that the Inspector of Police, ACB, being officer-in-charge of the office of DSP, can very well register the FIR and there could be no legal flaw in it. Referring G.O.Ms.No.268 Home (PSC) Department dated 12.09.2003, he would submit that the Government of Andhra Pradesh made it clear that the DSP shall be the in-charge of the Police Station and in his absence, the Police Officer at that Station, who is next in rank to such Officer i.e, Inspector of Police shall be the Officer in charge of the police station. Hence, the Inspector of Police—Sri S.V.Ramana Murthy is authorised to register FIR and investigate as well. He thus prayed to dismiss the petition.

7) The point for determination is:

“Whether the Inspector of Police, ACB (Telangana) is not authorised to register FIR and investigate in the instant case and thereby the FIR is liable to be quashed?”

8) **POINT:** The first contention of petitioner is that the Inspector was not authorised in terms of Section 17 of P.C. Act to investigate the offence. Section 17 reads thus:

Section 17 – Persons authorised to investigate

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,-

- a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;*
- b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;*
- c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant:*

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefore without a warrant:

Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

9a) Since the offence allegedly took place in Bhadrachalam, Kothagudem District, Section 17(c) of P.C.Act, applies to the instant case. Hence, a DSP or Officer of equivalent rank is required to investigate the offence. This Section however, has two provisos.

As per first proviso, a Police Officer not below the rank of Inspector, if authorised by the State Government by general or special order, can also investigate any of the offences under P.C.Act.

As per second proviso, if the offence concerned is the one under Section 13(1)(e) of P.C.Act i.e, acquisition of assets disproportionate to the known source of income of a public servant, same shall not be investigated without the order of a Police Officer not below the rank of Superintendent of Police.

b) Since the instant offence is the one under Section 13(1)(e) of P.C.Act, the requirements mandated in the above Section shall be fulfilled. Admittedly, in the instant case, Inspector of Police—Sri S.V.Ramana Murthy, ACB, Khammam Range, registered the FIR and commenced investigation. Hence, it has now to be seen whether he fulfilled the statutory requirements.

10) With regard to first proviso, the argument of Spl.P.P is that the Government of Andhra Pradesh have issued G.O.Ms.No.170 (which is available in “A Treatise on Anti-Corruption Laws in India” by Sri P.V.Ramakrishna (14th Edn: 2012) at Pg.No.2115). It reads thus:

Notification issued by Government of Andhra Pradesh:

GOVERNMENT OF ANDHRA PRADESH

Abstract

Anti-Corruption Bureau:--Investigation of offences under Prevention of Corruption Act, 1947 – Authorisation to Inspectors of Police of Anti-Corruption Bureau to conduct investigation—Notification—Issued.

G.O.Ms.No.170, General Administration (SC-D) Dept., dt.20-03-1968

30th Phalgun, 1889

Read the following:

From the Director, Anti-Corruption Bureau, Hyderabad,
Letter Rc.No.101/5, 1/66, dated the 10th November, 1966.

ORDER

The following Notification will be published in the
Andhra Pradesh Gazette:

NOTIFICATION

In exercise of powers conferred by the first proviso to sub-section (1) of Section 5A of the Prevention of Corruption Act, 1947(Central Act 2 of 1947), the Governor of Andhra Pradesh hereby authorises the Inspectors of Police of the Anti-Corruption Bureau of Andhra Pradesh to investigate any offence punishable under Section 161, and Section 165 of Section 165-A of the Indian Penal Code or under Section 5 of the Act without the order of a Magistrate of the First Class.

(By Order and in the name of the Governor of Andhra Pradesh)

(Sd/-) **M.T.RAJU**,
Chief Secretary to Government.

