

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.47 of 2018

ORDER:

The revision petitioner is one Shaik Ibrahim, aged about 52 years. The respondent is State of Telangana, through ACB, Hyderabad Range, represented by its Special Public Prosecutor for ACB.

2. The revision is maintained against the dismissal order, dated 24.04.2017, in CrI.M.P.No.41 of 2016 in C.C.No.61 of 2014 passed by the First Additional Special Judge for SPE and ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad, which was an application seeking to discharge the petitioner/accused from the accusation levelled against him in the final report filed by ACB and taken cognizance for 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, 1988'), which is the out come of Crime No.18/RCT-H.R/2013 of ACB, Hyderabad Range Police Station, Ranga Reddy District, alleging that the petitioner/accused worked as site Engineer on contract basis in Rajiv Vidya Mission (SSA) in-charge of Pargi Division, Ranga Reddy District, from 13.06.2011 to 24.05.2013 and by virtue of the post held by him falls under the category of 'public servant' defined under Section 2 (c) of the PC Act, 1988. One Ninavath Shanker Naik (L.W.1), according to the Inspector of Police, ACB, lodged a complaint on 22.05.2013, alleging that the petitioner/accused demanded an amount of Rs.20,000/- from him for issuing utilization certificate and the crime registered therefrom and so-called trap laid against the petitioner on 24.05.2013, and

arrested while accepting the tainted currency and the shown seized amount therefrom arrested and produced before the judicial custody and later released on bail.

3. The ACB officials after investigation, filed charge against the petitioner/accused and the learned Magistrate has taken cognizance. At the post cognizance stage, after the petitioner/accused appearing and supplying with copies and while hearing before charges, the petitioner/accused filed the present application in CrI.M.P.No.41 of 2016 supra under Section 239 Cr.P.C., to discharge him saying there are no grounds to frame charge.

4. The sum and substance of the averments in the petition are that from the entire investigation material, it no way reveals any sustainable accusation against the petitioner/accused to show that he is a public servant within the meaning of Section 2 (c) of the PC Act, 1988, and at no point of time, he was appointed as Government servant nor he received any salary from Government and on the other hand, Section 161 Cr.P.C., statement of one Syed Sadiq Ali @ Nawab (L.W.11) reads that the petitioner/accused worked on third party contract basis and does not come under the category of public servant, as such and thereby once he is not public servant, the prosecution against whom to take cognizance for any of the offences under the PC Act, 1988, is solely unsustainable and he shall be discharged.

5. The counter-affidavit filed by the ACB officials in opposing the petition saying as per the investigation, the petitioner/accused is a 'public servant' within the meaning of Section 2 (c) of the PC

Act, 1988, and the statement of Sri M.Bhasker Reddy, Deputy Executive Engineer, Rajiv Vidya Mission (RVM) (SSA), Pargi Division, shows that the petitioner/accused was working as site Engineer under his control since 13.06.2011 and entrusted with the work of marking, preparations of estimates, recording of works, execution and supervision of construction of school buildings under RVM scheme and as per the statement of Sri S.Sambu Prasad, Senior Assistant, RVM (SSA), Ranga Reddy District, the petitioner/accused was appointed as site Engineer on contract basis on 13.06.2011, as per the guidelines of State Project Director, RVM (SSA), Ranga Reddy District, vide Rc.No.40926/SSA/CW/2004, dated 25.09.2010, and deputed to the Deputy Executive Engineer Sri M.Bhaskar Reddy, RVM (SSA), Pargi Division, and Sri Syed Sadiq Ali, Contractor at RVM (SSA) Ranga Reddy District, stated that he is a private contractor, third party consultant on 3% commission agency at RVM and provided site Engineers on contract basis and the petitioner/accused was appointed as one of the site Engineers on 13.06.2011 to work on contract basis and deputed to Pargi Division and the contention of the petitioner/accused that he was not appointed as Government servant nor received any salary from the Government is not sustainable and as per the proceedings, dated 25.09.2010, payment of wages were fixed to work on contract basis at RVM (SSA). The Collector and Chairman as per R.c.No.2680/A1/RVM/SSA/RR/11 agrees with the Tiger Security Services to send qualified site Engineers to work on contract basis upto completion of the work under the RVM on payment of wages fixed as per the proceedings of the PDRVM (SSA), dated

