HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

TANSFER CRIMINAL PETITION No.234 OF 2017

ORDER:

The petitioner herein viz., Beeram Gopal Reddy, who is accused officer in Crime No.12/RCA-TCT/2011, for the offence punishable under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 (for short 'PC Act') of Anti Corruption Bureau, Tirupati Range, Tirupati, before the learned Special Judge for SPE & ACB Cases - cum - II Additional District and Sessions Judge, Nellore, filed the present application under Section 407 of the Code of Criminal Procedure, 1973 (for short 'Code'), requesting to withdraw the case, at the crime stage, from the file of the learned Special Judge for SPE & ACB Cases - cum - II Additional District and Sessions Judge, Nellore, and to transfer the same to the file of the learned I Additional Special Court for SPE & ACB Cases, City Civil Court, Hyderabad, Telangana State.

2(a) It is stated in the affidavit that while the petitioner was working as Deputy Executive Engineer, Priyadarshini Jurala Project, Gadwal Circle No.1, Mahabubnagar District, Telangana State, the Deputy Superintendent of Police, Anti Corruption Bureau, Tirupati Range, Tirupati, registered the aforesaid case on 25.07.2011 and he was arrested on 26.07.2011 and was produced before the Court on 27.07.2011 and remanded to judicial custody, and, later he was released on bail. He states that he was suspended from service on

26.07.2011 vide G.O.Rt. No.806, I & CAD (SCR - VI) Department dated 03.08.2011 and he was reinstated into service vide G.O. Rt. No.299, I & CAD (SCR - VI) Department, dated 05.05.2014, and later he was retired from service on 30.04.2015. Thus, he claims that the crime was registered while he was working as Deputy Executive Engineer in Priyadarshini Jurala Project, Gadwal, Circle No.1, Pebbair, Mahabubnagar District. He states that after the investigation, final report (DFR) was sent to Director General, Anti Corruption Bureau, Government of Andhra Pradesh on 19.11.2014 by respondent No.1 stating that no case is made out against the petitioner and the Director General, Anti Corruption Bureau, Andhra Pradesh, in Memo No.12346/VIG.I/A2/2015-2 dated 03.09.2015, stated that the petitioner retired from service as Deputy Executive Engineer in Telangana State and is an employee of Government of Telangana State, on which, the original file pertaining to his case was transferred to the Government of Telangana by the Government of Andhra Pradesh.

(b) According to the petitioner, the Director General, Anti Corruption Bureau, Andhra Pradesh, has recommended for dropping action against him in the above case as the allegations made against him that he acquired assets disproportionate to his known sources of income is not sustained by any evidence and also recommended to initiate departmental action for violation of Andhra Pradesh Civil Services (Conduct) Rules 1964 under letter in RC.No.169/RCA-

TCT/2011 dated 19.11.2014 from the Director General, Anti Corruption Bureau, Andhra Pradesh, Hyderabad.

(c) It is also according to him that the Government of Telangana State issued G.O. Rt. No.299 on 08.05.2016 dropping further action against him in the above crime, but, still, First Information Report (FIR) is not closed in the Court and the copy of the said Government Order is filed.

(d) He has also stated that the Deputy Superintendent of Police, Anti Corruption Bureau, Mahabubnagar, Telangana State, earlier filed a memo in the Court requesting to close the FIR of the said crime, but the Court retuned the memo on the ground that FIR in this case was registered by the Deputy Superintendent of Police, Anti Corruption Bureau, Tirupati Range.

(e) He states that he has been suffering for his no fault since 26.07.2011 and all his properties are under attachment and due to non-closure of FIR in this case, he failed to get his retrial benefits and that he is aged about 60 years and because of pendency of this case, he is suffering a lot. Hence, he made a request to withdraw the case in Crime No. 12/RCA-TCT/2011, for the offence punishable under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 (for short 'PC Act') of Anti Corruption Bureau, Tirupati Range, pending before the Court of the learned Special Judge for SPE & ACB Cases - cum - II Additional District and Sessions

Judge, Nellore, by filing the present application under Section 407 of Code of Criminal Procedure, 1973 (for short 'Code'), and to transfer the same to the file of the learned I Additional Special Court for SPE & ACB Cases, City Civil Court, Hyderabad, Telangana.

3. It is to be noted that the case is at crime stage.

4. Heard Sri P. Kasi Nageswara Rao (Pillix Law Firm), learned counsel for the petitioner, and Sri Udaya Bhaskar Rao, learned special Public Prosecutor of ACB, Andhra Pradesh, and perused the material on record.

