THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE No.597 of 2020

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of Code of Criminal Procedure, 1973 (for short "Cr.P.C"), is filed by the petitioner/Accused No.3, challenging the order, dated 02.11.2020, passed in Crl.M.P.No.558 of 2020 in C.C.No.15 of 2016, by the learned Principal Special Judge for trial of SPE & ACB Cases, Hyderabad, wherein, the application filed by the petitioner/A-3 under Section 239 of Cr.P.C., praying to discharge him in C.C.No.15 of 2016, registered for the offences punishable under Sections 12 of Prevention of Corruption Act, 1988 (P.C.Act) and Section 120B read with 34 of I.P.C, was dismissed.

2. Heard the submissions of Sri Parsa Ananth Nageswar Rao, learned counsel for the petitioner/A-3, Sri V.Ravi Kiran Rao, learned Special Counsel for ACB cases appearing for the respondent and perused the record.

3. The petitioner herein filed the subject interlocutory application before the trial Court *inter alia* contending as follows:

"The petitioner is shown as Accused No.3 in C.C.No.15 of 2016 for the alleged offences punishable under Section 12 of P.C.Act and Section 120B r/w 34 of I.P.C. The prosecution alleged that petitioner/A-3 carried a bag containing Rs.50 lakhs to the house of the *de facto* complainant in the evening of 31.05.2015 and on the directions of A-1, the petitioner opened the bag and kept the currency bundles on the Teapoy as advance bribe amount, which was offered to the *de facto* complainant and on the same day, the officials of respondent/State said to have detained the petitioner/A-3 along with other accused. It was also alleged that the amount referred above was offered to the *de facto* complainant for casting his vote in favour of a particular candidate in the MLC elections. The petitioner/A-3 claimed that the entire record placed before the Court does not reveal any of the offences under Sections 7 to 11 of P.C. Act much-less the offence under Section 12 of P.C. Act. Even though the petitioner/A-3 did not commit any offence, he was falsely implicated in this case. The petitioner/A-3 further stated that this Court was pleased to quash the proceedings against A-4 in the subject crime vide order dated 03.06.2016 passed in Criminal Petition No.5520 of 2015 and the petitioner/A-3 stands on a better footing than that of A-4. The ingredients of the offence under Section 120B r/w 34 IPC do not attract against the petitioner/A-3 and hence, no charges can be framed against the petitioner/A-3 and ultimately prayed to discharge him.

4. The respondent/ACB filed counter before the trial Court and opposed the subject application. It was stated that on 31.05.2015 at about 4:45PM, A-1-A.Revanth Reddy, MLA and A-2-Bishop Harry Sebastian, came to Pushpa Nilayam Apartment in Mahindra Scorpio vehicle bearing registration No.AP 09 CV 9939 and went to Flat No.204 and few minutes later, the petitioner/A-3 also came to the same apartment in Hyundai Verna car bearing registration No.TS 10 UA 1031 and went into the same flat along with bag containing cash of Rs.50 Lakhs. A-1 and A-2 negotiated with the *de facto* complainant and offered Rs.5 Crores as bribe for casting his vote in favour of TDP candidate in MLC elections to be held on 01.06.2015. On the directions of A-1, the petitioner/A-3 opened the cash bag and kept the currency bundles (Rs.50 lakhs) on the teapoy as part bribe amount. A-1 once again asked the *de facto* complainant to cast his vote in favour of TDP candidate Sri Vem Narender Reddy and promised to pay the remaining bribe amount of Rs.4.5 crores after completion of MLC elections. There is oral and documentary evidence to prove the meeting of minds and collusion between the accused including the petitioner/A-3 and hence all the accused are liable for punishment under Section 12 of P.C. Act and Section 120B r/w 34 IPC and ultimately, prayed to dismiss the subject Interlocutory Application.

5. The Court below after hearing both sides, was pleased to dismiss the subject discharge application vide impugned order dated 02.11.2020 and framed charges against the petitioner/A-3 and other accused for the offences punishable under Section 12 of P.C. Act and Section 120B r/w 34 IPC. Challenging the same, the petitioner/A-3 filed the present Criminal Revision Case.