25.09.2010, and Shaik Ibrahim was appointed as site Engineer and his letter, dated 10.06.2011, also on record and the RVM is entrusted with the work of construction of school buildings, which is a public duty and as per Section 2 (b) of the PC Act, 1988, “public duty” means, duty in discharge of which the State or public or community at large has interest and as per Section 2 (c)(i) of the PC Act, 1988 ‘public servant’ means any person in the service or pay of the Government or remunerated by the Government by fee or commission for performance of any public duty and as per Section 2 (c)(viii) of the PC Act, 1988, ‘public servant’ means any person who holds an office by virtue of which, he is authorized or required to perform any public duty. In view of the above provisions and from nature of duty performed by the petitioner/accused and payment of wages received from the Government for the duty performed by him as site Engineer of RVM (SSA) is a ‘public servant’ and there is ample evidence to prove the case registered against the petitioner/accused from the investigation about he demanded and accepted the bribe of Rs.20,000/- to process and issue utilization certificate for the work done by the complainant and thereby, the petition is liable to be dismissed.

6. After hearing both sides, by the impugned order, dated 24.04.2017, the learned First Additional Special Judge for SPE and ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad, dismissed the petition with an observation that the petitioner/accused was appointed as Government servant on contract basis as per the proceedings, dated 25.09.2010, payment of wages were fixed to work on contract basis and the Collector and

Chairman agrees with the Tiger Security Services to send qualified site Engineers to work on contract basis upto completion of work at RVM and payment of wages fixed as per the proceedings of the Project Director, RVM (SSA), dated 25.09.2010, and the petitioner/accused was appointed as site Engineer and entrusted with supervising the construction of school building, which is a public duty and he is a public servant.

7. As per the contention of the learned Special Public Prosecutor, representing ACB officials, and what the decisions relied on **Karthikeya Varma @ Kartik Varma v. The Union of India and others**¹ and **Shailesh Ramanlal Mahimtura v. State of Maharashtra**², by the petitioner/accused in contending of not a public servant concerned. In **Karthikeya Varma's case (supra)**, the petitioner was a office bearer of Kerala Cricket Association and the decision pertains to construction of stadium, in which the cricket association purchased land and with regard to involvement of the office bearer in corruption while purchasing land, it was held that Kerala Cricket Association was not a public office and the decision has no application to the present facts. Similarly, in **Shailesh Ramanlal's case (supra)**, the applicant was a structural Engineer and was running a company and he was appointed by the technical committee constituted by the Government of Maharashtra by virtue of the Government resolution and held that there was no permanency attached to his job as the appointment was only for a period of three years and the nature of work was not considered as a public work for honorarium for every meeting. In

¹ 2015 CrL.L.J 4815

² 2016 CrL.L.J (NOC) 66 (Bombay)

C.B.I v. Ramesh Gelli and others ³, the Apex Court observed that discharge of duties in which the State, the public or community at large has an interest shall be brought within the ambit of expression “public duty” by a person who is holding an office which requires or authorizes him to perform such duty is the *sine qua non* and there is hardly any office whose duties cannot in the last resort be traced to have a bearing on public interest or interest of the community at large to call as a “public duty” or the person as a public servant. In **State of Maharashtra v. Brijlal Sadasukh Modam**⁴, **Manaish Trivedi v. State of Rajasthan**⁵ and **State of A.P. v. P.Venku Reddy**⁶, it all depends upon nature of duties and the petitioner as site Engineer is drawing his pay from RVM as a public servant and as such he is not entitled to be discharged, by holding as a public servant.

