

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Revision Case No.1091 of 2013

ORDER:

The petitioner-Rama Krishna Kavuri of Bagh Lingampally, Hyderabad is accused in C.C.No.49 of 2005(R.C.No.35(A)/ 2004) on the file of the Principal Special Judge for CBI Cases, Hyderabad, outcome of crimes registered by CBI/ ACB Police, Hyderabad for the offence u/ Sec.7 and 13(2) of Prevention of Corruption Act, 1988 (for short 'the P.C.Act') and (ii) C.C.No.22 of 2006 (R.C.No.2(A)/ 2005) for the offence under Section 13(2) r/w 13(1)(e) of P.C.Act, while the petitioner was working as Director, Airport Authority of India, Begumpet, Hyderabad during the year 2004 with the allegation that while he was working as Airport Director, he demanded bribe from Shailendra Oja, proprietor of M/s.Music World, Hyderabad for extension of time to pay security deposit and licence fee for operating two Video/ audio CD stalls in the airport premises. In that context, the respondent-RM Khan, Deputy Superintendent of Police(DSP), CBI Mumbai, on the directions of SP,CBI, registered the crime having laid a trap against the accused on 27.11.2004 successfully and conducted a search and seized cash, articles, documents and some files and therefrom as per directions of SP, CBI, E.K.Anuj Kumar, the Inspector of CBI, registered the other crime supra in both the cases as referred supra and filed chargesheet and the Special Court supra taken cognizance of one case covered by trap and the other for disproportionate assets. The trap case C.C.No.49 of 2005 was ended in conviction on 28.07.2010 and the case of disproportionate assets C.C.No.26 of 2006 was ended in acquittal on 22.11.2011.

2. Further in the factual scenario, the petitioner filed CrI.M.P.No.____/ 2013 (SR No.420/ 2013) under Section 195(1)(b) (i)(ii) and (iii) r/w.340(1) CrPC, in saying said R.M.Khan-P.W.4 in C.C.No.49 of 2005 (Trap Case) deposed in his cross-examination as *"he has taken telephonic clearance from the then SP, CBI for search of house of the accused as the search was conducted immediately after the trap which was in the night and, therefore, I could not go and obtain the written permission"* and further *"No written permission taken from my the then SP, CBI for searching the office of the accused in the morning hours of 25.11.2004 other*

than the telephonic permission". These two versions proved of him false by virtue of evidence of Inspector-E.K.Anuj Kumar who was examined as PW-13 in another case i.e. CC No.22 of 2006 who in the cross examination deposed as "Ex.P.43 (FIR in R.C.No.2(A)/2005 along with order of SP, CBI directing E.K.Anooj Kumar to register FIR does not disclose that R.M.Khan has passed any information to SP CBI, Hyderabad. Ex.P.43 FIR does not disclose that panchanamas and inventories are enclosed with". According to him, R.M.Khan gave false evidence to the effect that he sought telephonic permission from SP,CBI to conduct searches in the residence and office of the accused which was proved to be false by the evidence of Anuj Kumar.

3. The learned Special Judge after hearing both sides having formulated the points for determination as to without there being a finding in the judgment to the effect that R.M.Khan(P.W.14) committed perjury, by referring to the factual matrix supra which no way requires repetition observed from the order running in 8 pages of between paras-4 to 11 in nutshell that from perusal of the Judgment in C.C.No. 49 of 2005, it is found the petitioner/ accused neither brought to the Court depositions of the R.M.Khan-P.W.4/ 14 in C.C.No.49 of 2005 and E.K.Anuj Kumar (P.W.13 in C.C.No.22 of 2006) to establish anything that R.M.Khan gave false evidence nor inviting finding in the Judgment or Judgment in C.C.No.49 of 2005 is silent in this regard as to there is any perjury or not and that too his application u/ sec.340CrPC is long after said judgment. Though it is the contention of his counsel saying that proceeding u/ sec.340 CrPC, there is no any need of any finding in the judgment of a particular witness committed perjury but for during enquiry u/ sec.340CrPC the Court if at all to give a finding and the enquiry is supposed to be conducted and the Court from the decisions cited 6 in number including that of the Apex Court referred in saying from perusal of the same with reference to the legal position including on the scope of Sections 340 and 344 CrPC depicting two courses available to Court to deal with the offence and perjury in the Court proceedings of evidence either to follow summary procedure u/ sec.344 or regular procedure u/ sec.340 CrPC and in summary proceedings, the Court, while delivering

