HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.253 of 2019

ORDER :

The petitioner-Vittala Gopalakrishna, is A.1 out of two accused in C.C.No.178 of 2015 on the file of the Learned Special Judge for SPE & ACB Cases at Karimnagar, outcome of Cr.No.04/ACB-KNR/2013 of Anti Corruption Bureau(for short, 'ACB'), Karimnagar Range, Karimnagar, registered for the offences punishable Under Sections 7,12 and 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988(for short, 'the D.P.Act') on the report, dt.23.01.2013 of one Thorrikonda Srinivas S/o. Mallaiah, a Student, resident of Sulthanabad village and Mandal, Karimnagar District. The averments in the report speak that his father is in possession of agricultural land admeasuring Ac 0-30 Guntas and Ac 1-10 in Sy.Nos.531/A and 535/A situated outskirts of Gattepalli Village, Sulthanabad Mandal. Due to nuisance causing by the neighbouring agriculturists on boundaries, his father paid an amount of Rs.350/- on 20.06.2012 through challan and submitted a representation on 28-06-2012 to V. Gopala Krishna, Deputy Inspector of Survey, Peddapalli- the petitioner enclosing original challan, Photostat copies of pahani and pattadar pass book requesting to cause survey of their land and to fix boundaries. Though the petitioner assured to do so, despite their requests for 3 to 4 times, there was no response from him. Again on 07.01.2013 when the complainant requested the petitioner to survey and fix boundaries, he demanded an amount of Rs.10000/- as bribe to measure and demarcate the boundaries of the land. The report further reads that the defacto-complainant informed the accused for such demand of he suffered loss in cultivation and already indebted to many and not in a position to pay the bribe amount and requested to survey. However the accused bluntly stated that without payment, the work will not be done. The further averment is later he met thrice and reiterated the same. It is further averred that on 07.01.2013 he met the accused and pleaded for survey, he reduced his bribe demand to Rs.8,000/- else not to meet him. With no other go, he agreed to give Rs.8,000/- and cause fix date to measure and notices to give to boundary owners and asked to pay on 09.01.2013 evening at his office. He met him on 09.01.2013 accordingly and informed that he could not secure. The accused for that stated he was not coming on 10.01.2013 to cause survey. So again on 23.01.2013 he went to the accused and requested to fix date to pay on that day however the accused stated unless paid on 28.01.2013 not coming to cause survey. Hence to take action.

2. The report received as per endorsement of DSP, ACB, at Karimnagar on 23.01.2013 at 17.00 hours. However the FIR dispatched to the Court only on 28.01.2013 at 13.00hours as per the column No.15 of the FIR which is after 5 days. Leave about when the Special Judge received the FIR is not before the Court. The ACB Inspector, Karimnagar after investigation filed chargesheet dt.01.05.2015 against the petitioner as A.1 and another person as A.2 by name Kannam Rakesh.

3. The sum and substance of the chargesheet speaks that on 28.01.2013 at about 17.00hours a trap was laid against the petitioner at the RDO office, Peddpalli of Karimnagar District, and in the office, the L.W.1-the complainant made to enter into the office of the petitioner and in the meantime the trap party took vantage positions near the office and later at about 17.45 hours, the complainant came outside of the office and gave the pre-arranged signal to the trap party by wiping his face with handkerchief. The trap party along with the mediators rushed into the

office and the L.W.1-complainant informed that the petitioner accepted bribe amount and handed over the same to the A.2 and accordingly the trap party entered into the office and apprehended the petitioner including the A.2 near the seat of the petitioner and restricted the movements and when subjected for sodium carbonate solution test, the fingers of both the hands of the petitioner and A.2 yielded positive result. Then the L.W.14-Investigating Officer recovered the tainted bribe amount of Rs.8,000/- from A.2 kept in right side front pocket of his wearing pant and then got tested the left side pocket of A.2's wearing pant which contained tainted bribe amount, which turned into pink colour. The L.W.14 got transferred all the five resultant solutions into separate glass bottles and the sample of sodium carbonate powder in a separate cover, sealed them, labelled and seized the same along with the pant of A.2 by getting attestation of the mediators (L.W.10 and L.W.11) on it. When the L.W.14 asked the L.W.2, the immediate officer to the petitioner/A.1, to produce the connected documents, the L.W.2-G.Shankaraiah-Tahasildar produced the processing file of the L.W.1-complainant which contains 24 pages and the same were seized by the Investigating Officer, and took signatures of L.Ws.10 and 11 mediators on each and every page. The Investigating Officer also perused the Attendance Register of the office and found that signature was put by the petitioner/A.1. On enquiry it was disclosed that the A.1 is Executive Officer and was working on deputation and not putting his signatures in the Attendance Register and the LW-14 seized the copy of the Attendance Register, for the month of January, 2013 and took the signatures of LWs.10 and 11 on each and every page. Later when the LW-14 enquired L.W.1 what was happened after leaving the trap party, he stated that he entered into office of RDO Peddapalli and found both the petitioner and A.2 were present in the office and when entire Staff went out from the office, on the demand of A.1 he handed over the tainted amount to the A.1 who accepted the same and handed over the same to the A-2 to count and keep with him and A.2 did so and kept in the right side front pocket of his wearing pant. Later the A.1 prepared notices in the names of L.W.4-Bogiri Bheemaiah, L.W.5-Nallavelli Mallaiah, L.W.6 Thorrikonda Rayamallu and L.W.7-Rate Sadaiah by fixing date on 31-01-2013 to survey and gave them to the complainant to hand over to L.W.9-Sampath Kumar, VRO, Gattepally to serve them to concerned and also assured to survey and fix boundaries. Thereafter, the LW-I came out of the office and gave pre-arranged signal to the trap party. Then the L.W.14 seized the notices prepared by the A.1 supra and handed over to L.W.1 to hand over to L.W.11-Ellandula Yellaiah for serving to concerned. The L.W.14 also seized the tour diary of the A.1 for the month of January, 2013 containing one sheet and list of particulars of applications received from the seat of A.1 with the attestation of mediators. Then the L.W.14 examined the scene of offence and prepared rough sketch attested by mediators and arrested the A.1 and A-2 on 28-01-2013 and produced before the Court and later released on bail. Later, he examined and recorded under Section 161 CrPC statements of LWs.1 to 9 supra and also the Judicial Magistrate of First Class, Special Mobile Court, Karimnagar (LW-12) recorded the statement of L.W.1 U/s 164 CrPC on 08.02.2013 and forwarded the same to the Special Judge, supra. The Principal Secretary to Government, Revenue (Vigilance-I) Department, Telangana State, Hyderabad (LW-13), who is the competent authority to remove the A.1 from service, accorded sanction for prosecution of A.1 and for taking cognizance of the offence vide G.O.Ms.No.160, 09.09.2015. The trap amount was reimbursed to LW-I. It is clearly established that the A-1 with the assistance of A.2 demanded and accepted an illegal gratification of Rs.8,000/- other than legal remuneration from the LW-I on 28.01.2013 at the office of the RDO for doing an official favour to cause survey. Thereby, the A.1 committed the offences punishable u/s 7 and 13 (1) (d) r/w 13 (2) of PC Act and the A-2 committed an offence punishable u/s 12 of P.C.Act.

