HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.12690 OF 2017

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code'), by the petitioner - accused viz., Bendi Mohana Rao requesting to quash the proceedings in Calendar Case No.30 of 2017 pending on the file of the III Additional District and Sessions Judge - cum - Special Judge Court for ACB Cases, Visakhapatnam, arising out of Crime No.4/RCT/ACB/SKL/2014 of Anti-Corruption Bureau, Srikakulam Range.

2. The petitioner alleged to have committed the offences punishable under Sections 7 and 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988 (for short 'PC Act') in Crime No.04/RCT-ACB/SKL/2014 of Anti-Corruption Bureau, Srikakulam Division. When the charge was laid, upon completion of investigation, the learned Special Judge, Visakhapatnam, taken cognizance for the aforesaid offences and registered Calendar Case No.30 of 2017 on its file.

3. Heard Sri O. Kailashnath Reddy, learned counsel, representing Sri Shaik Karimulla, learned counsel for the petitioner, and Sri Udaya Bhaskara Rao Pechetti, learned Standing Counsel -

cum - Special Public Prosecutor for ACB Cases (A.P.) for respondent No.1.

4(i). The main submissions made by the learned counsel for the petitioner have been that the petitioner is falsely implicated and that by the date of alleged offences, no file relating to respondent No.2 - *de facto* complainant was pending with the petitioner and, in fact, he has secured the file, a couple of days prior thereto while working as Senior Accountant, Divisional Sub-Treasury, Srikakulam, State of Andhra Pradesh, and even the said file was approved by the Sub-Treasury Office, and it was sent to the District Treasury, Srikakulam for pre-audit, and the Pension Payment Office has returned the file to the Sub-Treasury Office from District Treasury after pre-audit and, therefore, the Investigating Officer is not right in laying charge sheet and, thus, conducted improper investigation without properly ascertaining the true facts.

(ii) The learned counsel would submit that in fact, the bribe amount was not found on the person of the petitioner, and according to the investigating officer himself, it was found in the table drawer of the petitioner, and only at the instance and instructions of the ACB Officials, the said amount was handled by the petitioner and thereby, chemical test was found positive and not by a routine procedure of the petitioner receiving the amount and keeping in his possession and further handing-over the same to the ACB Officials. Thus, it is abundantly clear that it is a clear case of planting the amount without the knowledge of the petitioner and, thereafter, making him to handle it for the purpose of trap.

(iii) The third submission made is that the petitioner is not the ultimate authority to do the official favour as a final stage to have any benefit by the *de facto* complainant, and the official procedure clearly speaks that any benefit to be accrued to the *de facto* complainant would be the outcome of the superior officer, i.e., District Treasury Officer, but not by the petitioner, who is only a Senior Assistant in the Sub-Treasury Office.

iv) The fourth submission is that the very fact that the petitioner has been reinstated and permitted to work itself goes to show that the Department, where the petitioner was working, and the ACB officials are aware of that the prosecution ultimately may not sustain against the petitioner.

Therefore, the learned counsel would submit that if the petitioner is subjected to trial, irreparable loss and hardship would occasion as the petitioner would be subjected to unwarranted ordeal of trail, which is nothing but abuse of process of law as well, sought to allow the petition.

5(i). The learned Special Public Prosecutor for ACB for the State of Telangana, *per contra,* strongly resisted the request, refuting the submissions made by the learned counsel for the petitioner, contending that it is a clear case of obtaining bribe amount as the very fact that the fingers of the petitioner tested positive soon after the trap was made and the defence pleaded by the petitioner that he was made to handle the currency notes found in his table drawer is palpably false and invented to overcome the successful trap made by the ACB Officials.

(ii) Concerning the official favour, the learned Special Public Prosecutor would submit that what all transpired from the seat of the petitioner to his superior officer was not made known to the *de facto* complainant, and had there been any explanation in that regard either in the mediators' report or from any other source; that the *de facto* complainant was informed that the file was already cleared by the petitioner and he has sent it to his superior officer even a day prior to taking place of the trap, certainly, there would have been some case to sustain the defence of the petitioner, but it is not so.

(iii) The learned Special Public Prosecutor also would submit that mere fact that the petitioner was reinstated into service would not give rise to an inference that there was no case made out against him and the ACB Officials are aware that the prosecution ultimately may not sustain as sought to be viewed by the learned counsel for the petitioner.

The learned Special Public Prosecutor, therefore, would submit that unless a full-fledged trial takes place, the truth or otherwise of the defence now projected by the petitioner cannot be unravelled and, therefore, sought to dismiss the petition.