8. The same is impugned in the grounds of revision that the order of the trial Judge dismissing the application for discharge is contrary to law and unsustainable of the material placed on record. From the investigation, no way discloses as he is a public servant within the meaning of Section 2 (c) of the PC Act, 1988 and at no point of time he was appointed as public servant much less any salary from the Government and in the application for discharge mentioned the statement of the witnesses disclosing the fact for accused worked on a third party contract basis thereby not coming within the meaning of public servant and the learned

³ 2016 (3) SCC 677

⁴ 2016 (4) SCC 417

⁵ 2014 SCC 420

⁶ 2002 (7) SCC 631

Judge did not properly appreciated the facts in dismissal of the petition mechanically and order is liable to be set aside.

9. Learned counsel for the petitioner reiterated the same, whereas Sri. T.L Nayan Kumar, learned Counsel as Special Public Prosecutor for ACB cases, supported the order the lower Court by saying that the petitioner is coming within the meaning of Section 2 (c) (i) and (viii) of the PC Act, 1988, as public servant and also discharging public duty within the meaning of Section 2 (b) of the PC Act, 1988, and thereby once the trap was laid from his demand and acceptance and the test yielded the positive result and he is public servant, the provisions of Prevention of Corruption Act are applicable and there is nothing to discharge him, but for to face trial by left open all reliefs and sought for dismissal of the revision.

10. Heard. Perused the material on record.

11. Before deciding whether the petitioner is a public servant or not and the proceedings under Sections 7 and 13(1)(d) read with Section 13(2) of PC Act are unsustainable and liable to be quashed concerned, it is necessary to reproduce the definitions of 'public duty' and 'public servant' under Sections 2(b) and 2(c) of PC Act, 1988, respectively which reads as follows:

“2(b) **“public duty”** means a duty in the discharge of which the State, the public or the community at large has an interest. Explanation.—In this clause “State” includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

2(c) **“public servant”** means,—

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority;

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorized by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorized or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any

other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority. Explanation 1.—Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not. Explanation 2.—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.”

12. This Court cannot ignore the fact that the Prevention of Corruption Act 1947 concerned, the definition of public servant was restricted to Section 21 IPC, but under Section 2(c) of PC Act 1988, the definition is some what different and the definition of public servant in Section 21 IPC is different from the definition of public servant in Section 2(c) of PC Act and it has to be taken note of in considering a particular person is public servant or not under PC Act as also laid down by the Apex Court in **Manish Trivedi Supra.**

From the above definition, every person performing a public duty by itself does not become a public servant. Any of the 12 clauses of Section 2 (c) of the PC Act, 1988 to call any person to a public servant required to be fulfilled.

13. From that coming to the status of the petitioner concerned, the petitioner is not in service or pay of any Government or remunerated by the Government by fees or commission for performance of public duty or in service or pay or local authority, Corporation established by or under Central or Provincial or State

Act, or an authority or a body owned or controlled or aided by the Government or a Government company or to pay a person holds an office by virtue of he is a authorized or required to perform any public duty. In **State Bank of India v. K.P. Subbaiah**⁷, the two-Judge Bench of the Apex Court relating to fixation of pay observed with reference to FR-9(21) in the judgment at Paras 15 to 21, which reads thus:

“In Service jurisprudence the expressions 'pay' and 'Pay scale' are conceptually different connotations. Pay is essentially a consideration for the services rendered by an employee and is the remuneration which is payable to him. Remuneration is the recurring payment for services rendered during the tenure of employment. Pay and salary are necessarily not interchangeable concepts. Their meanings vary depending upon the provisions providing for them.

As per Concise Oxford Dictionary 8th Edn. (1990), the word 'pay' in its ordinary significance in relation to service means "to give what is due for services done". However, in the Service Jurisprudence, the expression 'pay' has technical connotation of its own. Fundamental Rule 9(21) throws some light on this aspect. The definition itself is as follows:

"9(21)(a)- Pay means the amount drawn monthly by a Government servant as-

- (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reasons of his position in a cadre, and
- (ii) overseas pay, special pay and personal pay, and
- (iii) any other emoluments which may be specially classed as pay by the President."

