

(2017) 02 AP CK 0063

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No.1582 of 2016

B. Gunasekhar Babu

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 09-02-2017

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B LW 19

Prevention of Corruption Act, 1988 — Section 13(1)(a), Section 13(1)(d)

Citation : (2017) 2 ALTCrI 98 : (2017) 1 HLT(CrI) 325

Hon'ble Judges : DR. B. Siva Sankara Rao, J.

Bench : Single Bench

Advocate : Sri Virupaksha Dattatreya Gouda, Counsel, for the Petitioner; Sri Udaya Bhaskara Rao, SC for ACB & Spl. P.P, for the Respondent

Final Decision : Disposed Off

Judgement

B. Siva Sankara Rao, J.—The revision petitioner is the Inspector of Police, who is none other than Accused No.8 in C.C.No.98 of 2013, an outcome of Crime No.15/RCO-ACB-KNR/2011, registered on 14.12.2011 for the offences punishable under Sections 13(1)(a) and (d) of the Prevention of Corruption Act, 1988 (for brevity "the Act") and Sections 34 and 120-B of IPC, which is based on occurrence report of the Deputy Superintendent of Police, Anti-Corruption Bureau (ACB), Kurnool, from a surprise check conducted on 13.12.2011 by intercepting a TATA Victa vehicle belonging to the officials of Excise Department and Rs.3,62,640/- seized from them under the cover of panchanama and the source of money could not be explained by the officials as that was suspected to be the amount collected towards bribe for favouring the owners of Wine Shops, in registering the above crime and from the investigation, including on the searches conducted and seizures effected, the ACB officials filed the final report that was taken cognizance for the offences referred supra by the learned Special Judge for Trial of SPE and ACB Cases, Kurnool.

2. It is thereafter on supply of copies to the accused and in the course of hearing

on charges, the petitioner/A.8 filed Crl.M.P.No.254 of 2015 in C.C.No.98 of 2013 under Section 239 Cr.P.C., seeking for his discharge, saying that the investigation and the cognizance order of the Special Judge are unsustainable and baseless for there are no grounds to frame any charge against him, in particular.

3. It is after contest, by the impugned order dated 03.11.2015 in Crl.M.P.No.254 of 2015 in C.C.No.98 of 2013, the learned Special Judge dismissed the discharge petition and the same is the subject matter in the present Criminal Revision Case.

4. Before coming to the contentions in the grounds of revision vis-à-vis oral submissions of the learned counsel for revision petitioner/A.8 impugning the discharge petition dismissal order, it is needful to mention the facts that are all covered by revision petition vis-à-vis the discharge petition before the Court below.

5. As per the prosecution version from the investigation of the crime supra, A.1 ? K. Dayakar Reddy is the leader of a Liquor Syndicate of Yemmiganur, Kurnool District, and he conspired with A.2 to A.7 (viz., A.2 ? C.V. Raghava Reddy; A.3 ? G. Ravi Kumar; A.4 ? K. Sankar Reddy; A.5 ? K. Virupaksha Reddy; A.6 ? Y. Sreenivasulu Goud; and A.7 - C. Sidda Ramappa) and operated the Syndicate that was running 8 Wine Shops, out of which 7 are situated in Yemmiganur Town and Mandal and one is at Divandinne Village Yemmiganur Mandal. On 13.12.2011, the aforesaid vehicle belonging to the Excise officials, on a surprise check conducted in Kurnool Town, was intercepted and a sum of Rs.3,62,640/- was seized by the ACB officials, who registered a case and the investigation disclosed that Wine Shop Syndicate leaders, who developed illegal nexus with the officials of Excise and Police and others to win over the Law Enforcing Agency and to overlook various omissions and commissions done by the Liquor Syndicate and in the course of search on 17.12.2011 by the Dy.S.P, ACB, Kurnool, at the office of Liquor Syndicate, bearing Door No.1-1589, Gandhinagar, Yemmiganur, two Registers i.e., Books of Accounts of Liquor Syndicate for the period from 01.12.2011 to 14.12.2011 and 29.10.2011 to 16.12.2011 when seized under Mediators Report, and on verification it disclosed that A.1 to A.7 made payments to the Government officials, including the Excise officials and that the Excise officials received a sum of Rs.1,93,000/- towards mamool and the Police officials received Rs.95,000/- towards mamool. The revision petitioner/A.8, who worked as Inspector of Police, Yemmiganur, at that time, was paid Rs.20,000/- by the Liquor Syndicate as monthly mamool, as disclosed from the said two seized Registers, particularly entry in page-12 of Register No.1, and the same is also supported by oral evidence of one Sri B. Murali Krishna, PC-2635 (LW.19) and also by the disclosure statements of A.1 to A.7 leading to discovery of facts. The final report from the investigation filed against the revision petitioner/A.8 is for the offences punishable under Sections 7, 13(2) r/w. 13(1)(a) and (d) of the Act and Sections 34 and 120-B of IPC.