4. The chargesheet speaks the above facts with reference to the so called investigation and citing 16 witnesses. L.W.14 is the DSP who registered the FIR and examined and recorded the statement of L.W.1 and arrested the A.1 and A.2. L.W.15 is Inspector who assisted the DSP in laying the trap and examined and recorded the statements of L.Ws.2 to 9 and L.W.16 is successor to L.W.15 who filed chargesheet. Among the other L.W.8 is father of defacto-complainant, L.Ws.4 to 7 are so called nearby adjacent land owners of L.W.8, L.W.3 is Asst. Director of Survey & Land Records, immediate superior to A.1 and L.W.2 is the Tahasildar-Administrative Officer(for short, 'the AO') in the office of RDO, Peddapalli and handed over the processing file to the defacto-complaint pertaining to survey of his land at Gattepalli.

5. The contentions in the quash petition, impugning the proceedings in Calendar Case supra are that the chargesheet is not maintainable either in law or on facts as the same is devoid of merits, weight of evidence and probabilities of the case. The alleged bribe money was not seized from the petitioner and the Investigating agency failed to produce any material to show as to how the A.2 is connected with the case and the presence of A.2 at the alleged place of trap shows he was set up with no nexus between the petitioner-A.1 and the A.2. There is no material to establish that the petitioner received the application for survey of land from L.W.1-defacto-complainant on 28.06.2012. The statement of L.W.2-G.Shankaraiah-the AO, shows the application was handed over in the inward section and the documentary evidence covered by tour diary of A.1 establishes that he was on official tour to Bommareddypalli and the very demand of bribe is not

established prima facie. The statement of LW-1 that the petitioner issued notices to the neighbouring land owners on 7.01.2013 for survey of land on 10.01.2013 but the prosecution failed to produce said notices in the chargesheet along with other documents which gave suspicion to the genesis of the prosecution. The claim of the Investigating Officer-L.W.14 and LW-1 that due to non-payment of bribe amount by LW-1, the petitioner did not cause survey is false for the reason that the documentary evidence establishes that the petitioner was on tour and following the L.W.3-Assistant Director. The failure on the part of the L.W.1 to give dates and times of alleged demand except stating he approached the petitioner three times and all the time reiterated the demand of bribe, is false and the proceedings are nothing but abuse of process since there was no any demand much less acceptance. However, the unexplained delay of 7 months in approaching the ACB police from the date of alleged first demand of 28.06.2012 to the date of lodging report on 23.01.2013 is fatal so also the unexplained delay of 5 days in registering the case from the date of 23.01.2013 to the date of FIR i.e. 28.01.2013. Further there is no prosecution witnesses that spoke to the allegation of demand of bribe by the petitioner in their presence at any point of time to give credence to the L.W.1's version and the so called report of L.W.1 itself apparently manipulated one with false story by interpolation of date 23.01.2013 and amount of Rs.8,000/- to lay false trap to implicate the petitioner. The fact of absence of the petitioner in the office when the L.W.1 entered the office at 15.40 hours and again going into the office at 17:00 hrs and drafting of any proceedings by the DSP, ACB during the interregnum period gives raise to suspicion to the trap. The non-conducting of phenolphthalein test on the notices allegedly handed over by the petitioner to the L.W.1 immediately after receiving the bribe amount gives raise to suspicion. The documentary evidence that covered by tour diary dt.28.06.2012 establishes that the petitioner was on official duty to Bommireddypalli whereas L.W.1 claims that he met the petitioner on the above date at his office which is false so also the demand of the bribe. There is no mention of time, place of meeting of the petitioner by L.W.1 on 28.6.2012 and demand of A.1 for bribe amount of Rs.10,000/- stated in the 164 CrPC statement of L.W.1 shows that the L.W.1 did not meet the petitioner on the above date. As per the prosecution case, the bribe money was received by the petitioner-A.1 from the L.W.1 and counted and handed over to A.2 who kept the same in his pant pocket but in the 164 CrPC statement, it is clearly mentioned that the bribe money was received by A.2 on the instructions of A.1 and counted it and kept in his pant pocket which is contradictory to the so called acceptance and it is suffice to quash the proceedings. The fact of non-mentioning of presence of kerchief with L.W.1 before proceeding for trap in the MRI clearly goes to show no signal was given with kerchief and the proceedings are false. The L.W.1 falsely stated that he met the petitioner on 09.01.2013 on which day the A.1 reiterated the demand of bribe, but on that day the petitioner was on tour to Garripalli on office work that is borne out by tour dairy and thus the alleged demand is false. There is no mention in MRI that sodium carbonate powder was taken to the scene of offence and without which, no chemical test can be conducted and what is mentioned in MR-II that the D.S.P. got prepared Sodium Carbonate Solution in four glass tumblers separately with the help his staff and asked the petitioner and A.2 to rinse their hand fingers separately in the said four glass tumblers and upon which the colourless solution in the four glass tumblers turned into pink colour and the very procedure adopted testing the hand fingers of both the accused simultaneously is wrong and the said test is not accurate and liable to be rejected. The file relating to the survey of lands of L.W.1 stated as seized by DSP after trap from the possession of the Administrative Officer-L.W.2, clearly establishing that had the petitioner got any interest and demanded money from L.W.1, he would have kept the file with him. There is no intentional delay caused by the petitioner in causing Survey, since they are about 200 surveys relating to 8 Mandals of Peddapalli Revenue Division under the control of the petitioner and those pending files were long prior to the application of the L.W.1 which is borne out by the made up file No.5 produced along with charge sheet and hence continuation of proceedings is abuse of process of law. The ACB officials chose to falsely trap the petitioner by using the L.W.1 who is a rank criminal involved in number of criminal cases including a case in S.C.No.112/2013 on the file of Addl.Sessions Judge, Godavarikani in which he was convicted for life imprisonment and undergoing the sentence in central prison, Warangal. The ACB officials did not verify the antecedents of L.W.1 so also of the petitioner-A.1. The complainant is a criminal involved in a murder case covered by Cr.No.306/2010 of Godavarikani Police Station that was not even find place in the so called investigation and final report. Though verification of antecedents is mandatory, there is no record showing mediators to the panchanamas 1 and 2 obtaining necessary permissions from the superiors in attending pre-trap and post-trap proceedings. Further as per the Section 164CrPC statement of L.W.1 no written complaint was given to the ACB officials, Karimnagar against the A.1 and thus the very crime proceedings and pre-trap and post-trap proceedings are unsustainable including cognizance order of the learned Special Judge, from the police final report with no basis and there is no necessity to the petitioner to be put to ordeal of trial and to subserve the ends of justice, the case proceedings are liable to be quashed.