judgment, shall express an opinion to that effect and shall further express that it is necessary and expedient in the interest of justice of the witness should be tried summarily for giving or fabricating false evidence and after giving a reasonable opportunity to the offender, witnesses to be tried summarily and impose sentence with imprisonment for a term which may extend to three months or fine which may extend to Rs.500/- or with both. Whereas, Section 340 Cr.P.C. lays down two conditions to be fulfilled for enquiry in saying before lodging a complaint with concerned Magistrate a) the Court shall form an opinion that an offence referred to in Section 195(1)(b) CrPC appeared to have been committed in or in relation to a proceeding in that Court (b) that the Court shall form an opinion that it is expedient in the interest of justice that an enquiry should be made into the offence u/ sec.195(1)(b) CrPC, and the Apex Court in K.Karunakaran Vs. T.V.Eachara Warriar¹, in para-20 observed that in a proceeding u/ sec.340(1)CrPC, the reasons recorded in the principal case, in which a false statement has been made, have a great bearing and indeed action is taken having regard to the overall opinion formed by the Court in the earlier proceedings and the basis for opinion expressed during enquiry u/ sec.340CrPC of witness committed perjury sprouts to go to that effect from the finding given to that effect in the principal or main case and therefrom coming to the facts, what P.W.13 Anuj Kumar in C.C.No.22 in the cross-examination deposed of Ex.P.43 does not disclose that the respondent-R.M.Khan passed any information to SP, CBI, by which date of said evidence dt.11.06.2010, the other case accused is facing in C.C.No.49 of 2005 still pending for the judgment pronounced only later on 28.07.2010 and having negated same in both the cases and from defending by the accused and come to know of the same should have bring to the notice of the Court in C.C.No.49 of 2005 with a request to give a finding for any and there is nothing in the said judgment C.C.No.49 of 2005 of R.M.Khan committed any alleged offence of perjury and long after the judgment ended came up with a petition to give a finding. Without there being a finding that a witness committed perjury with a judgment of the principal case for the first time in an enquiry u/ sec.340CrPC would mean reviewing its own judgment for

¹ AIR 1978 SC 290

which it became a *functus officio* and thereby rejected the unnumbered petition. The same is the impugment herein.

4. Heard the learned counsel for the petitioner and the Special Public Prosecutor for CBI.

5. Even without that difficulty of elaboration with the observations in the impugned order of the learned Special Judge, what all pointed out the alleged perjury against the R.M.Khan is what R.M.Khan stated of he obtained telephonic permission from SP, CBI for search of house of accused that was taken immediately after the trap in that night and could not go to obtain written permission and no written permission for searching office of accused in the morning on 25.11.2004 other than telephonic permission. What Anuj Kumar-P.W.13 in C.C.No.22 of 2005 deposed in his cross-examination is Ex.P.43-FIR in R.C.2(A) of 2005 along with order of SP directing to Anuj Kumar to register FIR does not disclose R.M.Khan passed any information to SP, CBI. Even taken it does not disclose, it does not mean there was no any telephonic or oral permission of R.M.Khan from the SP, CBI. Once such is the case, where is the perjury of two statements on oath one is contrary to the other for one to believe as true and the other to believe as false. It at best shows there is a cloud unclarified, that does not mean deposing falsehood as it is for the prosecution to prove and even in the application to conduct any enquiry u/ sec.340 CrPC though otherwise required and when this is the only material by which the petitioner relies on its face value there is no basis to arrive a finding of there is a prima facie case in forwarding the complaint for perjury by cause filing through any learned Magistrate concerned.

6. Having regard to the above, the Criminal Revision Case is dismissed for no merits. Consequently, miscellaneous petitions, pending shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

Date:22.02.2019

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