6. The learned counsel for the petitioner/A-3 would submit that there is no evidence on record to constitute any of the offences under Section 12 of P.C. Act and Section 120B r/w 34 IPC. The Court below erroneously framed charges against the petitioner/A-3 for the aforementioned offences. *Prima facie,* there are no material allegations to frame charges against the petitioner/A-3 as indicated above. The impugned order, dated 02.11.2020, passed by the Court below, is contrary to law and evidence on record and against the probabilities and circumstances of the case. Considering the material on record, the Court below ought to have allowed the subject application for discharge. The Court below erroneously accepted the narration of the prosecution case without proper scrutiny and examination. If two views are possible, the view which is favourable to the accused has to be adopted. Ignoring the same, the learned trial Judge erroneously held that there is a *prima facie* case against the petitioner/A-3. The Court below failed to appreciate that the alleged role attributed to the petitioner/A-3 is limited to handling a bag on the alleged directions of A-1. The contents of the said bag are not known to the petitioner/A-3 and so, the allegation of carrying the bag to Flat No.204, Pushpa Nilayam and placing the same on teapoy, *ipso facto* do not constitute any offence. The trial Court had considered inadmissible electronic evidence such as voice recording etc., for which, the certificate as required under Section 65-B(4) of Indian Evidence Act, is not placed on record. When there is no knowledge with regard to the contents of the bag to the petitioner, the petitioner ought not have been charged for conspiracy. The petitioner/A-3 has no knowledge with regard to the alleged attempt to bribe the *de facto* complainant. In the absence of such knowledge, the petitioner cannot be part of criminal conspiracy. The impugned order, dated 02.11.2020, passed by the trial Court, is illegal, perverse and liable to be set aside and ultimately prayed to discharge the petitioner/A-3 from the subject Calendar Case. In support of his contentions, the learned counsel placed reliance on the following decisions:

i) **State of Maharashtra and others vs. Somnath Thapa and others**[1]

[1] (1996) 4 SCC 659

ii) **Union of India vs. Prafulla Kumar Samal and another**[2]

iii) **Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and others**[3]

iv) **Central Bureau of Investigation vs. K. Narayana Rao**[4]

v) **State through Central Bureau of Investigation vs. Dr.Anup Kumar Srivatsava**[5]

vi) **Dipakbhai Jagdishchandra Patel vs. State of Gujarat and another**[6]

vii) **Chota Ahirwar vs. State of Madhya Pradesh**[7]

7. On the other hand, the learned Special Counsel for ACB cases appearing for the respondent, submitted that there is ample evidence on record to connect the petitioner/A-3 with the alleged offences. On 31.05.2015, A-2 accompanied by A-1, went into the house of *de facto* complainant and negotiated with him to vote in favour of TDP candidate in the MLC elections and offered to pay bribe. As per the directions of A-1, the petitioner/A-3 went to Mettuguda X roads and collected bribe amount of Rs.50 Lakhs from Vem Krishna Keerthan S/o. Vem Narender Reddy and proceeded to Pushpa Nilayam. At about 4:40pm, A-1 and A-2 were at the Flat No.204, situated at Pushpa Nilayam and while they were negotiating with the *de facto* complainant, the petitioner/A-3 came to the said flat with a black colour rexine bag containing cash of Rs.50 Lakhs and kept it on the teapoy on the instructions of A-1. There are audio and video recordings to that effect. Further, there is telephonic conversation between A-1 to A-3 to establish the nexus between them and the collusion and conspiracy to commit the offence. There is material evidence on record to prove that A-1 to A-4 and others, in pursuance

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[2] (1979) 3 SCC 4
[3] (2020) 3 SCC (Crl.) Page 1
[4] (2012) 9 SCC 512
[5] (2017) 15 SCC 560
[6] (2019) 16 SCC 547
[7] (2020) 4 SCC 126

of their criminal conspiracy, offered bribe to influence the *de facto* complainant to vote in favour of Vem Narender Reddy. It is a clear case of abetment of offence, which is punishable under Section 12 of P.C. Act. There is ample evidence on record to substantiate the accusations against the petitioner/A-3 for the offences under Section 12 of P.C.Act and Section 120B r/w 34 IPC. The trial Court, having examined the material on record, rightly held that there is *prima facie* case against the petitioner/A-3 to frame the charges for the offences under Section 12 of P.C Act and Section 120B r/w 34 IPC. The trial Court while dealing with the discharge application of the petitioner/A-3, meticulously dealt with all the contentions raised with reference to material collected and placed on record by the prosecution and rightly dismissed the subject Interlocutory Application. No two views are possible as contended by the learned counsel for the petitioner/A-3. The scope of revisional jurisdiction of this Court under Sections 397 and 401 of Cr.P.C. is very limited and this Court cannot re-appreciate the entire evidence on record, unless it is shown that perverse findings have been recorded by the trial Court. The contentions raised on behalf of the petitioner/A-3 do not merit consideration. There is no illegality, impropriety or perversity in the impugned order and ultimately, prayed to dismiss the Criminal Revision Case. In support of his contentions, learned Special Public Prosecutor relied upon the following decisions:

i) **Sajjan Kumar vs. Central Bureau of Investigation**[8]

ii) **Bhawna Bai vs. Ghanshyam and others**[9]

iii) **State (NCT of Delhi) vs. Shiv Charan Bansal and others**[10]