6. The counter filed by the respondent/(ACB Inspector) in saying from the investigation there is a sustainability of accusation from which the sanction order obtained and chargesheet filed and taken cognizance by the learned Special Judge in allotting Calander Case number supra. The Investigating Officer conducted proper investigation and prepared chargesheet that is forwarded to DG, ACB, who after examination forwarded the same to Government for sanction and sanction orders were issued from which the chargesheet filed in Court. As per mediators report, the A.1 asked the defacto-complainant whether he brought the demanded bribe amount and the complainant took the wad of currency notes from his left front pant pocket with his left hand and handed over to the A.1 who accepted the same with left hand and handed over to A.2 with his right hand with instructions to count and kept with him and the A.2 counted with his both hands and kept in his right front pant pocket. The mediators report to contain the proceedings with independent witnesses who are Government officials but there was no necessity to incorporate which is not happened. The ACB officials rushed to the office of the A.1, after receiving signal from the complainant, A.2 was present in the office of A.1 along with A.1, but if the A.2 was unknown to A-1 how and why the A.2 was present in the office of the A.1 along with A.1 after office hours and in the post trap proceedings, the A.1 did not take a plea of he did not know the A.2 and if the A.2 was unknown to him, he would have told and there is no need for ACB officials to set up the A.2 and there is no enmity or previous acquaintance between the A.1 and the ACB Officials, to accept such a false contention in the quash petition grounds. The L.W.2 nowhere stated in his 161 Cr.P.C. statement that the application was handed over in the inward section, just he disclosed the procedure of processing file for survey of the land and fixing the boundaries. The A.1 was trapped on 28-01-2013 and

requested him about his work, but the A.1 officially received the file on 02-07-2013 and kept pending the file with him for 06 months in order to obtain illegal gratification. As per the 161CrPC statement of witnesses with reference to the documentary evidence on record, the A.1 issued notice dt.10.01.2013 for survey and demarcation of boundaries but did not visit the field as the complainant did not arrange the bribe amount prior to that and if he did not demand the bribe amount, he would have visited the field to conduct survey on 10.01.2013. The office of A.1 was at Peddapally. The distance between Peddapally to Bommareddypalli is about 32 Kms and as per the tour diary on 01.01.2013 to 31.01.2013(File No.4) the A.1 wrote on 10-01-2013 to survey the land at Gattepally in Sy,Nos.531 and 535 and strike off. It seems that the A.1 fixed the date for survey and issued notices Dt.10-01-2013 and when L.W.1 failed to provide the demanded bribe amount on prior date, he did not visit the land for survey. As per documentary evidence on record, the A.1 fixed date for survey on 10-01-2013 but as per complaint version, when he failed to provide bribe amount on 09.01-2013, he did not conduct survey on 10-01-2013. If the A.1 was on tour and followed the Assistant Director, he would have informed the same on previous date, but he did not do so. When the L.W.1 did not provide the demanded bribe amount, the A.1 strike out the entire row of Dt.10-01-2013. If the L.W.1 had an intention to trap the A.1, he would have remembered exact date and time but he was willing to get his work done by the petitioner, as such he met the petitioner about 2 to 3 times, when he made rounds, he vexed with the attitude of A.1 as he was reiterating his earlier demand for which he approached the ACB officials. If the complainant wants to get to trap the A.1, he would have approached the ACB officials on the very next day itself when the A.1 demanded the bribe amount to do official favour. The L.W.1 was roaming around the A.1 from