6. The discharge petition of the revision petitioner/A.8 before the learned Special Judge is with the contentions that the Books of Accounts even shown contained

C.I. mamool of Rs.25,000/- and Police officials mamool of Rs.95,000/- among others, the ACB officials failed to collect any material to link to it to show that the said C.I. found in the Books of Accounts in any manner to array as A.8 and the Books of Accounts are not legally admissible. The statement of Sri Murali Krishna ? LW.19 under Section 161 Cr.P.C., through investigation showing that the Liquor Syndicate of A.1 to A.7 was paying monthly mamools to the Police and Excise officials for not booking cases against them or that on 12.01.2011, said Murali Krishna ? LW.19 collected a sum of Rs.20,000/- from the Liquor Syndicate of Yemmiganur, as per the instructions of the revision petitioner/A.8 as bribe/ mamool and handed over the same to the petitioner/A.8 and said statement of LW.19 is also inadmissible in evidence, as given by him in abetting the commission of crime and he is also an offender and there is no permission of the prosecution by tendering any pardon to an accomplice, like LW.19, and the statement of LW.12 ? G. Amareswarappa is only a hearsay and hence inadmissible in evidence and that cannot be used for framing charges.

7. The contentions in opposing the petition by the Public Prosecutor, representing the ACB officials before the lower Court are, that the investigation discloses of Rs.1,93,000/- towards mamools received by the Excise officials, besides police officials received Rs.95,000/- and the monthly mamool of Rs.20,000/- paid to the revision petitioner/A.8 by the Liquor Syndicate of A.1 to A.7 as disclosed from the seized records of Liquor Syndicate, apart from Rs.1,50,000/- paid to A.9 and his staff by the Liquor Syndicate. The prosecution from the investigation cited 68 witnesses and filed 90 documents in support of their contention, all of which establishes the complicity of revision petitioner/A.8 to the crime and the statement of LW.19 ? Murali Krishna is clear, besides that of LW.12 ? G. Amareswarappa, of the said Murali Krishna collected Rs.20,000/- from the Liquor Syndicate on 12.12.2011 as per the instructions of the revision petitioner/A.8 and handed over the same to him on the same day. Later LW.19 ? Murali Krishna came to know that the said amount received by petitioner/A.8 is in allowing contraventions of Excise Laws and the Rules committed by the Liquor Syndicate and the revision petitioner/A.8, being a Public Servant, conspired with the Liquor Syndicate of A.1 to A.7, having received the mamool of Rs.20,000/- is nothing but illegal gratification to do official favour, thereby punishable for the offences shown in the charge sheet and the discharge petition deserves dismissal.