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[8] (2010) 9 SCC 368
[9] (2020) 1 SCC (Cri) 581
[10] (2020) 1 SCC (Cri) 594

iv) **Arjun Pandit Rao Khothkar vs. Kailash Kushan Rao Gorantyal and others** (3 supra)

v) **State through CBI vs. Dr. Anup Kumar Srivastava** (5 supra)

vi) **State of Rajasthan vs. Fatehkaran Mehdu**[11]

8. In view of the above rival contentions, the point that arises for determination in this Criminal Revision Case is as follows:

> **"Whether the petitioner/A-3 is entitled for discharge in C.C.No.15 of 2016 on the file of Principal Special Judge for trial of SPE & ACB Cases, Hyderabad, registered for the offences punishable under Section 12 of P.C.Act and Section 120B r/w 34 IPC?"**

POINT:

9. The material placed on record reveals that the petitioner/A-3 is being prosecuted for the offences punishable under Section 12 of P.C. Act and Section 120B r/w 34 of IPC. The allegation is that the petitioner/A-3, along with other accused, i.e., A-1, A-2, A-4 and A-5, conspired to commit the offence, i.e, to bribe the LW.1-Elvis Stephenson to secure his vote in favour of Vem Narender Reddy, a candidate proposed by Telugu Desam Party for the membership of Legislative Council of Telangana State. The petitioner/A-3 contends that he has no knowledge about the understanding or to bribe the *de facto* complainant by other accused in this case. As seen from the material placed on record, on 31.05.2015 at about 3.15pm, A.1 started from Novatel Hotel, Shamshabad to Pushpa Nilayam and on the way, he called petitioner/A-3 and asked him to meet at Nagole Cross roads, where A.1 instructed the petitioner/A-3 to collect amount from one Vem Krishna Keerthan S/o. Vem Narender Reddy at Mettuguda Cross Roads. Accordingly, the petitioner/A-3 went to

[11] 2017 (1) ALD (Crl) 842 (SC)

Mettuguda and collected bribe amount of Rs.50 lakhs from said Krishna Keerthan and started proceeding to Pushpa Nilayam. At about 4:40pm, A-1 and A-2 came in Mahindra Scorpio vehicle bearing registration No.AP 09 CV 9939 and went into the house of *de facto* complainant i.e, Flat No.204, Pushpa Nilayam Apartment and while they were negotiating with the *de facto* complainant to vote in favour of TDP candidate in the MLC elections to be held on 01.06.2015, then the petitioner/A-3 reached the said flat in Hyunda Verna car bearing registration No.TS 10 UA 1031 and on the instructions of A-1, the petitioner/A-3 opened the black colour rexine bag containing cash of Rs.50 lakhs and kept the currency bundles on the teapoy as part bribe amount. A-1 and A-2 negotiated with the *de facto* complainant and offered Rs.5 Crores as bribe for casting his vote in favour of Vem Narender Reddy, a TDP candidate in the MLC elections. A-1 once again asked the *de facto* complainant to cast his vote in favour of TDP candidate i.e, Vem Narender Reddy and promised to pay the remaining bribe amount of Rs.4.5 crores after completion of MLC elections. Before that, there were telephonic conversations between the petitioner/A-3 and A-1. There are audio and video recordings to substantiate the allegations made against the petitioner/A-3. The prosecution had seized the material evidence to establish the same. So, under these circumstances, the contention of the petitioner/A-3 that he has no knowledge or he is not part of alleged conspiracy to bribe the *de facto* complainant to cast his vote in favour of Vem Narender Reddy, in the MLC elections scheduled to be held on 01.06.2015, is unsustainable. In view of the facts and circumstances of the case and the material available on record, no two views are possible as contended by the learned counsel for the petitioner/A-3.

10. The next contention of the petitioner/A-3 is that no certificate as required under Section 65-B(4) of Evidence Act, is obtained by the prosecution. It may be noted that non-production of the certificate would not desist the Court from proceeding against petitioner/A-3. The said certificate can be produced during the course of trial of the case. In any case, it is not a ground to discharge the petitioner/ A-3 from the subject case.