28-06-2012 till the date of trap and A.1 was avoiding to survey after fixing the date for survey in order to obtain illegal gratification. After 28-06.2012 the L.W.1 met the A.1, two or three times but the A.1 reiterated his earlier demand. Again the L.W.1 met the A.1 on 07-01-2013 about his work and after persistent request, the A.1 reduced the bribe amount from Rs. 10,000/- to Rs. 8,000/- in fixing date to survey on 10.01.2013 for non-payment by 09.01.2013 by the L.W.1. On 23.01.2013, the L.W.1 requested the A.1 to fix date so that he can arrange the amount on that day and the A.1 stated unless pays the bribe amount, he will not fix date and on 28.01.2013 when the L.W.1 paid the amount, the accused fixed date and issued notices and the L.W.1 in his examination before the Investigating Officer before the Magistrate stated in support of his report. Thus There is no any non-explanation of delay of 05 days. If the A.1 did not receive bribe amount, why both hand finger wash of A.1 who was subjected to chemical test yielded positive result. The tour diary of A.1 clearly proves the payment was accepted on 10.01.2013 for survey as per the complaint for non-payment of bribe amount by 09.01.2013 and if really the A.1 went along with the Assistant Director for survey, he would have informed to the neighbouring land owners by issuing notices to whom the A.1 issued notices that he would not be coming for survey, but he did not do so which shows he demanded and it was not meted out and the statement of neighbouring land owners established the same. There is no previous enmity or acquaintance between the ACB officials and the A.1 and no necessity for ACB officials to file false trap against the A.1 and no need to interpolate the date and bribe amount. During the post trap proceedings, when both the hand fingers of A.1 were subjected to chemical test and it yielded positive result, the recovery was made from the pant pocket of Personal Assistant of A.1. When gone through the connected file which was seized during the post trap proceedings, the A.1 kept the file pending with him at about 6 months. All the material collected during the investigation proved the allegation against A.1. Therefore the ACB Officials laid trap against the A.1l by manipulating the report is false and baseless. The absence of A.1 at 15.40 hrs and was seen entering into the office at 17.00 hrs, was disclosed by both mediators in the MR-II proceedings. During the interregnum period no need to draft proceedings, when there were no specific events and happenings and the contention in this regard is false and baseless. After giving signal by L.W.1, the trap party rushed into the office of the A.1 and while entering so, the DSP, ACB instructed L.W.1 to wait outside in a little distance for some time. The DSP, ACB did not know about the handing over notice by the A.1 to the complainant after accepting of bribe amount. The DSP ACB came to know about the above fact while recording the version of L.W.1 who went into the office of A.1 with tainted amount only which was kept by Police Constable, except that nothing carried by him which seems that after accepting bribe amount, the A.1 handed over notices to him. The phenolphthalein test conducted on the hand fingers of A.1 and pant pocket of A.2 is sufficient and the contention of the A.1 thereby in the quash petition is untrue. The L.W.1 never stated either in the trap proceedings or in his statement before the Investigating officer or Magistrate of he handed over the bribe amount to the A.1, in turn A.1 counted and gave it to the A.2 and on the instruction of A.1 for A.2 counted it and kept in his pant pocket, what L.W.1 stated is the A.1 took with his left hand and handed over to A.2 with his right hand to count and keep with him. The mediators report with one of pre-trap proceedings speaks about instructions of DSP where in case the DSP demands and accepted tainted amount asked L.W.1 to give signal by wiping his face with kerchief, it shows that he got handkerchief and non-mentioning of kerchief with the L.W.1 in the trap proceedings is not fatal. The distance between Garrepally to office at Peddapalli is at about 21 kms. The A.1 might have gone there and returned to office within one or two hours and tour diary did not contain time of visit to Garrepalli. The post-trap proceedings contains what was happened after the trap laid and tainted currency seized and the contra-contention of the A.1 in the quash petition is untrue. If the petitioner got 200 survey files pending, why he fixed date on 10.01.2013 but for L.W.1 could not provide bribe amount as demanded in not conducting. The L.W.1 merely because involved in SC No.112 of 2013 and convicted when he was on bail by the time report given to the ACB officials and at the time of trap the L.W.1 was studying LLB, at KMR Law College at Hyderabad and prior to one year back he was convicted in S.C.No.112 of 2013 that is after four to five years of trap. The Kerala High Court in K.Balaji Agarwal Vs. State of Kerala dt.26.10.2010-held that the complainant involved in other cases and not a person of good character not by itself a ground to reject the complaint. The ACB officials conducted discreet enquiry with regard to the genuineness of the report, reputation of A.1 and antecedents of L.W.1 and found the contents of the report, genuineness and antecedents of L.W.1 are good and reputation of A.1 is suspectable, leave about the criminal conduct of L.W.1 will not have any impact on the trap proceedings, the L.W.1 in his statement before the Magistrate stated that during pre-trap proceedings, DSP introduced the Government employees as mediators and gave copy of complaint to the mediators who confronted the contents to L.W.1 which shows without lodging a report by the L.W.1 what is need to ACB officials to lay trap and the contentions are therefore false and there are no grounds to quash the proceedings that too after commencement of the evidence of L.W.1 as P.W.1 in chief in part by posted for further chief-examination.

7. Heard both sides at length with reference to the above and perused the entire material on record.

8. So far as the first contention of maintainability of the quash petition from the version of L.W.1 was examined in chief in part as P.W.1 and taken time for further chief examination that is not a bar as quash petition can be filed at any time after registration of the FIR and before end of trial and the same truth was reiterated by the Apex Court in Umesh Kumar Vs. State of AP[1].

