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Date of pronouncement :
Date of uploading :

APHC010182742023

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3604]
(Special Original Jurisdiction)

THURSDAY, THE 5th DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

CRIMINAL PETITION NO: 2898 OF 2023

Between:

1. M.MUKTESWARA RAO, S/O. SOMERU, AGED 48 YEARS, INSPECTOR OF POLICE. R/O. SHOBHANA CHALAPATHY PLAZA, DOOR NO.74-6/6-18.TF-B, NEHRU ROAD, 6TH LANE, AYYAPPA NAGAR, AUTO NAGAR SUB POST OFFICE, VIJAYAWADA-520010.

...PETITIONER/ACCUSED

AND

1. THE STATE OF ANDHRA PRADESH, REP BY ITS SPECIAL PUBLIC PROSECUTOR FOR ACB, HIGH COURT OF A.P, AMARAVATHI THROUGH THE C.I.U., ANTI-CORRUPTION BUREAU, A.P., VIJAYAWADA
2. S GANGA RAJU, S/O S.SURYANARAYANA RAJU, AGED ABOUT 42 YEARS, OCC. INSPECTOR OF POLICE, CIU, ANTI CORRUPTION BUREAU (ACB), AP, VIJAYAWADA.

...RESPONDENT/COMPLAINANT(S):

Petition under Section 437/438/439/482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Courtpleased to quash the proceedings in FIR.No. 01/RCO-CIU-ACB/2022 on the file of the CIU, Anti Corruption Bureau (ACB) Police Station, Vijayawada, Andhra Pradesh and pass

IA NO: 1 OF 2023

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition,the High Court may be pleased pleased to dispense with in filing the certified copy of FIR.No. 01/RCO-CIU-ACB/2022 on the file of the CIU, Anti-Corruption Bureau (ACB) Police Station, Vijayawada, Andhra Pradesh, and pass such

IA NO: 2 OF 2023

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition,the High Court may be pleased pleased to grant stay of all further proceedings in FIR.No. 01/RCO-CIU-ACB/2022 on the file of the CIU, Anti-Corruption Bureau (ACB) Police Station, Vijayawada, Andhra Pradesh, pending disposal of the Criminal Petition and pass

Counsel for the Petitioner/accused:

1. P L NARASIMHA RAO

Counsel for the Respondent/complainant(S):

1. S.SYAM SUNDER RAO SC cum Spl P.P. For ACB

The Court made the following:

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

CRIMINAL PETITION No: 2898 OF 2023

ORDER:

This Criminal Petition is filed by the petitioner/Accused No.1 under Section 482 of the Code of Criminal Procedure, 1973, to quash the proceedings against him in FIR No.01/RCO-CIU-ACB/2022 on the file of the CIU, Anti-Corruption Bureau (ACB) Police Station, Vijayawada, registered for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988, as amended in 2018 (hereinafter referred to as "the Act").

2. The case of the petitioner, in brief, is that the allegations in the First Information Report, even if taken at face value, do not disclose the commission of any offence. On a plain reading of the complaint, the ingredients of the offence under the Act are not made out. The petitioner contends that the case falls within the principles laid down by the Hon'ble Supreme Court in ***State of Haryana v. Bhajan Lal***[1], and that there is no prima facie case against him. It is further contended that the proceedings are vitiated by mala fides, as the de facto complainant himself acted as the investigating officer. According to the petitioner, a fair investigation is an essential part of a fair trial and the informant and the investigator ought not to be the same person. The petitioner also contends that there is no material to establish the alleged offence and that the allegations are improbable and unsustainable.

3. The petitioner further contends that the investigating agency failed to comply with Section 17A of the Act and registered the crime without obtaining prior approval from the competent authority. It is alleged that the crime was registered only for statistical purposes. The petitioner also relies on the fact that the de facto complainant resiled from his earlier version while making a

[1] 1992 Supp (1) SCC 335

statement under Section 164 Cr.P.C. It is therefore contended that there are no grounds to continue the proceedings and that their continuation would amount to an abuse of the process of the Court.

4. Heard Sri P.L. Narasimha Rao, learned counsel for the petitioner, and Sri S. Shyam Sunder Rao, learned Special Public Prosecutor for the ACB. Perused the material available on record and the judgments relied upon by the learned counsel on both sides.

5. Learned counsel for the petitioner would submit that, though several grounds were raised in the petition, he is confining his submissions principally to the alleged violation of Section 17A of the Act. In support of the contention, he relies upon the judgments of the Hon'ble Supreme Court in ***Anand Kumar Mohatta and another v. State (Govt. of NCT of Delhi)***, ***Department of Home and another***[2], and ***Nara Chandrababu Naidu v. State of Andhra Pradesh and another***[3]. Further, prior approval of the competent authority was required before the crime could be registered or investigation could be undertaken and that the failure to obtain such approval vitiates the proceedings and the prosecution must establish demand and acceptance of illegal gratification and that no amount was recovered from the petitioner.