Thus it is clear that the Government of Andhra Pradesh have issued notification authorising the Inspectors of Police, ACB in A.P, to investigate offences under P.C. Act, 1947. It is true that the said notification was issued in terms of P.C. Act, 1947, which was repealed by P.C.Act, 1988 (vide Section 30). However, the notification issued under old Act was held valid in respect of P.C.Act, 1988 also. The

Apex Court in the decision of *State of Punjab v. Harnek Singh*², clarified this aspect. The questions that fell for consideration before Apex Court are:

“(1) Whether the notifications issued by the State Government in exercise of the powers conferred upon it under Section 5A(1) of the Prevention of Corruption Act, 1947 (since repealed) empowering and authorising Inspector of Police to investigate the cases registered under the said Act are not saved under the saving provisions of the re-enacted Prevention of Corruption Act, 1988.

(2) Whether the aforesaid notifications not being inconsistent with the provisions of the re-enacted Act continue to be in force and be deemed to have been issued under the Prevention of Corruption Act, 1988 till aforesaid notification are superseded or specifically withdrawn.”

The Apex Court ultimately held that the notifications issued by the Government of Punjab in exercise of the powers conferred under Section 5-A of 1947 Act, authorising Inspectors of Police to investigate the cases registered under P.C.Act, were saved under the saving provision of re-enacted 1988 Act. Such notifications are not inconsistent with the provisions of re-enacted Act and are deemed to continue in force as having been issued under the re-enacted 1988 Act, till they are specifically superseded or withdrawn or modified under 1988 Act. The investigation conducted by Inspectors of Police, authorised in that behalf under the 1947 Act is held to be proper, legal

² (2002)3 SCC 481

and valid under the re-enacted Act and do not suffer from any vice of illegality or jurisdiction. The above decision was followed by our High Court in *J.Venkateshwarlu v. Union of India*³.

11) Hence G.O.Ms.No.170 is applicable to the new Act of 1988 also. Coming to its application to the State of Telangana, Sections 101 and 102 of Reorganisation Act, are germane for consideration. They read thus:

“Section 101 – Power to adapt laws

For the purpose of facilitating the application in relation to the State of Andhra Pradesh or the State of Telangana of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation.—In this section, the expression “appropriate Government” means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law in its application to a State, the State Government.

Section 102 – Power to construe laws

Notwithstanding that no provision or insufficient provision has been made under section 102 for the adaptation of a

³ 2002 (4) CriLJ 4009

law made before the appointed day, any court, tribunal or authority, required or empowered to enforce such law may, for the purpose of facilitating its application in relation to the State of Andhra Pradesh or the State of Telangana, construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority.”

a) The term “law” used in the aforesaid provision is defined under Section 2(f) of the Reorganisation Act, as follows:

“(f) “law” includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the existing State of Andhra Pradesh”

12) Thus the cumulative effect of the above provisions is that within 2 years from the appointed day, the appropriate Government by order make such adaptations and modifications of the law which was made before the appointed day. Notwithstanding that no provision or insufficient provision has been made under Section 102 for the adaptation of a law made before the appointed day, any Court, Tribunal or authority required or empowered to enforce such law may, for the purpose of facilitating its application in relation to both the States, construe the law, as may be necessary or proper in regard to the matter before it without effecting the substance.

13) In view of the above facilitation, the notification which was issued under G.O.Ms.No.170 prior to the appointed day, can be

construed to apply to the State of Telangana for the purpose of present case. Learned Spl.P.P has not produced any material before this Court to know whether the State Government of Telangana have issued any notification akin to G.O.Ms.No.170. Inspite of non-issuing of such G.O, still G.O.Ms.No.170 could be applicable to the State of Telangana in view of the above discussion. Hence, the Inspector of Police(T), ACB, is empowered to investigate the offence.

14) Sofaras the requirement under second proviso to Section 17 of P.C.Act is concerned, in the FIR, it is clearly mentioned that the Director(T), ACB, Telangana, Hyderabad vide his Proceedings C.No.2/ACB-JD(T)/2017 dated 02.02.2017 authorised the Inspector to register the FIR and investigate the offence under Section 13(1)(e) r/w 13(2) of P.C.Act. Therefore, as rightly contended by learned Spl.P.P, all the requirements under Section 17 of P.C.Act are duly fulfilled.