8. It is from this, the learned Special Judge dismissed the discharge petition by order dated 03.11.2015 with observations, after discussing the legal position elaborately and from the rival contentions with reference to the provisions and propositions, that the contents of Books of Accounts show the C.I. mamool of Rs.25,000/- and other Police official mamool of Rs.95,000/-, statement of LW.19 ? Murali Krishna shows that on 12.12.2011 he collected a sum of Rs.20,000/- from the Liquor Syndicate as per the instructions of the revision petitioner/A.8 and handed over the same to him and by then he does not know, but later came to know of the same that the revision petitioner/A.8 collected the said amount from the Liquor Syndicate as bribe and there is a prima facie case

made out against the revision petitioner/A.8 therefrom, besides the disclosure statements of A.1 to A.7, in support of it, of the facts discovered and the charge sheet also refers the cell phones and the incoming and outgoing call records obtained from the Network Service Providers between A.1 to A.7 and A.8 in almost regular touch with each other and thus, there is a prima-facie accusation to sustain the cognizance taken to frame charges, for no grounds to discharge the petitioner/A.8.

9. In the revision, by reiterating the contentions referred supra, learned counsel for the revision petitioner/A.8 referred to the expression of 2-Judge Bench of the Apex Court in *Union of India v. Prafulla Kumar Samal* (1979) 3 SCC 4, wherein on the scope of Section 227 Cr.P.C. and the powers of the Special Judge, it was observed that he shall not act as a trial Judge, but should weigh evidence (material) and form an opinion only on the limited question of whether prima-facie case is made out. Except in cases of grave suspicion, which the accused is unable to explain, he is empowered to be discharged in passing order of discharge by the Special Judge. The word "not a sufficient ground for proceeding against the accused" used in Section 227 of Cr.P.C., clearly shows that the trial Judge is not a mere Post Office to frame charge at the behest of the prosecution, but has to exercise his Judicial mind to the facts of the case in order to determine, whether a case for trial has been made out by the prosecution. For that conclusion, the Apex Court in *Prafulla Kumar Samal* (supra) also referred the earlier decision of it in *State of Bihar v. Ramesh Singh* (1977) 4 SCC 39, which speaks of a strong suspicion against the accused enables the Court to think of a ground for presuming that the accused committed an offence, then it is not open for the Court to say that there is no material to proceed with by framing charge, and what is required is, if the material, if brought in evidence in chief, through respective witnesses, without cross-examination and without rebuttal evidence by the accused, if a ground for proceeding for trial, that is more than sufficient to frame the charge.

10. The other decision relied is another 2-Judge Bench of the Apex Court in *State of Rajasthan v. Gurucharan Das Chadha* (1980) 1 SCC 250 (2 JB), which is a case under Prevention of Corruption Act, referring to the scope of the Special Judge to frame charge where in coming to the conclusion upholding the remand order of the High Court, for reconsideration of framing of charge by the Apex Court, it referred the Apex Court's expression in *P. Sirajuddin Etc. v. State of Madras* AIR 1971 SC 520, saying where the evidence relied on by the prosecution consisted of statements signed by the makers that were shown obtained under inducement, threat or promise and that were obtained even before the FIR was lodged, those were observed as inadmissible and thereby cannot form the subject matter of charge.

11. Learned counsel for the revision petitioner/A.8 placed reliance on a 2-Judge Bench decision of the Apex Court in *P. Sirajuddin's* case (supra), wherein it was observed that in a case under Prevention of Corruption Act, of preliminary

enquiry before lodging FIR, a necessity, if any, in affirming the Madras High Court judgment and it was observed further, while referring to chapter-XIV from Sections 160 to 173 of Cr.P.C., that those provisions are aimed at securing fair investigation into the facts and circumstances of a criminal case and clearly with an idea that no one should be put to harassment of a criminal trial, unless there are good and substantial reasons for holding it, thereby empowers the Police Officer to release the accused from the custody, if no sufficient evidence during investigation and even to file a final report after completion of investigation. It was observed on facts further that there can be no excuse for the Directorate of Vigilance and Anti-Corruption for proceeding in the manner adopted in preliminary enquiry before lodging the FIR. The omission to do so ought not to have been allowed. The steps taken in the preliminary enquiry were grossly irregular and unfair. In the said case, it was also observed at para-26, in particular, that "in our view, granting of immunity to two persons, who are sure to be examined as witnesses for prosecution, was highly irregular and unfortunate. It was rightly pointed out by the High Court that neither Cr.P.C. nor Prevention of Corruption Act recognises the immunity from prosecution given under these assurances and that grant of pardon was not in the discretion of the Police authorities.