6. To appreciate the contentions raised by the learned counsel for the petitioner and the learned standing counsel, a few relevant facts need advertence.

i) The *de facto* - complainant retired as Forest Section Officer from Srikakulam, Srikakulam District, but he was compulsorily retired. He made an application to the District Forest Officer, Srikakulam, for settlement of retiral benefits and pension. The said papers were sent to Accountant General's office. Later, they were transmitted to the District Treasury Office, Srikakulam, and from there, they were transmitted to the Divisional Sub-Treasury, Srikakulam on 14.11.2014. He went to the Sub-treasury on 15.11.2014 and met the petitioner. The petitioner calculated the pension arrears and gratuity and informing that the *de facto* complainant would be receiving Rs.5.00 to 6.00 lakhs, demanded him to give 10% of the amount or Rs.50,000/- as bribe to him and other office staff. When he pleaded his inability as he had no income since the year 2005 as he was involved in some disciplinary action against him, the petitioner alleged to have refused to process the file and informed him that unless and until his demand was met, his work would not be done and he would be made to go round the office, and lastly demanded at least to pay Rs.25,000/-. Since the *de facto* complainant had no other alternative accepted the demand, on which, the petitioner alleged to have asked him to bring the bribe amount on 17.11.2014 in the morning hours. When he went to Sub-Treasury Office on 17.11.2014, the petitioner told him that his file was prepared and asked him whether he brought the amount or not. When the *de facto* complainant expressed that he did not bring the amount, the petitioner alleged to have threatened him stating that he would put queries when the file returns to him from the District Treasury's Office after approval and would not prepare pension arrears bill. Since there was no other option for him, he accepted to pay an amount of Rs.10,000/- initially ensuring that remaining amount would be given later, then, the petitioner asked him to bring the amount of Rs.10,000/- on 18.11.2014.

ii) The *de facto* complainant since did not incline to pay the bribe, he prepared a complaint himself and presented the same to the Superintendent of Police, ACB, Srikakulam Range, at 13:00 hours on 17.11.2014, who verified the genuineness of the contents of the complaint, registered the crime and trap proceedings were prepared on 18.11.2014. The petitioner was trapped in his office when he further demanded and accepted bribe of Rs.10,000/- from the *de facto* complainant. The chemical test conducted on the fingers of both hands of the petitioner, swabs collected from the surface of the paper, which came into contact with the tainted currency, were yielded positive results. The tainted currency, the Revised Life Certificate of Smt. Durga Santhi, PPO No.001033/Pol/SKL, dated 24.07.2007 and the resultant solutions were seized and other formalities were followed.

7. During the course of arguments, when asked, the learned Special Public Prosecutor submitted a copy of the mediators' report for perusal, as the petitioner has not filed it along with material papers.

8. In the backdrop of the aforesaid fact-situation, the submissions made by the learned counsel for the petitioner needs consideration. The learned counsel mainly adverts to the relevant details which were secured by the petitioner by making an application under Right to Information Act, 2005, from the Public Relation Officer, Sub-Treasury Officer, Srikakulam. The relevant details need projection, which are thus:

" Information sought	Reply
1. Date on which the PPO of Sri Kareem Khan Parookh was received in this Sub Treasury Office, Srikakulam	14.11.2014
2. Date on which the PPO was entered in the Sub Treasury inward register.	14.11.2014
3. Date on which the PPO was sorted out to Sri Bendi Mohana Rao, Senior Accountant	14.11.2014

4.	Date on which Sri Bendi Mohana Rao, Senior Accountant submitted the file to the Sub Treasury Office, Srikakulam	15.11.2014 (Sunday) 16.11.2014
5.	Date of which the S.T.O. has approved the file	17.11.2014
6.	Date on which it was sent to the Dist. Treasury, Srikakulam for pre-audit	17.11.2014
7.	Date on which the PPO was returned to Sub Treasury From District Treasury, Srikakulam after pre-audit	20.11.2014
8.	Have any body complained to the S.T.O. Srikakulam against Sri Bendi Mohana Rao, S.A. at any time about his performance in dealing with pension payments up to his date of suspension i.e., 18.11.2014.	No such information available in this office record.”

9. The learned counsel for the petitioner has placed reliance in **Bal Krishan Sayal v. State of Punjab**[1], where the Hon'ble Supreme Court held in paragraph No.3, thus:

> “3. Two outsider witnesses had been examined in the case being Khazan Singh as noticed by the High Court, did not speak as to what transpired in the conversation between the bribe giver and the appellant. The other witness too was not very clear as to what talk preceded the passing of the two currency notes. The High Court took the view that even if the prosecution had not indicated what exactly the conversation was, once the passing of the two currency notes was accepted it was for the appellant to explain the circumstance under which the same had been received. Another contention which had been raised before the High Court was that the total penal rent due from Gurcharan Ram was Rs. 102/- and to obtain waiver of this it was unlikely that Gurcharan would to find have agreed to pay a sum of Rs. 100/- as bribe. We wanted to find out exactly how

[1] AIR 1987 SC 689

> much of penal rent was due and, therefore, sent for the record. From the record it is apparent that the demand was of Rs. 102/- which Gurcharan Ram wanted to be waived. There is no material to show whether there was likelihood of any additional demand to b3e raised against him. Taking the unsatisfactory character of the prosecution evidence in regard to the conversation preceding the passing of the currency notes and the feature that for waiver of Rs. 102/-, the bribe of Rs. 100/- was offered, we are inclined to take the view that the prosecution has failed to establish its case beyond reasonable doubt and the appellant is entitled to this benefit of this situation. The appeal is allowed and the convictions and the sentences are set aside."