6. Learned counsel for the petitioner has also placed reliance on the judgment of the Karnataka High Court in ***Sri N. Tejas Kumar v. State of Karnataka***[4].

7. Per contra, the learned Special Public Prosecutor, while relying upon the judgment of the Hon'ble Supreme Court in ***Tejaram v. State of Rajasthan***[5], would submit that the demand for illegal gratification is a criminal act and is not, by itself, an act performed in discharge of official functions or duties and therefore, Section 17A of the Act is not attracted. Further, the investigation

[2] AIR 2019 SC 210
[3] 2024 INSC 41
[4] 2024:KHC:40433-DB
[5] 2026 INSC 1147

has been completed and that the investigating officer has already taken steps to obtain sanction from the competent authority and is awaiting orders.

8. Before considering the rival submissions, it is apposite to note the allegations which led to registration of the crime. As seen from the record, on the report of respondent No.2, the instant crime is registered for the offence punishable under Section 7 of the Act, against the petitioner/Accused No.1 and another on the allegation that the respondent No.2 acted as an intermediary and approached the petitioner/Accused No.1 on behalf of the accused in Crime No.111 of 2022, registered by the Station House Officer, Thotlavalluru Police Station, for the offence punishable under Section 302 read with Section 34 IPC and the purpose of the alleged approach was to ensure that the names of the family members of the accused were not included in that crime, and in that connection, the petitioner demanded illegal gratification and that respondent No.2 paid certain amounts to him and since respondent No.2 was unable to meet the further demand allegedly made by the petitioner, he submitted a report to the ACB, which resulted in registration of the present crime.

9. The principal contention of the petitioner is that without prior approval under Section 17A of the Act, the crime is registered. Section 17A provides for previous approval before a police officer conducts an enquiry, inquiry or investigation into an offence alleged to have been committed by a public servant, where the alleged offence is relatable to a recommendation made or a decision taken by that public servant in discharge of official functions or duties. Thus, the requirement of prior approval is not attracted to every allegation against a public servant merely because the person accused holds public office. The essential question is whether the alleged offence is relatable to a recommendation made or a decision taken by that public servant in discharge of official functions or duties or not.

10. In ***Tejaram*** *(supra*), while considering the scope of Section 17A of the Act in the context of an allegation of demand of illegal gratification, Hon'ble Supreme Court held that Section 17A is confined to cases in which the alleged offence is relatable to a recommendation or decision made by the public servant in discharge of official functions or duties. It further held that a demand for illegal gratification, when alleged as a criminal act unconnected with any such recommendation or decision, does not attract Section 17A. The Court clarified that the provision does not confer blanket protection upon public servants against investigation for criminal acts unrelated to their official duties.

11. In the present case, the allegation is that the petitioner demanded illegal gratification in connection with the non-inclusion of the names of certain persons in a criminal case registered for an offence under Section 302 read with Section 34 IPC. At this stage, the allegation has to be considered as a whole. The alleged demand is not stated to be a lawful recommendation or decision taken by the petitioner in the discharge of official functions. Rather, the prosecution case is that illegal gratification was demanded for procuring an improper result in the criminal investigation. As per the material, conduct of the petitioner would constitute an alleged criminal act and cannot be treated as an act protected merely because it is said to have been committed by a public servant in the course of, or by using the influence of, official position. In view of the principle laid down in ***Tejaram*** (supra), the absence of prior approval under Section 17A, by itself, does not furnish a ground to quash the present proceedings.

12. The petitioner's reliance on ***Nara Chandrababu Naidu*** (supra) and requires consideration. In that case, the Hon'ble Supreme Court delivered separate opinions expressing differing views on the interpretation and applicability of Section 17A to the facts before it. The matter was consequently directed to be placed before the Hon'ble the Chief Justice of India for consideration of reference to a larger Bench. Therefore, the said decision

cannot be read as laying down one uniform and final proposition that prior approval under Section 17A is mandatory in every case involving an allegation against a public servant. In any event, the later decision in ***Tejaram*** (supra) directly explains the scope of Section 17A in a case involving an allegation of demand of illegal gratification. The petitioner's contention, therefore, cannot be accepted merely on the basis of the absence of prior approval.

13. The judgment in ***Anand Kumar Mohatta and another*** (supra), lays down that the filing of a charge sheet during the pendency of a petition seeking quashing does not, by itself, make the petition under Section 482 Cr.P.C. not maintainable. It reiterates that the inherent jurisdiction of the High Court can be exercised at an appropriate stage to prevent abuse of the process of Court. There can be no dispute with that proposition. However, the said judgment does not hold that every prosecution must be quashed merely because the accused disputes the allegations or because the investigation has proceeded without compliance with a provision which is not attracted to the facts of the case. The question in the present petition is whether the allegations and the material, taken at face value, justify continuation of the proceedings. The principle in ***Anand Kumar Mohatta*** (supra) does not advance the petitioner's case on that question.