11. It is also contended by the petitioner/A-3 that since the proceedings against A-4 in the subject crime were quashed by this High Court vide order dated 03.06.2016 in Criminal Petition No.5520 of 2015, the petitioner/A-3 can also be discharged as he stands on a better footing than that of A-4. It has to be seen that the allegations against the petitioner/A-3 are distinct from the allegations against A-4. Therefore, the quash order, dated 03.06.2016, passed in favour of A-4 is not helpful to the case of petitioner/A-3. Moreover, the said order is *subjudice* before the Hon'ble Apex Court in SLP (Crl) No.5248 of 2016.

12. I have gone through the decisions relied upon by the learned counsel for both sides.

i) In **Somnath Thapa**'s case (1 supra), relied upon by the learned counsel for the petitioner/A-3, the facts of the case are that one of the appellants therein was running a travel agency by name M/s Abu Travel Agency. He was charged for sending the terrorists of Bombay bomb blasts that took place on 12.03.1993 to Dubai to undergo weapon training at Pakistan by booking their flight tickets out of his own funds, through M/s Hans Air Services. The matter ultimately reached the Hon'ble Supreme Court. It was contended on behalf of the appellant therein that there is no basis for the allegation that he had booked the tickets out of his own funds, which is the gravamen of the charge, inasmuch as there is galore of material to show that the funds for booking the air tickets had come, not from the funds of the appellant, but the money had been made available to the firm of the appellant, i.e., Abu Travel Agency, by one Maulana Bukhari. After elaborately discussing the evidence on record and the relevant provisions of law, the Hon'ble Supreme Court discharged the said appellant holding that, the only incriminating material, namely, crediting an amount of Rs 9939/- in the account of the appellant's firm in the books of M/s Hans Air Services, is a weak circumstance to say that the appellant might have abetted the offences in question, which is the real charge against him; the general charge *qua* the said appellant has to fail, as the only overt act attributed to him is the aforesaid activity of booking tickets. In the instant case, the main allegation against the petitioner/A-3 is that he carried a bag containing cash of Rs.50 Lakhs to the house of the *de facto* complainant and on the directions of A-1, he opened the bag and kept the currency bundles on the Teapoy as part bribe amount. Any prudent person would not, in any event, carry any bag containing huge currency to a particular place, take out the currency bundles from the bag and keep on a table, without having a basic idea as to why and for what purpose he is doing such act. In view of the same, the said decision is not helpful to the petitioner/A-3.

ii) In **Prafulla Kumar Samal**'s case (2 supra) and **K.Narayana Rao**'s case (4 supra), relied upon by the learned counsel for petitioenr/A-3 and **Sajjan Kumar**'s case (8 supra), relied upon by the learned Special Counsel for ACB cases, the Hon'ble Apex Court has extensively dealt with the scope and exercise of jurisdiction under Sections 227 and 228 of Cr.P.C., and laid down some principles and there cannot be any dispute with regard to the same.

iii) In **Arjun Panditrao Khotkar**'s case (3 supra), relied upon by the learned counsel for both sides, the Hon'ble Apex Court dealt with the aspect of production of certificate under Section 65-B(4) of Evidence Act. In the instant case, though there is no production of certificate as required under Section 65-B(4) of Evidence Act, there is no legal bar to produce the same during the course of trial of the case and non-production of the said certificate shall not, in any event, desist the Court below from proceeding with the trial. Hence, the said decision is not helpful to the case of petitioner/A-3.

iv) In **Dr. Anup Kumar Srivatsava**'s case (5 supra) relied upon by the learned counsel for both sides, the facts of that case are that a team of officials of Central Excise led by a superintendent, conducted an illegal raid, in conspiracy with the respondent therein, who was a Commissioner, Central Excise. A private person negotiated with the owners of the premises for illegal gratification in lieu of not taking any action against them, finalized bribe amount of Rs.60 Lakhs to be paid by them through a private person. The prosecution case solely rested on 96 telephonic conversations recorded between 23.12.2011 to 02.01.2012 on the basis of legal technical surveillance. After elaborately discussing the evidence on record, the Hon'ble Apex Court held that the prosecution was able to prove the guilt of the respondent in the alleged raid and that there is no direct or circumstantial evidence to prove that the respondent had demanded any illegal gratification and accepted or obtained any illegal gratification. The facts and circumstances of the said case are entirely different from the facts and circumstances of the case on hand.

