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APHC010290782026

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

MONDAY, THE 5th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

CRIMINAL PETITION NO: 5389/2026

Between:

1. S ISMAIL ALIAS A ISMAIL, S/OA MD HANEEF SAHEB AGED 48 YEARS, OCC INSPECTOR OF POLICE, SC ST CELL, SRI SATYASAI DISTRICT.FORMERLY SUB-INSPECTOR OF POLICE,KOTHACHERUVU P.S., ANANTHAPURAM DISTRICT.

...PETITIONER/ACCUSED

AND

1. THE STATE OF ANDHRA PRADESH, ,Rep. by its Special Public Prosecutor, Anti- Corruption Bureau, High Court of Andhra Pradesh, Amaravati-522239Through Deputy Superintendent of Police, Anti-Corruption Bureau, Ananthapuram Range, Anantapuramu

...RESPONDENT/COMPLAINANT

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 Court pleased to set aside the Order dated 25-03-2026 passed in CrI.M.P. No.12 of 2026 in C.C. No.1 of 2017 on the file of The Special Judge for SPE and ACB Cases, Kurnool, whereby the learned Special Judge permitted the prosecution to receive and mark certain documents at a highly belated stage, and consequently dismiss the said petition filed under Section 242 Cr.P.C., and pass

IA NO: 1 OF 2026

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 to stay all further proceedings in CrI.M.P. No.12 of 2026 in C.C. No.1 of 2017 on the file of The Special Judge for SPE and ACB Cases, Kurnool pending disposal of the main CRLP, and to pass

Counsel for the Petitioner/accused:

1. O UDAYA KUMAR

Counsel for the Respondent/complainant:

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

The Court made the following:

HON'BLE SMT. JUSTICE SUNITHA GANDHAM

CRIMINAL PETITION No.5389 OF 2026

ORDER:

This Criminal Petition is filed by the petitioner/accused seeking to quash the order dated 25.03.2026 passed in Crl.M.P. No.12 of 2026 in C.C. No.1 of 2017 by the learned Special Judge for SPE & ACB Cases, Kurnool.

2. The parties are hereinafter referred to as they were arrayed before the trial Court, for the sake of convenience and clarity.

3. During trial, the prosecution filed a petition under Section 242 Cr.P.C., seeking permission to receive and mark three documents, namely: (i) a letter submitted by PW.24/DSP (Final Investigating Officer) to the Director General, ACB, seeking permission for entrustment of the case to PW.23/Inspector of Police, dated 20.03.2013; (ii) a memo bearing C.No.1/DSP-ACB/ATP/2013, dated 30.03.2013, issued by PW.24 to PW.23 for further investigation; and (iii) an attested copy of the memo received from the office of the Superintendent of Police, Ananthapuram, bearing C.No.60/A1/2013, dated 13.12.2013, along with the service particulars of the accused officer.

4. The prosecution stated that the aforesaid documents could not be filed along with the charge sheet as they had inadvertently been mixed with the records of another case in the office of the DSP, ACB, Ananthapuram. It was further stated that, upon verification, the documents were traced in the office of the DSP, ACB, Ananthapur Range. According to the prosecution, the documents are relevant and necessary to establish the chain of investigation between PW.24 and PW.23 and also to establish the undisputed fact that the accused officer was a public servant. It was therefore contended that no prejudice would be caused to the accused by receiving the documents.

5. The accused officer filed a counter opposing the said petition. It was, inter alia, contended that he had not committed any offence and that the prosecution had foisted a false case against him. It was further contended that the documents sought to be received and marked were inadmissible in evidence and that the petition had been filed only to fill up the lacuna in the prosecution case. According to the accused, the documents were neither relevant nor admissible; Document No.3 was only an attested copy and, therefore, secondary evidence could not be received. It was also contended that the documents ought to have been filed along with the charge sheet and that they did not contain complete particulars such as dispatch numbers, endorsements or acknowledgements. The accused further contended that, during trial, the competency of PW.23 to conduct the investigation had been questioned and, after an elaborate cross-examination, the prosecution had filed the petition belatedly. On these and other grounds, dismissal of the petition was sought.