14. The petitioner has also relied upon Sri ***N. Tejas Kumar*** (supra). The said case concerned an order of suspension passed against a Government servant who had been in police custody for more than forty-eight hours and the effect of a subsequent posting order on the suspension. The observations therein relate to service conditions and the effect of suspension. The said judgment does not deal with Section 17A of the Prevention of Corruption Act or the quashing of criminal proceedings arising out of an allegation of demand of illegal gratification. Hence, the said decision is distinguishable on facts and does not assist the petitioner in the present case.

15. The further contention that there was no recovery from the petitioner also cannot, by itself, be a ground to quash the FIR at this stage. The absence of recovery may be a circumstance to be considered while appreciating the evidence during the course of trial. However, the prosecution allegation, as reflected in the material placed before this Court, is not confined to recovery alone; it includes an allegation of demand and payment of certain amounts by respondent No.2. Whether the prosecution will be able to establish the demand, the alleged payment, the petitioner's role and the other ingredients of the offence under Section 7 of the Act is a matter for investigation/trial, as the case may be. This Court, while exercising jurisdiction under Section 482 Cr.P.C., cannot conduct a mini-trial or undertake a detailed appreciation of disputed evidence.

16. The petitioner further relies upon the statement of respondent No.2 recorded under Section 164 Cr.P.C., contending that he resiled from his earlier statement. The effect, credibility and evidentiary value of the statement under Section 164 Cr.P.C., when considered along with the earlier version and the other material collected during investigation, are matters which require appreciation by the competent Court at the appropriate stage. A subsequent statement which is stated to be inconsistent with the earlier version does not automatically erase the earlier allegations or conclusively establish that the prosecution is false. The petitioner will be at liberty to rely upon the said statement and other relevant material in accordance with law at the appropriate stage.

17. The contention that the de facto complainant and the investigating officer are one and the same person also requires consideration in the light of the actual role played by the concerned officer and the material on record. The mere assertion that the informant and the investigator are the same person does not, without more, automatically result in quashing of the proceedings. The petitioner has to demonstrate how the alleged circumstance has caused

prejudice or rendered the investigation unfair in the facts of this case. At this stage, in the absence of material establishing such prejudice or showing that the investigation is fundamentally tainted, this ground does not warrant exercise of the inherent jurisdiction of this Court.

18. The petitioner has invoked the principles laid down in ***Bhajan Lal's*** case. The categories indicated in that decision are illustrative and guide the exercise of inherent jurisdiction. The power to quash criminal proceedings is to be exercised sparingly and with circumspection. When the allegations in the FIR, taken at face value, disclose the commission of an offence and the matter requires examination of the evidence, the proceedings ordinarily should not be terminated at the threshold. In the present case, the allegations of demand of illegal gratification and payment of certain amounts, if ultimately established, may attract the offence alleged. It cannot be said at this stage that the allegations, on their face, do not disclose any offence or that the prosecution is inherently impossible.

19. The submission of the learned Special Public Prosecutor that the investigation has been completed and steps have been taken to obtain sanction from the competent authority is also placed on record. The question of sanction under Section 19 of the Act is distinct from the requirement of prior approval under Section 17A. The present petition is principally founded on the alleged non-compliance with Section 17A. Since, for the reasons stated above, Section 17A is not attracted on the allegations as presently placed before this Court, the absence of prior approval under that provision does not vitiate the registration of the crime. Any question concerning sanction under Section 19, if and when it arises, shall be considered by the competent Court in accordance with law and on the basis of the relevant record.

20. On an overall consideration of the allegations in the FIR, the submissions of the learned counsel on both sides and the principles laid down in the aforementioned judgments, this Court is not persuaded to hold that the

present case falls within any of the recognised categories to quash the proceedings. The contentions raised by the petitioner involve matters which are required to be tested on the basis of the evidence and cannot be conclusively decided in these proceedings. No opinion expressed herein shall be construed as a finding on the guilt or innocence of the petitioner. The observations are confined to the limited question whether the proceedings are liable to be quashed at this stage.

21. **In the result**, and for the foregoing reasons, this Criminal Petition is dismissed. The investigating agency/prosecution shall proceed in accordance with law uninfluenced by any of the observations made in this order.

As a sequel thereto, pending miscellaneous petitions, if any, shall stand closed.

SUNITHA GANDHAM, J

Date:05.11.2026
Cjp/knl

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

CRIMINAL PETITION No. 2898 OF 2023

Date: 05.11.2026

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