5. The record would show that the petitioner earlier filed a petition in Criminal M.P. No…… of 2017 [C.F.R. No.130 of 2017] in the said crime under Section 173 of the Code, on the file of the learned Special Judge for SPE and ACB Cases, Nellore. The relief sought for by the petitioner reads thus:

> "11. Hence under the above mentioned circumstances the petitioner herein humbly prays this Hon'ble Court to close the FIR in the above crime as entire file pertaining to the above crime was transferred to State of Telangana and the Government of Telangana state issued G.O.R.T.No.299 on 08.05.2015 dropping further action against the petitioner in the above crime in the interest of justice."

Thus, the petitioner sought two reliefs. One is for closure of the FIR and the other is to transfer the file to the State of Telangana as the

Government of Telangana issued G.O.Rt. No.299 dropping further action against him. The said petition was disposed of by the learned Special Judge on 21.09.2017 in CFR No.130 of 2017 by passing an elaborate order rejecting the request. The learned Special Judge formulated the point for consideration in paragraph No.6, thus:

> "6. Now the point for consideration is that whether the Petitioner/Accused Officer can file the Petition under section 173 of Cr.P.C. with a request to close the FIR as claimed by the Petitioner/Accused Officer ?"

The observations made by the learned Special Judge are contained in paragraph No.8, thus:

> "8. It is contended on behalf of the Petitioner/Accused Officer that the Government of Telangana dropped further action against the Petitioner in the above Crime by issuing G.O.R.T.No.299 dt.8.5.2015. But, the above Crime was registered by the Deputy Superintendent of Police, ACB., Tirupati Range, Tirupati, which is within the jurisdiction of Government of Andhra Pradesh. So far, no Orders were passed by the government of Andhra Pradesh for dropping the Proceedings against the Petitioner/Accused Officer in the above Crime. Further, the Respondent No.1, who registered the case against the Petitioner/Accused Officer did not file any final Report seeking permission to refer the Crime as dropped. Moreover, the Report should filed by the Respondent No.1-ACB Police under section 173 of Cr.P.C. seeking permission to refer the case as

> dropped, but the Petitioner can not file this type of Petition under section 173 of Cr.P.C. requesting to close the FIR and therefore, the Petition is not maintainable under Section 173 of Cr.P.C. file by the Petitioner/Accused Officer and it is liable to be rejected"

6. It is no doubt true, the petitioner was working at Mahbubnagar on the date when the crime was registered, but, as rightly observed by the learned Special Judge, the crime was registered by the Deputy Superintendent of Police, Anti Corruption Bureau, Tirupati Range, Tirupati, which is within the jurisdiction of the Government of Andhra Pradesh. Thus, the investigation was done by the Deputy Superintendent of Police, Anti Corruption Bureau, Tirupati Range, Tirupati, and arrived at forming opinion, which according to the petitioner, that a memo bearing No.12346/VIG.I/A2/ 2015-2 dated 03.09.2015, wherein, the Government of Andhra Pradesh, Director General, Anti Corruption Bureau, Andhra Pradesh, Hyderabad, said to have stated that the petitioner retired as Deputy Executive Engineer in Telangana State, and he was an employee of the State of Telangana, and, therefore, the original file pertaining to the above case was transferred to the State of Telangana by the Government of Andhra Pradesh, and the Director General, Anti Corruption Bureau, Andhra Pradesh, has recommended for dropping the action against him in the above case as the allegations made against him that he acquired assets disproportionate to his known

sources of income is not substantiated by any evidence and also recommended to initiate departmental action for violation of Andhra Pradesh Civil Services (Conduct) Rules, 1964, under a letter in Rc.No.169/RCA-TCT/2011 dated 19.11.2014.

7. When it is the specific case of the petitioner that the Director General, Anti Corruption Bureau, Andhra Pradesh, even transferred the file to the State of Telangana, as mentioned in paragraph No.3, it has to be construed that it is at the stage of crime only as no report under Section 173 of the Code appears to have been filed before the Special Court for ACB Cases at Nellore. The question of passing any orders as requested by the petitioner to transfer the case at crime stage does not arise.

8. It is open either to the Director General, Anti Corruption Bureau, Government of Andhra Pradesh, or the Director General, Anti Corruption Bureau, Government of Telangana, to take appropriate action, in accordance with law, to choose in filing report under Section 173 of the Code considering whether the petitioner is allotted to the State of Telangana. Now, there is no need to pass any orders in view of the facts narrated and the circumstances occurring herein.

9. With the above observations, the Criminal Petitions is disposed of, at the admission stage itself.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present transfer criminal petition stand closed.

A. SHANKAR NARAYANA, J

January 25, 2018.
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