6. After hearing both sides, the learned Special Judge, by order dated 25.03.2026, allowed the petition. Aggrieved thereby, the accused has filed the present Criminal Petition contending that the impugned order suffers from patent illegality and material irregularity. It is contended that the documents were sought to be introduced at a highly belated stage and only to fill up the lacuna in the prosecution case; that the documents directly relate to the competence and authorization of PW.23 to investigate the case, although PW.23 had already been cross-examined at length on the requirements under Section 17 of the Prevention of Corruption Act, 1988; that the alleged entrustment letter dated 30.03.2013 and the letter dated 20.03.2013 were not issued by the competent authority; and that the documents were being produced for the first time after about 13 years and were not part of the charge sheet, case diary or other contemporaneous record. It is also contended that the learned Special Judge erred in receiving the attested copy of the memo dated 13.12.2013 along with the

service particulars of the accused, which, according to the petitioner, amounts to secondary evidence. The impugned order is further assailed on the ground that the observations that the documents 'appear genuine' and that the explanation regarding 'mixing up' sounds genuine are not supported by adequate judicial reasoning.

7. Heard Sri O. Udaya Kumar, learned counsel for the petitioner, and Sri S. Syam Sunder Rao, learned Special Public Prosecutor for ACB. Perused the petition, the impugned order and the material available on record.

8. On hearing both sides and upon perusing the material on record, the following point arises for consideration:

> Whether the order dated 25.03.2026 passed by the learned Special Judge for SPE & ACB Cases, Kurnool, in Crl.M.P. No.12 of 2026 in C.C. No.1 of 2017, is sustainable in law and on facts?

9. As seen from the record, on the basis of a report submitted by Sri A. Harinath Chowdary, Ex-Sarpanch of Kothacheruvu Village, and five others, after conducting an enquiry, a case in Crime No.4/RCO-ATP/13 was registered under Section 13(2) read with Section 13(1)(a) and (d) of the Prevention of Corruption Act, 1988, against the accused officer. After completion of investigation, charge sheet laid for the offences under Sections 7, 13(2) read with Sections 13(1)(a) and (d) and 15 of the Prevention of Corruption Act, 1988, and Sections 323, 343 and 389 IPC.

10. After examination of the accused officer, the trial commenced. Out of 27 witnesses, 23 witnesses had already been examined. During the examination of PW.24, the prosecution filed the instant petition stating that PW.24 had issued certain instructions to PW.23 to conduct the investigation and that the three documents referred to above were subsequently traced. The learned Special

Public Prosecutor submitted that the documents had not accompanied the charge sheet as they had inadvertently been mixed with the bundles relating to another case in the office of the DSP, ACB, Ananthapuram. It was further submitted that, upon verification, the documents were traced and that they are relevant and necessary to establish the chain of investigation between PW.23 and PW.24 and to establish that the accused was a public servant.

11. Per contra, learned counsel for the petitioner/accused contended that the prosecution has no right to file a petition under Section 242 Cr.P.C., that the documents were sought to be introduced only to overcome lacunae and missing links in the prosecution case; and that the prosecution had filed the petition only after PW.23 had been cross-examined at length and a defence had been taken regarding his authorization to conduct the investigation. It was further contended that Document No.3 is only an attested copy of a memo accompanied by service particulars and that the documents were being introduced only to cause prejudice to the accused. Learned counsel relied upon the judgments of the Hon'ble Supreme Court in ***Central Bureau of Investigation v. R.S. Pai and another***[1], and ***Rajendra Prasad v. Narcotic Cell***[2].