15) The next argument of the petitioner is that the Inspector of Police is not authorised to register the crime. As per the Government notification, it is the office of DSP which is notified as Police Station and therefore, the DSP alone shall register the FIR and the Inspector has no authority.

16) The above argument does not hold water. In ***T.R.Shivaramu*** (1 supra) cited by the petitioner, this aspect was clearly discussed at length. In the said decision, it was observed by the Karnataka High Court that the petitioner put up an argument equating the word “post”

with “office” and submitted as if the office of DSP has been declared as Police Station and without there being a similar notification declaring the office of Police Inspectors as Police Station, the Police Inspectors, ACB have no authority to register the FIRs. The Karnataka High Court held that the Government intended to declare the office of the Deputy Superintendent of Police where the Police Officers are stationed as the Police Station for registration and investigation of the cases under P.C. Act. The High Court held that the office of the DSP means, the place where the Police Officers are stationed but the term office does not mean the post of DSP.

17) With the above clarification, the High Court of Karnataka held that the Inspectors of Police, who are stationed in the office of the Deputy Superintendent of Police being officers-in-charge of the Police Station have lawful authority to register FIR and undertake investigation. Needless to emphasise that the ratio laid down by the Karnataka High Court applies with all its force to the instant case to hold that the present Inspector of Police, ACB, being officer-in-charge of the office of DSP, ACB, is authorised to register and investigate the offences under P.C.Act. The cited decision (1 supra) will not advance the cause of the petitioner. Therefore, the investigation does not suffer from any vice of illegality or error of jurisdiction. Hence the argument of petitioner does not carry conviction.

18) For another reason also, his argument does not hold substance. In G.O.Ms.No.268 Home(PSC) Dept., dated 12.09.2003, the

Government of A.P have vividly declared which offices of the ACB to be called as Police Stations; which of the Officers shall be called as Officer-in-charge of the Police Stations and in the absence of such Police Officer, who shall officiate as Officer-in-charge of the Police Station. The notification is thus:

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Anti - Corruption Bureau, Andhra Pradesh – Declaration of Offices of Anti-Corruption Bureau as Police Stations with their jurisdiction– Notification – Issued.

HOME (PSC) DEPARTMENT

G.O.Ms.No.268,

Dated: 12-9-2003.

Read

Letter C.No.51/RPC(c)/2002 dated 7-6-2002 of the Director General, Anti-Corruption Bureau, Andhra Pradesh, Hyderabad.

ORDER :-

The following Notification will be published in Andhra Pradesh Gazette, dated. - -2003.

NOTIFICATION

In exercise of the powers conferred by clause(s) of section 2 of the Code of Criminal Procedure, 1973 (Act 2 of 1974) and in supersession of all posts of all previous orders on the subject, the Governor of Andhra Pradesh hereby declares that the offices of the Anti-Corruption Bureau specified in the schedule shown below in column (2) shall be Police Stations and that they shall include within their limits, the areas specified in column (3) against each of the offices and in exercise of the powers conferred under clause (o) of section 2 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) declares that all Police Officers of the Anti-Corruption Bureau, Andhra Pradesh, of and above the rank of Deputy Superintendent of Police shall be officer in charge of a Police Station, and in the absence of such Police Officer from the Station House, or unable from illness, or other cause to perform his duties, the Police Officer at the Station House, who is next in rank to such officer i.e, Inspector of Police shall be the Officer in charge of the Police station.

THE SCHEDULE

S.No. (1)	Name of the Office (2)	Jurisdiction (3)
1	Director General, Anti-Corruption Bureau, Andhra Pradesh, Hyderabad	State of Andhra Pradesh
2 to 21	xx xx	xx xx
22	Deputy Superintendent of Police, A.C.B, Khammam.	Khammam District

Therefore, there is no demur that in the absence of DSP, an Inspector of Police, ACB, shall be the Officer-in-charge of a particular Police Station and he can register the crime and investigate into.

19) Accordingly, this Criminal Petition is dismissed and the Investigating Officer is directed to complete the investigation expeditiously.

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

U. DURGA PRASAD RAO, J

Date: 13.06.2018

Note: L.R copy to be marked: YES

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