10. The learned counsel has also placed reliance in **Smt. Meena Balwant Hemke v. State of Maharashtra[2],** where, when the chemical tainted currency notes, found lying on the pad on the table of the accused, were recovered but not from the person or from the table drawer of the accused, it was held that such recovery does not conclusively lead to inference of acceptance of bribe by accused. On facts, the present case is not identical, since the admitted case is that tainted currency notes were found from the table drawer of the accused. Thus, this ruling would not render any assistance to the petitioner.

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[2] AIR 2000 SC 3377

11. In **State of Andhra Pradesh v. T. Venakteswara Rao**[3] relied on by the learned counsel for the petitioner, explanation of the accused that money in question was kept in advance by the complainant before his arrival in house and on being asked by the Investigating Officer, he brought money and because of his handling, he came in to contact with phenolphthalein powder, was accepted in the facts and circumstances occurring therein.

12. **State of Maharashtra v. Anant gurunath Jotrao**[4]**, is** a case of bribe for reducing electricity bill. On appreciation of evidence, it was held that acceptance of bribe by accused and recovery of amount from him was not proved by the prosecution beyond reasonable doubt and, therefore, gives benefit of doubt. In the present case, trial yet to take place.

13. In **V. Venkata Subbarao v. State of A.P., represented by Inspector of Police**[5]**,** it was held, the presumption that money was received as motive or reward cannot be raised when demand by accused has not been proved. Even the said decision was rendered after a full-fledged trial, and, therefore, since, in the present case, the trial is yet to take place and only on appreciation of evidence after a full-fledged trial takes places, the intricacies can be answered.

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[3] AIR 2004 SC 1728
[4] 2005 Cri.L.J. 4450
[5] AIR 2007 SC 489

14. In **Nagulapati Mallaiah v. The State**[6], accused was held entitled to get benefit of doubt, where the defence available with accused showing that there was possibility for complainant who was known to be unscrupulous individual in the habit of involving public servants in false charges of graft also made false complaint against him. Such a situation is not arising in the present fact-scenario.

15. Now adverting to the submissions made by the learned counsel for the petitioner, the first submission relates to absence of official favour as the scope to do any favour by the petitioner was not there for him for the reason that he has already submitted the file to the Sub-Treasury, Srikakulam on 15.11.2014 and file was approved on 17.11.2014 and the file was sent to District Treasury Office, Srikakulam, for pre-audit on 20.11.2014. The Pension Payment Office returned the file to the Sub-Treasury from District Treasury after pre-audit, whereas, the trap alleged to have taken place was on 18.11.2014, and, therefore, according to the learned counsel, there was no official favour pending with the *de facto* complainant by the petitioner. In this context, charge sheet averments require advertence. The relevant details would show that the petitioner threatened the *de facto* complainant that he will put queries when the file returns to him from the District Treasury after approval. In fact, after approval, when the District Treasury sends back the file, it was the petitioner, who has to prepare the bills, and thus, process of preparing pension

[6] 2014 Cri.L.J. 1581

arrears bills was to be done by the petitioner, and, therefore, it cannot be said that, at this stage, there was nothing for the petitioner to do official favour to the *de facto* complainant. Hence, this submission would not sustain.

16. Concerning the second submission that the bribe amount was not found on the person of the petitioner and according to the investigating officer, the same was found in the table drawer of the petitioner and the petitioner was compelled to handle the tainted currency notes by the ACB officials, appears to be unconvincing at this stage, and unless a full-fledged trial takes place, certainly, the defence now projected is difficult to accept. This apart, as already referred to in the above, in **Smt. Meena Balwant Hemke**[2], while acquitting the accused, held that the chemical tainted currency notes were found lying on the pad of the table of the accused when the recovery was made, but the recovery was not from the person or table drawer of the accused.

17. Touching the third submission, it relates to the first submission made by the learned counsel for the petitioner, and, therefore, it is unnecessary to deal with it once again as it is clear from the procedure in processing the file and preparing the bill, the petitioner as Senior Accountant, was the person, who had to prepare the bill, after pre-audit was done by the District Treasury. Thus, there is no merit in the said submission.

18. Turning to the fourth submission, merely because the petitioner was reinstated into service and permitted to work, it cannot be said that it would amount to imputing awareness to the ACB officials that the prosecution, ultimately may not sustain against the petitioner. Thus, viewed from any angle, there is absolutely no merit in the present petition.

19. Therefore, the Criminal Petition is dismissed, at the admission stage itself.

20. As a sequel thereto, Miscellaneous Petitions, if any, pending in the present Criminal Petition stand dismissed.

21. Since the Calendar Case is coming up for trial, it is directed that the learned Special judge while disposing of the case shall not treat any of the observations made herein or reference to any of the events as having finally made and uninfluenced, shall dispose of the same.

A. SHANKAR NARAYANA, J

January 25, 2018.
MGR/PV