12. Coming to the first objection of the learned counsel for the petitioner/accused, Section 242(2) Cr.P.C. expressly empowers the Magistrate, on the application of the prosecution, to issue summons to any of its witnesses directing him to attend or to produce any document or other thing. Under Section 242(3) Cr.P.C., on the date so fixed, the Magistrate is required to proceed to take such evidence as may be produced in support of the prosecution, subject to the power to defer cross-examination or recall a witness for further cross-examination. The provision does not impose an absolute prohibition against production of documents merely because they were not filed along with the

[1] (2002) 5 SCC 82
[2] (1999) 6 SCC 110

charge sheet. Therefore, the contention that the prosecution is, as a matter of law, precluded from filing such an application under Section 242 Cr.P.C. has no merit.

13. The next contention is that the application was filed only to fill up a lacuna in the prosecution case. The judgment relied upon by the learned counsel for the petitioner in **Central Bureau of Investigation** (supra)**,** Hon'ble Apex Court has held that the principal of prohibiting the prosecution from filling up a lacuna applies to curing fatal defects in the core facts or rebuilding a failed case after defence discloses and a mere administration oversight or accidental misplacement of documents into another case file does not constitute filling up a lacuna and further, procedure is the handmade justice, and a technical flaw or procedural oversight should not operate to defeat the search for the truth.

14. Further in the other judgment relied upon by the learned counsel for the petitioner/ accused in ***Rajendra Prasad*** (supra) also, Hon'ble Apex Court distinguished an inherent weakness in the prosecution case from the oversight committed during the conduct of trial and held that the oversight in producing relevant material cannot automatically be treated as an incurable lacuna.

15. The issue, however, has to be decided on the facts of the present case, particularly in the light of the nature of the documents sought to be received and the opportunity available to the accused to raise all objections regarding their evidentiary value. In the present case, the documents sought to be received relate to the year 2013 and consist of official correspondence concerning the entrustment and further investigation of the case and the service particulars of the accused officer. The prosecution has specifically explained that the documents were inadvertently mixed with the records of another case and were subsequently traced. The explanation cannot, at this stage, be rejected as inherently improbable. Significantly, the documents are not sought to be

introduced to set up an altogether new case, but are relied upon in the context of the existing prosecution case and the defence taken regarding the authority of PW.23 to conduct the investigation. Learned counsel for the petitioner finally would argue that after lapse of 13 years, prosecution filed the documents rebutting the said averments, learned Special Public Prosecutor argued that previously, accused officer obtained stay and in the year 2022 only, trial commenced, out of 27 witnesses, so far 23 witnesses are examined and then, during examination, the IO/ PW.24 filed this petition.

16. It is also necessary to distinguish between receiving a document on record and admitting the contents of that document in evidence. Mere receipt of a document does not, by itself, amount to a final adjudication upon its admissibility, mode of proof or evidentiary value. If the accused has any objection regarding the admissibility, mode of proof, genuineness or relevance of the documents, the accused is entitled to raise such objection before the trial Court at the appropriate stage, and the trial Court shall consider the same in accordance with law. In the present case, the prosecution has furnished the documents to the accused, thereby affording an opportunity to the accused to effectively meet the material and to raise all permissible objections.

17. Having regard to the above circumstances, this Court finds no illegality or material irregularity in the order dated 25.03.2026 passed in Crl.M.P. No.12 of 2026 in C.C. No.1 of 2017 by the learned Special Judge for SPE & ACB Cases, Kurnool. The documents are stated to be relevant to the issues arising in the trial, the prosecution has furnished an explanation for their belated production, and the accused has been afforded an opportunity to contest their admissibility and evidentiary value. Mere belated production, in the circumstances of the present case, cannot by itself be treated as an attempt to fill up a lacuna.

18. In the result, this Criminal Petition is dismissed confirming the order dated 25.03.2026 passed in Crl.M.P. No.12 of 2026 in C.C. No.1 of 2017 by the learned Special Judge for SPE & ACB Cases, Kurnool.

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

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SUNITHA GANDHAM, J

05.10.2026
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