9. Undisputedly, as per the constitution Bench expression of the Apex Court in Lalita Kumari Vs. State[2] it is the duty of the ACB officials in the cases under the PC Act, to verify the antecedents of the accused officially. In fact once the report was received on 23.01.2013 as per the very version of the prosecution from the endorsement on the report page No.2, the endorsement on 23.01.2013 at 17hours speaks informed the above facts and contents to Joint Director, ACB, Hyderabad over phone and as per his instructions further action will be taken after due verification of the reputation of the officer. The very endorsement itself is sufficient to say antecedents of the complainant not at all verified. What is mentioned in the counter to the quash petition saying as if antecedents of the complainant which verified and good and nothing but false per se that too when admitting the L.W.1 is involved in a murder case covered by Cr.No.306 of 2010 in S.C.No.112 of 2013 on the file of the Addl. Sessions Judge, Godavarikhani, thus by the time of the report dated 23.01.2013 referred supra by L.W.1 received by the DSP-L.W.14. there is a charge sheet filed and committal proceedings pending if not Sessions Case number outcome of Cr.No.306 of 2010 of Godavarikhani and it could have been revealed at the antecedents of the informant which is supposed to be

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[1] 2013 (10 SCC 591.

[2] (2014) 2 SCC 1

verified as per the expression of the Lalita kumari supra even otherwise allegedly verified, baseless to say as if good antecedents despite the crime admittedly pending from 2010 from very counter version. There is nothing to show either from the pre-trap proceedings or in endorsement by the DSP or the Inspector, after 23.01.2013 before registration of crime on 28.01.2013 if at all the antecedents of A.1 verified as to what was his previous history. The mere mention in the counter as antecedents are suspectable is nothing but false and baseless in the absence of any whisper by any record including in the police final report. The ACB officials abdicated their mandatory responsibility on verification of the truth of report before laying trap so also antecedents of the complainant first than that of the alleged accused which are liable to be verified as per Lalita Kumari supra. As per the expressions of the Apex Court in P.Sirajuddin Vs. State of Madras[3] whatever be the status of a public servant, is publicly charged with acts of dishonesty etc., which amount to serious misdemeanour or misconduct under the PC Act of any type of allegation in the case and the first information is lodged against him, there must be some suitable preliminary enquiry into the allegations of a responsible officer. The lodging of such a report against a person, specially one who like the official occupied top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to in general. If the Government had set up a vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner. It is observed further that the officer who is conducting discreet enquiry on the allegations in the report against the public officer, must not act under any

[3] AIR 1971 SC 520

pre-conceived idea of guilt of the person whose conduct was being enquired into or pursue the enquire in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful validity or sanction. It is categorically observed that the means adopted no less than the ends to be achieved must be impeccable. In Lalita Kumari supra, further held that neither the chargesheet nor the FIR, referred any role much less advertent antecedents of the A.1-petitioner. From the above, it is clear that there is nothing to show any bad antecedents of the petitioner/A.1 and there is criminal record of the informant-L.W.1 who was accused of a grave crime of murder which occurred nearly three years prior to the said report which gives impact on the credibility of the version of L.W.1.

10. In fact, the very report of L.W.1 received by the L.W.14 on 23.01.2013 speaks the L.W.1 is a student aged 25years and not even mentioned as cultivator. His father Mallaiah is alive and examined as per the prosecution as L.W.8. The counter filed by the ACB Officials shows the L.W.1 is a law student. Even the L.W.8-Mallaiah, father of L.W.1 shown aged 60 years, a retired employee in Singareni calories. Thus the L.W.1 and 8 are not laymen but educated and know men and matters. In this background, the Court has to consider the material to see any justification or not to lay trap proceedings.

11. From the above, the very report of L.W.1, dt.23.01.2013 speaks he applied and obtained challan for Rs.350/-dt.20.06.2012 for the purpose to cause fixating of boundaries of the land of his father and therefrom he says that he approached the petitioner/A.1-Deputy Inspector of Survey. In fact, the proceedings of the RDO, Peddapalli dt.30.06.2012 speaks G.Mallaiah(L.W.8 not L.W.1 his son) filed a petition before the RDO for demarcation of his land by paying Rs.350/- towards challan No.5106,