12. Coming to the other decision placed reliance is of the Madras High Court in *Sirajuddin* In AIR 1968 Madras 117, which is none other than the expression covered in appeal before the Apex Court in *SIRAJUDDIN*'s case (*supra*) that no way requires further repetition, but for to consider whether in the case on hand, is there any person supposed to have been shown as accused or co-accused was accorded immunity by police by simply examined them as witnesses to let off them from their complicity, if any.

13. In fact, the 3-Judge Bench expression of the Apex Court in *State Of Orissa v. Debendranath Padhi* (2005) 1 SCC 568, observed on the scope of pre-charge enquiry and consideration of material by referring Section 227 of Cr.P.C., "that the record of the case" used therein to mean "the record of the case and the documents submitted therewith, which relate to the case and the documents referred in Section 209 Cr.P.C. by the prosecution" and "hearing the submissions of the accused" used in the Section to mean "from the record of the case filed by the prosecution with the documents submitted by the prosecution". What is required therefrom is that there should be a *prima-facie* accusation to frame the charge. It is observed that on the face of the material, if the accusation sustains, charge can be framed.

14. Even in *Amith Kapoor v. Ramesh Chander* (2012) 9 SCC 460, a 2-Judge Bench of the Apex Court, referring to the decision in *Ramesh Singh* of 1977 (*supra*) observed that, the Court after considering the record of the case i.e., with the documents submitted by the prosecution, the final report and after hearing the parties, shall frame charge, if there are grounds for presuming that the accused committed the offence. Such presumption is not a presumption of

law and, as such, what is required is satisfaction of the Court in relation to the existence of constituents of offence and the facts leading to that offence are sine-qua-non for exercising of such discretion. The Court at that stage, in framing a charge under Section 228 Cr.P.C., is not concerned with the proof, but merely a strong suspicion that the accused has committed offence. The final test of guilt is not to be applied at the stage of framing of charge, the presumption that the accused has committed the offence, if there is a prima-facie material as contemplated by Section 228 Cr.P.C. to be drawn for framing charge. Thus, the legal position is very clear that a strong suspicion of commission of an offence by the accused from the prima-facie accusation and not ultimate result in the case from the full dressed trial is required in framing of charge.

15. Once such is the position of law, coming to the facts, leave about the statement of LW.12 ? G. Amareswarappa, the statement of LW.19 ? Murali Krishna about his collection of the amount of Rs.20,000/- at the instance of the petitioner/A.8 from A.1 to A.7 and handing over the same to the petitioner/A.8, what he stated was, the purpose he does not know by then and it is later he came to know of the same is an illegal gratification/bribe, in the form of monthly mamool. If he deposed the same, it is a part of appreciation of evidence on admissibility, for nothing shown prima-facie inadmissible. There is nothing even from said version to say the police granted him immunity to save any of his complicity to apply the ratio in Sirajuddin's case (supra).

Further, there is no basis to say that LW.19 is an accomplice or co-accused and could have been charge sheeted, as what he stated is, he simply collected the amount at the instance of the petitioner/A.8 from A.1 to A.7 and handed over the same to the petitioner/A.8, without knowing the purpose and the consequences, but only later he came to know of the same. If that is the issue, it is difficult to say that he is an accomplice or co-perpetrator of the crime.

16. Further, once the entries in the Books of Accounts are relevant and admissible, leave about the evidentiary value of it, as held by the learned Special Judge, all these constitute prima-facie accusation to frame charge. The contention that all those are with no basis and are ultimately insufficient to sustain the accusation, if put to trial, are premature to decide.

17. In view of the above, there are no grounds to interfere with the impugned discharge dismissal order dated 03.11.2015 passed by the learned Special Judge.

18. Accordingly, the Criminal Revision Case is dismissed. As a sequel, miscellaneous petitions pending, if any, in this revision shall stand closed.