There are different types of pay like substantive pay, special pay, additional pay, personal pay and presumptive pay.

Public services comprise of different grades and, therefore, different pay scales are provided for different grades. The pay of an employee is in that background fixed with reference to a pay scale.

⁷ (2003) 11 SCC 646

This is necessary to be done because the pay of an employee does not remain static.

It has to be noted that an employee starts with a particular pay which is commonly known as initial pay and the periodical increases obtained by him are commonly known as increments. When the highest point is reached, the concerned employee becomes entitled to what is known as ceiling pay. It is, therefore, a graded upward revision.

The fixation of pay scales is essentially a function of the executive. They are closely inter-linked with evaluation of duties and responsibilities attached to the posts and the pay scales are normally linked with conclusions arrived at by expert bodies like the Pay Commission.

The degrees of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the tasks, hazard attendant on work and fatigue involved are some of the relevant factors which go into the process of fixing the pay scale. [[See Delhi Veterinary Association v. Union of India and Ors.](#) (1984 (3) SCC 1)]”

From the above expression pay is essential consideration for the services rendered by an employee and to mean to give what is due for the services done though as per the FR-9(21-a) different kinds of pay referred also for different cadres or grades and the pay fixation is on the pay scale for uniformity.”

14. The two-Judge Bench of the Apex Court in **Union Public Service Commission v. Girish Jayanti Lal Vaghela**⁸, held that for statutory rules not permitting to extend the age of superannuation without compliance of Article 16 of the Constitution of India, a person, who was appointed for a short period of six months or till availability of a regular selectee, whichever earlier is practically on contract basis and as such he is not a Government servant and not entitled to relaxation under

⁸ 2006 (2) SCC 482

statutory provision the age of him to consider as regular employee. By referring to Articles 319 and 320 of the Constitution of India, by referring to earlier expressions in saying once a person is appointed to his post or office as a Government servant, he acquires the status and his rights and obligations are no longer determined by consent of parties but by statutory rules to be framed even unilaterally by the Government to say his status is not that of a contract but status attached to the legal relationship of rights and duties imposed by the public law but not by mere agreement. Thus, the employment under the Government is a matter of status and not contract even though the acquisition of status preceded by a contract, namely, allow the employee from selection in joining and person working on contract cannot be said to be a Government servant to claim relaxation of upper age limit.

15. In **S.S.Dhanoa v. Municipal Corporation Delhi and others**⁹, by three-Bench judgment of the Apex Court by referring to Section 21 I.P.C as to any sanction required for prosecution of a public servant under Section 21 I.P.C referring to Section 197 Cr.P.C, it was observed that a member of the Indian Administrative Service, whose services are placed at the disposal of a co-operative society (Super Bazaar) registered under the Bombay Co-operative Societies Act, 1925, is not a public servant during his period of deputation for not working as officer in the service or pay of the Government, but receiving the pay from the Co-operative society, which is not a Corporation established by or under the Act of the Central or State Legislature even to claim as public servant for requirement of sanction to prosecute.

⁹ AIR 1981 Supreme Court 1395

16. Coming to the expression relied on by the petitioner in **Shailesh Ramanlal's case (supra)**, of a single judge with reference to Section 2 (c) (viii) of the PC Act, 1988, the petitioner was a public servant working as a structural Engineer. He was appointed on Technical Committee constituted by Government of Maharashtra pursuant to the Government Resolution of 2007, scrutinizing of building more than 70 meters height facing allegation of demanded money in order to obtain clearance for high rise buildings though he was non-official member of the said committee appointed for three years. The role was purely advisory and the honorarium paid to him for every meeting did not come from Government, but from scrutiny maintained by the office of Municipal Commissioner and as such cannot said holding office of the public servant or employee in Government within the meaning of Section 2 (c) (viii) of the PC Act, 1988.