dt.20.06.2012. Therefore, the A.1 has to conduct survey to demarcate within seven days. The proceedings of the RDO were issued on 30.06.2012 for the first time bearing No.C/3313/2012 addressed to the A.1 and copy marked to Mallaiah-L.W.8. This clearly shows the very version of the complainant-L.W.1 of he addressed application to the A.1 on 28.06.2012 is false. In fact, his father Mallaiah that applied to RDO. Further it is the proceedings of RDO, dt.30.06.2012 to complete the survey and demarcation within one week. Once a copy of it marked to L.W.8 and if at all prior or after 30.06.2012 L.W.8 would have approached the A.1 if not on his behalf by the L.W.1 within one week therefrom, to say in the first week of July, 2012 itself. If at all the survey was not conducted from the time fixed by the RDO, L.W.8, father of L.W.1 being a retired employee in Singareni Calories and the L.W.1 leave about his antecedents are accused in murder case of 2010 a student of law, should have approached the RDO, with a complaint for non-completion of work. What the FIR says is for the first time the L.W.1 met A.1 on 07.01.013 which is nearly six months after RDO Proceedings and there is no meaning to believe said version of him in the report of meeting after such a long time that too in saying allegedly met on 28.06.2012 itself having given the application for survey and the A.1 allegedly demanded bribe and reiterated when six months later as referred supra. The very giving of application by the L.W.1 to the A.1 on 28.06.2012 to cause survey of his land is false as application given by the L.W.8 to the RDO and the RDO directed on 30.06.2012 the A.1 to conduct survey and demarcate within one week and marked copy to the L.W.8. Had the veracity of the complainant verified by the ACB officials, the very report shows something is behind and untrue for very giving of report on 28.06.2012 approaching the A.1 by L.W.1 to survey is false so also on that day the demand by the A.1 to L.W.1. In this context it is also to mention that it is not the prudence of a common man to infer u/sec.3 of the Indian Evidence Act, of keeping quiet even demanded on 28.06.2012 when approached by L.W.1 to A.1 with application for survey, Rs.10,000/- as bribe, keeping quiet if at all not willing and if at all to pursue in his case as to when subsequently he met was in between 7.01.2013 in 6 months gap allegedly thrice he did not mention where, when, how and what is the version of accused for nothing to say in between also any such demand and for nothing to say despite repeated demands more than thrice why he again approached on 07.01.2013 and why he did not give any report, leave about no application for survey allegedly given by the L.W.1 to A.1 on 28.06.2012 filed. Neither L.W.8 nor L.W.1's complaint to RDO for survey is not filed if at all pursuant to the proceedings of RDO, dt.30.06.2012. Even coming to the FIR version in its background in addition to the above showing hard to believe said version of complainant for no ordinary prudent man will act in such a way and even taken for arguments sake, he went again on 07.01.2013 despite several repeated demands by the A.1 of Rs.10,000/- bribe and persuaded to pay Rs.8,000/- and agreed for it to fix date as 10.01.2013 to pay amount by 09.01.2013. Admittedly he did not pay by 09.01.2013. What could be his conduct if not paid on 09.01.2013 pursuant to the demand on 07.01.2013 fixing the date of survey on 10.01.2013 to payment on 09.01.2013, he should have at least approached the ACB officials or RDO for not conducting survey despite proceedings, dt.30.06.2012 to conduct within one week. It is hardly believable of even no survey conducted pursuant to the notice dt.10.01.2013 for the alleged non-payment of the bribe amount on 09.01.2013 as agreed by the L.W.1. There is no meaning in his waiting till 23.01.2013 in giving report to the ACB officials after 10.01.2013 for about 13 days. Not only that, the so called notice fixing date for survey 10.01.2013 issued and even mentioned in the tour diary of A.1 of time fixed to conduct survey on 10.01.2013 it was stated struck off the date accepted to conduct survey on 10.01.2013. It is not even the case of the ACB officials despite quash petition averments of therefrom about 100 applications for survey and demarcation pending entrusted to him by the RDO and he has to proceed in priority and application of the complainant is far below in priority. Once such is the case even any date tentatively fixed to the complainant, how the ACB officials can say in the chargesheet without basis as if the version of the criminal antecedents of L.W.1 good who did not show about applying in writing to A.1 much less on 28.06.2012 but for his father L.W.8 that too to the RDO in fixing the date for not even conducted, instead of approaching the RDO approaching to A.1, can give to the alleged inference of giving amount of bribe of Rs.8,000/- agreed by L.W.1 to A.1. It is baseless inference that no prudent man would give but for otherwise and it if at all aggrieved by the L.W.1, what could be his conduct of a prudent persons immediately after 10.01.2013 having bribe amount to approach the ACB officials instead of waiting for 13.06.2013, that itself shows something behind to implicate the petitioner by the L.W.1 with criminal antecedents taking advantage of his father applied to survey to the RDO in 2012 with challan dated 20.06.2012 for which the RDO fixed by proceedings dated 30.06.2012 to conduct survey within one week therefrom for A.1 busy with other applications and tours could not conduct survey for such animosity and also behind, the investigation is totally tainted and influential and prejudicial mind including with no preliminary enquiry which is prior to what is laid down by the expressions of the Apex court in Sirajuddin and Lalita Kumari supra. Not only that before coming to the allegations of trap, a perusal of the FIR no way mentions that any GD entry made even information received on 23.01.2013 at 17.00 hours by the L.W.14 despite the expressions of the Apex Court Constitution Bench Lalita Kumari supra making of GD entry and conducting of trial and enquiry, it clearly shows some report with ante-date with some extraneous reasons apparently outcome as if received on 23.01.2013 in laying trap and registration of crime on 28.01.2013 and subsequent dispatch of FIR.

12. Not only that if at all on 23.01.2013 report received, leave about the alleged statement if not from alleged enquiry of the antecedents of the L.W.1 good and the accused are suspectable, why the FIR not registered and submitted to Court when shows a prima facie accusation if not chosen to make GD entry and straightaway issued the FIR. There is nothing even as to what is the enquiry conducted and who conducted with regard to the antecedents of the complainant after 23.01.2013 which must find place in the chargesheet with some basis leave about at least in FIR with a note which is lacking to say the ACB officials proceeded with pre-judicial mind from beginning either for statistical purpose or otherwise, rather than conducting preliminary enquiry supposed to conduct on receiving report if at all received on 23.01.2013 leave about no meaning waiting to lay the trap after 5 days till 28.01.2013. In fact, the statement of L.W.3-Assistant Director who is immediate superior to A.1 as if stated of A.1 failed to visit the land and conduct survey as fixed on some pretext and demanded Rs.8,000/- as bribe from the complainant, a law student, for demarcation of their land and was trapped for not even witness to any of it, not even a case that the antecedents of A.1 are bad and earlier there are no such complaints or he was earlier even indulged in such extraneous demands or avoiding work. It is nothing but introduced as if their statement by mentioning name of the witnesses to suit the prosecution purpose as a basic preparation on its face from its reading. The duties of the Deputy Inspector of Survey-the petitioner mentioned are that Inspection of the

