(2007) 11 AP CK 0006

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 1636 of 2007

N. Vivekananda Swamy — APPELLANT

Vs

State ACB Kurnool Range — RESPONDENT

Date of Decision : 30-11-2007

Acts Referred:

Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 — Rule 20
Criminal Procedure Code, 1973 (CrPC) — Section 321
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2008) CriLJ 1325

Hon'ble Judges : P. Swaroop Reddy, J

Bench : Single Bench

Advocate : A. Narasimha Reddy, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

P. Swaroop Reddy, J.—This revision case is filed against the order of the learned Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad in Memo.SR.No. 675 of 2007 in C.C. No. 27 of 2006.

2. The facts are as follows: The petitioner, who is the accused in the above Calendar Case, was facing prosecution for possessing disproportionate assets worth Rs. 41,00,645.00 in his name, in the name of his dependents, his family members and relatives.

3. The petitioner-accused joined in government service as an Assistant Executive Engineer on 1.2.1978; promoted as Deputy Executive Engineer on 15.3.2002 and was working as Deputy Executive Engineer in Guru Raghavendra Project Sub Division, Mantralayam, Kurnool District. The investigation revealed that he was in possession of assets in his name and in the name of his dependents, his family members and relatives. The income of the accused-officer for the check period was Rs. 44,08,071.00; his expenditure was calculated at Rs. 32,97,820.00 and

the likely savings were Rs. 11,10,251.00. Thus, he was in possession of disproportionate assets.

4. According to the prosecution case, the officer failed to satisfactorily account for possessing huge assets in his name, in the name of his dependents, his family members and relatives. Thus there was prima facie material to show that he indulged in corrupt practices and amassed wealth. The Government of Andhra Pradesh accorded sanction for the prosecution of the accused-officer vide G.O. Ms. No. 45 dated: 1.6.2006 of Irrigation and General Administration (Services VI(1)) Department. Thus he was liable for punishment u/s 13(1)(e) read with Section 13(2) of Prevention of Corruption Act, 1988. The charge sheet was filed against him on 23.9.2006 and when the case was posted to 5.7.2007 for framing of charges, the learned Counsel for the accused filed a Memo to withdraw the case against the accused stating that the Government have issued orders - G.O. Rt. No. 608 dated: 4.6.2007, Irrigation and CAD (Ser. VI(1) Department to drop the case against the accused-officer

5. The notice of Memo was given to the Special Public Prosecutor by the trial court. The learned trial Judge after elaborately discussing the factual and legal position dismissed the Memo., disallowing withdrawal of the prosecution, resulting in the present revision.

6. Now the contention of the learned Counsel for the petitioner is that the learned trial Judge erroneously dismissed the Memo., in spite of the State Government, itself, issuing a Governmental Order dropping proceedings against the accused-officer, after examining the defence statement filed by the accused; the learned judge ought not to have disallowed the Memo, the learned judge had exceeded his jurisdiction and unnecessarily entered into the merits of the case.

7. Now the point for consideration whether there are any grounds to entertain the revision case.

8. The Memo filed by the learned Counsel in the lower court did not state anything about the case or the grounds on which the prosecution has to be dropped; simply G.O.Rt.No. 608 dated: 4.6.2007, Irrigation and CAD (Ser.VI(1) Department, issued by the Government was enclosed.

9. The contents of the Governmental order are that the case was registered by the investigating agency on 17.1.2005 against the accused-officer on the allegation that he has acquired assets disproportionate to the known source of is legal income; he was suspended from service with effect from 19.1.2005; was reinstated into service later; the properties of the accused were attached; after thorough investigation into the matter, the government have issued orders for prosecuting the accused before the competent court of law; orders were also issued against the accused for initiating departmental action u/s 20 of A.P.C.S. (CC & A) Rules, 1991; the accused-officer in response to the charges framed against him, filed his defence statement on 26.10.2006; the government after careful consideration of the defence statement of the accused-officer felt that for

acquisition of the assets by the wife of the accused-officer, an Income Tax Assessee and who in the course for several years has acquired the assets out of her Stridhanam and business profits with her parents; the accused-officer cannot be held responsible, and, therefore the Government decided to drop further action against the accused-officer among other things being equal.

10. Thus the Governmental order dropping the proceedings is predominantly issued for the reason that the defence statement of the accused-officer revealed that his wife was an income tax assessee and who in the course for several years, has acquired assets out of her Stridhanam and business profits with her parents and the accused-officer cannot be held responsible for that.

11. Such a kind of explanation can be given by any delinquent officer. If simply such kinds of statements are accepted to drop serious proceedings, perhaps no one can be prosecuted for corruption. It is not known as to whether the accused-officer had obtained permission of the competent authority for his wife doing business; whether he has shown the income in his earlier property statements submitted to the department. Even assuming that there is no necessity of taking permission showing the income of his wife in the property statements also, simple statement explaining the source of income cannot be just accepted and if such a trend is allowed, it would lead to dangerous consequences and ultimately help in encouraging corruption. It would also demoralize the concerned law enforcement agency, as, amongst thousands of corrupt, now-and-then one is caught and scuttling prosecution of such persons in the bud, is not desirable. May be, in certain cases, false accusations are made for various reasons. It is a case, that wholly depends mostly on documentary evidence and in case the accused-officer is falsely implicated, he can easily come out. But closing the case at initial stages without giving an opportunity to the prosecution to establish its case is certainly undesirable and would lead to dangerous consequences, as already referred. The learned trial judge relying on various decisions of the Hon''ble Supreme Court has elaborately discussed about the undesirability of withdrawal of the prosecution in such kinds of cases. As found by the learned trial Judge, in the Memo filed on behalf of the accused there was no mention that there was no likelihood of the conviction of the accused, no doubt even such a mention would not have made much difference.

12. The Hon''ble Supreme Court held that withdrawal of the prosecution must be in public interest. In this case, it is not known as to what public interest is involved, except the interest of the accused. If such prosecutions are allowed to be dropped at the initial stages, there is danger of the public loosing confidence in the very system, as well as in Courts. No great prejudice would be caused to the accused in case he faces the trial. It is a case where the prosecution would wholly depend on documentary evidence and as such it cannot be said that the prosecution would be frivolous.

13. Another important aspect is with regard to the technical aspect of the power and locus standi of the counsel for the accused to file a Memo for withdrawing

the prosecution, as Section 321 of the Code of Criminal Procedure contemplates that the Memo should be filed by the Public Prosecutor or the Assistant Public Prosecutor, in charge of the case.

14. Thus, in any view of the matter, I am of the opinion that there are no merits in the revision case.

15. In the result, the revision case is dismissed.

16. Before parting with the case, I feel it is necessary to observe that it is not at all desirable for the State to drop the proceedings in any form, on administration side or to withdraw the prosecution in corruption cases of any nature. A copy of this order be forwarded to the Chief Secretary, Government of Andhra Pradesh, Hyderabad to consider taking appropriate steps prohibiting such practices in future in all the departments of the State.