17. In **C.B.I v. Ramesh Gelli and others**¹⁰, it was held that the Chairman and Managing Director or Executive Director of the Private Bank operating under licence issued by R.B.I under the Banking Regulation Act, 1949, holds an office and performances public duty defined under Section 2 (b) of the PC Act, 1988, however, cannot be said to be a public servant within the meaning of Section 21 I.P.C. For I.P.C offences concerned, other than to the PC Act of , 1988, the offence under Section 2 (c) of the Act being a public servant for the purpose of P.C Act. It that discussion, it was held a person, who holds an office by virtue of which he is authorized or required to perform public duty, is a 'public servant' from the combined meaning of Section 2 (c) and 2 (b) of the PC Act,

¹⁰ (2016) 3 Supreme Court Cases 788

1988, and public duty having a bearing on public interest or interest of the community at large. Though mere performance of public duties by holder or any office cannot bring the incumbent as public servant, but for by reference to the office and duties performed in connection there with, should be of a public character to say performance of such public duty by a person, who is holding an office which requires or authorizes him to perform such duty is a *sine qua non* for application of definition of public servant for the purposes of P.C Act. It is observed, referring to **P.Venku Reddy's case (supra)**, para 12 of public servant defined in Section 2 (c) of the P.C Act, 1988, is required to adopt a purposive approach of the intention of the legislature to take an assistance, as it is with a much wider definition brought into force to purify public administration and as held in **State of Maharashtra v. Ramsing (supra)**, the definition of public servant under P.C Act deserves a wide construction. It is observed in para 36 referring to expression in **P.V.Narsimha Rao v. State**¹¹ para 61 and therefrom that the expression public servant to be understood by reference to the offence and the duties performed in connection therewith to be of a public character.

18. From this coming back to the facts, the proceedings of the State Project Director RVM (SSA), A.P. Hyderabad, dated 25.09.2010, speaks engaging site Engineers on contract basis by communicating list of selected candidates with reference to the Notifications of August, 2010, drawing attention of the Project Officer, RVM (SSA) Ranga Reddy District, in asking to enter into the agreement with candidates to work on contract basis and

¹¹ 2998 (4) SCC 626

payment of wages mentioned for Graduate Engineers (B.E/B.Tech) Rs.350/- per day not exceeding Rs.9800/- per month and for Diploma Engineers Rs.300/- per day not exceeding Rs.8400/- per month and for F.T.A. Rs.1000/- per month and copy of draft approval agreement with letter of intimation enclosed for action to complete the process and report compliance by 04.10.2010 with list of selected candidates and agreement form.

19. The note file of the Collector-cum-District Magistrate, Chairman, RVM (SSA), Ranga Reddy District, also speaks pursuant to the SPD RVM SSA A.P. Hyderabad, has instructed to appoint site Engineers to complete the works allotted within stipulated time of 31.03.2011 and instructed to appoint nine (9) site Engineers entrusted to Tiger Security services, who are in the field of security and manpower supply of employees on contract basis in requesting to send nine (9) qualified site engineers to work on contract basis upto 31.03.2011 or upto completion of the work, whichever is earlier to say from the said office note, dated 29.01.2011, 31.01.2011 and 11.02.2011 respectively with initials. It is to say only to a maximum of two and three months the appointments on contract basis terminated by 31.03.2011 at any cost even work not completed within that time. In the list it is mentioned Shaik Ibrahim, site Engineer having Diploma in Civil Engineering address not furnished, date of joining shows mentioned as 13.06.2011, the same is not found in consonance with the said proceedings of Collector-cum-District Magistrate in saying the request to send the qualified site Engineers to work on contract basis upto 31.03.2011 alone, whereas the appointment is subsequently on 13.06.2011 (joining) therefrom representation to

work on contract basis as site Engineers. The trap was on 24.05.2013 and the report of the complainant was, dated 22.05.2013 and there is no any order of appointment even fixing the remuneration by entrusting nature of work, much less to say the said joining and permitting to continue is from any extended time for the work to be completed or the contract employment to be terminated by virtue of proceedings of the Collector and District Magistrate before 31.03.2011 and joined on 13.06.2011, latter thereby by not pursuant to the above proceedings.