v) In **Dipakbhai Jagdishchandra Patel**'s case (6 supra), relied upon by the learned counsel for petitioner/A-3, the Hon'ble Apex Court held that for framing charge/s, the Court must be satisfied with the material available; a case is made out for the accused to stand trial; a strong suspicion suffices, but however, such strong suspicion must be founded on some material; confession made to a police officer is clearly inadmissible, even if it contains admission by virtue of Section 162 Cr.P.C. There cannot be any dispute with regard to the said ratio laid down by the Hon'ble Apex Court. The instant Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C and this Court has very limited power to the extent of satisfying the legality, propriety or regularity of the proceedings or orders of the lower court and not to act like an appellate Court.

vi) In **Chota Ahirwar**'s case (7 supra), relied upon by the learned counsel for the petitioenr/A-3, the Hon'ble Apex Court summarized the requirements of applicability of Section 34 of IPC and held that mere participation in crime with others is not sufficient to attribute common intention, but the prosecution is required to prove a premeditated intention; To attract Section 34 of the Penal Code, no overt act is needed on the part of the accused if they share common intention with others in respect of the ultimate criminal act, which may be done by any one of the accused sharing such intention; Common intention implies acting in concert; Existence of a prearranged plan has to be proved either from the conduct of the accused, or from circumstances or from any incriminating facts; It is absolutely necessary that the intention of each one of the accused should be known to the rest of the accused. There cannot be any dispute with regard to the said preposition of law laid down by the Hon'ble Supreme Court. Further, it is settled law that each case shall be decided on its merits.

vii) In ***Bhawna Bai***'s case (9 supra), relied upon by the learned Special Counsel for ACB cases, the Hon'ble Apex Court held that at the time of framing of charges only *prima facie* case has to be seen and no strict standard of proof is required.

viii) In ***Shiva Charan Bansal***'s case (10 supra), relied upon by the learned Special Counsel for ACB cases, the Hon'ble Apex Court held as follows:

> ***"Para 39***: *The court while considering the question of framing charges under Section 227 CrPC has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case has been made out against the accused. The test to determine prima facie case would depend upon the facts of each case. If the material placed before the court discloses grave suspicion against the accused, which has not been properly explained, the court will be fully justified in framing charges and proceeding with the trial.*

ix) In ***Fatehkaran Mehdu***'s case (11 supra), relied upon by the learned Special Counsel for ACB cases, the Hon'ble Apex Court held that the Revisional jurisdiction can be invoked where the decision under challenge is grossly erroneous, there is no compliance with the provisions of law, the findings recorded is based on no evidence, material evidence ignored or judicial discretion is exercised arbitrarily or perversely.

13. It is apt to mention here that the object of the Revisional jurisdiction is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the Court to scrutinize the orders, which, on the face of them, bear a token of careful consideration and appear to be in accordance with law. Revisional Jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the findings recorded are based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. Another well accepted norm is that the Revisional jurisdiction of the higher Court is very limited and cannot be exercised in a routine manner. Revisional Court has to confine itself to the legality and propriety of the findings of the subordinate Court and as to whether the subordinate Court acted within its jurisdiction. A Revisional Court has no jurisdiction to set aside the findings of facts recorded by the learned Judge and impose and substitute its own findings. Sections 397 to 401 Cr.P.C., confer only limited power on the Revisional Court to the extent of satisfying about the legality, propriety or regularity of the proceedings or orders of the lower court and not to act like an appellate Court.

14. In the instant case, the impugned order of trial Court does not reflect patent defect or an error of jurisdiction or law. It is in accordance with law. Neither there is non-compliance of the provisions of law nor it is grossly erroneous. There is substantial material on record to frame the charges against the petitioner/A-3 for the offences under Section 12 of P.C Act and Section 120B r/w 34 IPC. The Court below elaborately examined the contentions raised by the petitioner/A-3 and negated the same by giving cogent and convincing reasons, holding that there is *prima facie* case against the petitioner/A-3 for the offences under Section 12 of P.C Act and Section 120B r/w 34 IPC and it is not a fit case to discharge the petitioner/A-3. The Court below also opined that the trial Court need not conduct detail enquiry to find out the truth or otherwise of the allegations made against the petitioner/A-3 in the charge sheet. The conclusion reached by the trial Court is based on material on record and it is not perverse or illegal. Therefore, as there is *prima facie* case, the Court below is justified in framing charges under Section 12 of P.C. Act and Section 120B r/w 34 IPC against the petitioner/A-3 by dismissing the discharge application. Under these circumstances, the impugned order is sustainable. The Criminal Revision Case is devoid of merit and is liable to be dismissed.

15. In the result, the Criminal Revision Case is dismissed.

Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

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Dr. SHAMEEM AKTHER, J

Date: 01st April, 2021.
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