work of Mandal Surveyor, Town Surveyors, Special Surveyors, Technical Scrutiny of Sub-Division records and supervision of incorporation of changes in both village and Mandal level records, overcheck of plotting sub-divisions in Villages/Mandal records, Detailed and general check of village accounts, scrutiny of survey errors, detection of missing Theoldolite section, Enquire into complicated boundary disputes, Inspection of village stone depots, appeal cases on 'F' line/demarcation, court commissions, monthly review of progress of work of Mandal Surveyors and passing of diaries of Mandal Surveyors/Special Surveyors through centre check and Attending inspection of Revenue and Survey Officials. Had it been taken true, there is no necessity of any duty to the A.1 to conduct field survey and demarcate the boundaries but for to depute the subordinates viz; Mandal Surveyors, Town Surveyors and Special Surveyors etc., in his Range or Division and is it believable that the A.1 has to conduct survey?. Coming to L.W.2, the Administrative Officer stated that he is working only from 27.06.2012 in that capacity usually any pattadar to get boundaries of his land fixed has to pay challan of Rs.350/- and give along with representation in the inward section of the RDO office and from those the papers will be sent for signature of RDO and after RDO signature, that will be sent to C-wing to Junior Assistant who puts up file and sent to the Deputy Inspector of Survey with memo to fix boundaries and report. Then the Deputy Inspector prepares notices to be issued to the adjacent pattadars and hands over them to the concerned surveyor and the Deputy Inspector visits to the land and cause survey on the scheduled date and time in the notice. This statement itself is crystal clear that the role of the Deputy Inspector is only after receiving proceedings from the RDO office, fix date and send notices to adjacent land owners and depute a surveyor to conduct survey. Thus what the complainant averred of the so called investigation of the ACB officials disclose that the A.1 has to conduct survey and wanted to conduct survey and failed to come on the scheduled time and date in the notices fixed for the survey on 10.01.2013 and it might be for the reasons of alleged non-payment of alleged bribe amount is baseless and the mechanical investigation by the ACB officials is without even little application of mind to the material.

13. Not only that coming to the report of the defacto-complainant, the statement recorded by the L.W.14 and by the Magistrate L.W.12 under 164CrPC respectively concerned, his report referred supra further speaks the most unbelievable part of allegedly he went on 28.06.2012 and the petitioner demanded the amount of Rs.10,000/- and later thrice went and reiterated the demand allegedly on 07.03.2012 again went after six months gap to the original date of 28.06.2012 and from his plea and bargain, reduced the demand to Rs.8,000/- allegedly fixed to pay by 09.01.2013 and as failed to pay and allegedly he could understand for survey not conducted on 10.03.2013 without payment he will not conduct survey. Even then that too being a law student not a layman why he did not approach in writing either RDO or ACB officials immediately what made him to wait. Even coming to his version, it is 13 days later again went and asked to fix date for survey is meaningless for not even his case that on that he paid amount and therefrom any notice issued to conduct survey. It is his version that it is only then he went to the ACB officials. It is hardly believable from what is discussed supra. Further when the tour diary itself shows the A.1 was on tour on 23.01.2013, it is difficult to say without ascertaining from the L.W.1 what is the time, when and where he met A.1 on that day. In fact, notice for conducting survey and boundary demarcation issued on 24.01.2013 fixing the date 31.01.2013 and copy marked to L.W.8, Tahasildar, RDO and the boundary proceedings by referring earlier RDO

officers in letter and directing demarcate. Once notices issued on 24.01.2013 itself with the signature of A.1 fixing the date of survey on 31.01.2013, is it believable of date fixed for payment of the bribe on 28.01.2013. Is it believable of earlier even date fixed for 10.01.2013 subject to payment by 09.01.2013 and for not paid, having cancelled the so called survey as per the alleged versions, issued notice fixing a date without payment of bribe. Despite the above version thereafter even when went and asked, A.1 stated without payment survey not be conducted when survey not chosen to be conducted, is it believable of notices issued.

14. The very giving of notices of 24.01.2013 fixing date on 28.01.2013 itself shows the alleged demand in between to fix on payment 28.01.2013 is nothing but false so also need to give report on 23.01.2013 and even the antecedents of the complainant, truth of the complaint, whether notices sent or not, what is the date fixed for survey were verified, it could be known of the notices dated 24.01.2013 which is immediately on the next date of the report dated 23.01.2013 and four days prior to the so called trap on 28.01.2013. Thus the very version of payment of amount fixed on 28.01.2013 is baseless to believe. When that is the version highly unbelievable from the very report, coming to the statement of L.W.1-complainant before Investigating Officer, he did not even whisper that notices dated 24.01.2013 issued by the A.1 and also none of the witnesses up to L.Ws.4 to 8-the father of the complainant and the boundary owners, fixing the date of survey on 31.01.2013. The Investigating Officer not properly investigated much less collected either from L.W.1 or 3 the so called written report of L.W.1 to A.1 on 28.06.2013 or written requisition of L.W.8 to the RDO from which the RDO fixed by proceedings dated 30.06.2012 directing the A.1 to cause survey within one

week and as per the statements of L.Ws.2 and 3, the A.1 is the supervisory authority among the surveyors to depute the surveyors to the field to cause survey and not the person so to conduct survey and no direct application to A.1 that could be made but for to the RDO and from which after they process, they direct the Deputy Inspector to cause survey is the A.1 to depute any of the surveyors. Thus entire version in very report and the statement of L.W.1 and L.Ws.4 to 8 in this regard besides no consistency is quite unbelievable. Coming to his 164 CrPC Statement before the Magistrate, it is also not consistent to the report supra for the reasons supra and also from what is contended in the quash petition grounds for the respondent officials to dispute with no basis, of so called meeting of the L.W.1 to A.1 not correlating with as pointed out in ground Nos. 11 to 17 in the quash petition.