20. So far as the duties are concerned, not even specifically defined what to do for each and they were engaged by contractor and for their services paid by contractor and so, honorarium receiving from contractor after deducting commission even coming from Government funds and not direct to them much less by payment of any wage or salary or pay or remuneration direct. One such is the case, they are not the public servants particularly so far as the petitioner is concerned to attract any of the penal provisions under PC Act even from the wider definition of public servant defined under Section 2 (c) of the PC Act, 1988.

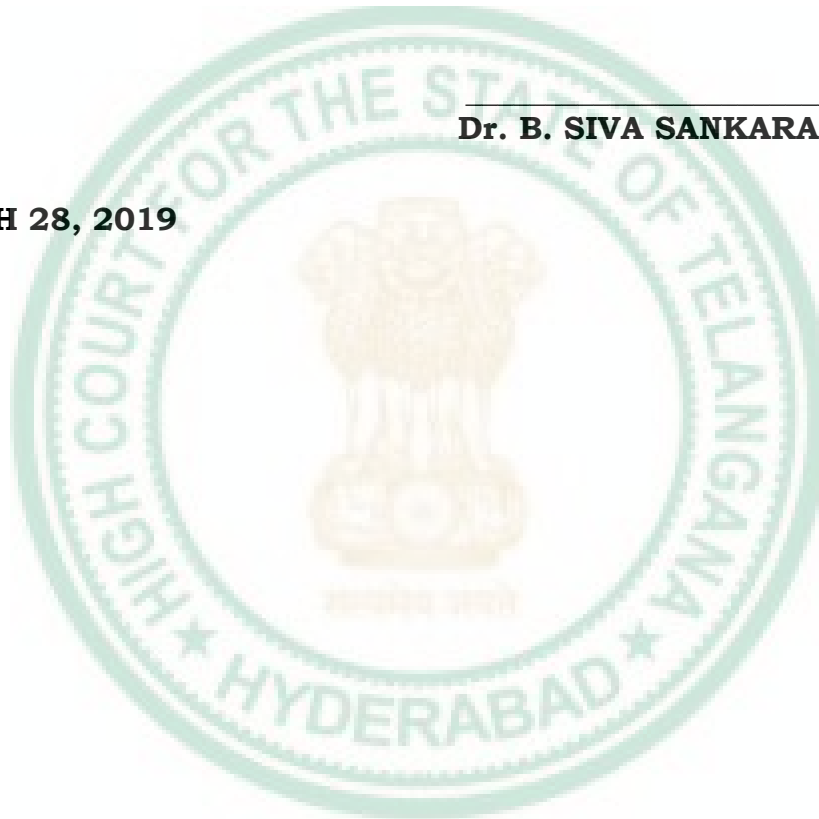
21. Having regard to the above and in the result, the Criminal Revision Case is allowed by setting aside the dismissal order, dated 24.04.2017, in CrI.M.P.No.41 of 2016 in C.C.No.61 of 2014 passed by the First Additional Special Judge for SPE and ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad, by discharging the petitioner/accused from the penal consequences of PC Act for not public servant, which is a pre-requisite to sustain any prosecution under Sections 7 and 13 of the PC Act, in which

cognizance for the offence taken against him by the learned First Additional Special Judge for SPE and ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad, with a direction to return the final report so that if any offence under I.P.C made out to represent before proper Court said final report to take cognizance for any such offence.

Miscellaneous petitions, if any, pending in this revision case shall stand closed.

Dr. B. SIVA SANKARA RAO, J

MARCH 28, 2019
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO



CRIMINAL REVISION CASE No.47 of 2018

Date:28.03.2019

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