15. From the above, even coming to pre and post trap proceedings importantly the tainted currency according to the prosecution version given to the L.W.1 to pay to the A.1. According to the post-trap proceedings, the LW.1 allegedly given to the A.1 with his hands. If true, the Phynapthaline test to be conducted to rinse his hands also to get positive result, that was not shown conducted and not only that if at all the tainted currency held by him with his hands and handed over to the A.1 and with them wiped out his face with kerchief, the kerchief must have remnants of the material which is on the tainted currency through hands to the kerchief to pass, the kerchief also was subjected to Phynapthaline test that was not done. Not only that there is a delay of 10 days to the examination of the L.W.1 u/sec.164 CrPC with version therein different to the FIR and 161 CrPC statement before the L.W.14. The two versions one showing as if L..W.1 directly paid to A.1 and who held with one hand and pass to A.2 or directly asked to pay to A.2 or A.2 received and counted that also belies

the very versions on the credibility and genesis of the prosecution. Once such is the case, any version of so called Phynapthaline test as if conducted and yielded positive result is unbelievable. Can it infer any demand which is pre-requisite without which even any person accused to so called cause and wanted to pay and even held for the time being and not chosen to receive would not be inferred the demand and acceptance from the so called test results. A test result to the hands of A.2 or tainted currency in his pant pocket will no way suffice to fix the A.1 as a person demanded and accepted any bribe which is a pre-requisite. The L.W.8 statement is only hearsay. It is not even his case that he went along with L.W.1 as no independent means. It is not even the case of L.W.8 that he has given the amount to L.W.1 to pay the bribe which are also contextually relevant. Not only that, the version of the Investigating Officer of immediately after the so called payment of bribe amount either to A.1 or at his instructions to A.2 by L.W.1, the A.1 allegedly prepared notices and handed over to L.W.1 fixing date for survey in a future date. Had it been true, immediately after payment by the L.W.1 holding that the tainted currency if held, the paper prepared immediately by the A.1 and given to L.W.1 that also would contain the substance of the material which was also supposed to be subjected to the test. Not only that the post-trap proceedings no way contain that which is crucial that it is a version created otherwise. The contention in the counter as if L.W.14 asked the L.W.1 for time being to wait outside and conducted post-trap proceedings and does not know to mention about the tour as notices handed over by the A.1 to L.W.1 to cause survey fixing a future date concerned, even it relates to notices dated 24.01.2013 fixing date on 31.01.2013. At least if it is true, the L.W.14 could know by ascertaining from the L.,W.1 what happened, the so called examination of the L.W.1 by the L.W.14 u/sec.161 CrPC is even alleged on 28.01.2013 what is mentioned is the A.1 told that he will issue notices to neighbouring agriculturists on 31.01.2013 at 10.00A.M. for fixation of boundaries to be completed on that date and he took photostat copies of the same and stated to handed over to the VRO and inform to serve to boundary owners, then came outside and wiped off his face with kerchief as a signal for the trap party. Had it been true, the notices on his hand besides kerchief which is apparent, could it be possible to L.W.14 at least to ask if before trap or immediately after trap and caught hold of A.1 or A.2 from L.W.1 to know what are the papers, could it be believed that the L.W.1 was kept out of the area even after completion of the post-trap proceedings. All these infirmities goes to the root of the matter. In fact the Apex Court Constitution Bench in P.Sathyanarayana Murthy Vs. District Inspector of Police State of Andhra Pradesh[4] to Sections 7 (1) (d) of the PC Act, referring to Section 13 of the PC Act, acquitted the accused on the ground of quality and decisiveness of the proof of demand of illegal gratification and acceptance of bribe in a trap cases where even tainted currency allegedly recovered and Phynapthaline test yielded positive result by saying proof of demand of illegal gratification. Even if evidence of accused as accepted tainted currency, on the face value it falls short of the quality and decisiveness of proof of demand of illegal gratification. Thereby the accused cannot be found guilty for prosecution failed to prove both the demand and acceptance.

16. In B.Jayaraju Vs. State of AP[5] for the offences u/sec.7,13 (1)(d) read with 20 of the P.C.Act, where the accused was prosecuted based on a report and when there is no proof of demand for illegal gratification even mere recovery of tainted currency notes from accused did not establish commission of offence and as demand of illegal gratification when not

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[4] (2015) 10 SCC 152
[5] 2014 (13) SCC 55

proved beyond reasonable doubt, the accused cannot be convicted and it must be proved pursuant to the demand there was acceptance by voluntarily accepting money knowing it to be a bribe to constitute the ingredients of Section as held by the earlier expression of the Apex Court in C.M.Sharma Vs. State of A.P.[6], C.M.Girish Babu Vs. CBI,[7] that was placed reliance to quash the proceedings and the same is also the position of law reiterated in Mukhtiar Singh Vs. State of Punjab[8] and State through CBI Vs. Dr.Anoop Kumar Srivastava[9].

17. Having regard to the above, as the ends of justice are more than sacrosanct, to subserve the ends of justice and to prevent abuse of process, the criminal proceeding pending against the petitioner are liable to be quashed.

18. Accordingly the Criminal Petition is allowed by quashing the proceedings in C.C.No.178 of 2015 on the file of the Learned Special Judge for SPE & ACB Cases at Karimnagar, outcome of Cr.No.04/ACB-KNR/2013 of Anti Corruption Bureau (for short, 'ACB'), Karimnagar Range, Karimnagar. The accused is acquitted and his bail bonds shall stand cancelled.

Consequently, pending miscellaneous petitions, if any, shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

Date:08.04.2019
vvr

[6] 2010 15 SCC 1
[7] (2009) 3 SCC 779
[8] 2016 11 SCC 357
[9] 2017 15 SCC 560