
(2010) 10 AP CK 0080

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 9877 of 2010

Poola Aswartha Narayana

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 197, 482
Prevention of Corruption Act, 1988 — Section 19

Citation : (2011) 8 RCR(Criminal) 2606

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : Gangaiah Naidu for N. Bharat Babu, for the Appellant; V. Ravi Kiran Rao, Special Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—This criminal petition is filed u/s 482 Code of Criminal Procedure. seeking to quash the proceedings in C.C. No. 5 of 2010 on the file of the Special Judge for SPE and ACB cases, Nellore.

2. I have heard the learned Senior Counsel Sri Gangaiah Naidu appearing for the Petitioner and the learned Special Public Prosecutor for ACB cases.

3. Brief facts of the case are that while the Petitioner was working as the Special Deputy Collector for Land Acquisition, Chitravathi Balancing Reservoir-II, Pulivendula, Kadapa District he was alleged to have demanded an amount of Rs. 15,000/- as bribe from one Parvathamma for issuing a cheque for Rs. 1,85,000/- payable towards compensation for the land of an extent of Ac. 1.39 cents at Goddumarri Grampanchayat acquired by the State of A.P. According to the prosecution, the said Parvathamma authorised one Ram Mohan Reddy who is no other than her brother to receive the cheque on her behalf and that when the said Ram Mohan Reddy asked for issuance of cheque the Petitioner demanded an amount of Rs. 15,000/-, then the said Ram Mohan Reddy, who is not interested

to pay bribe as demanded by the Petitioner, approached the ACB officials who laid trap on 26.5.2008 at Kadiri and during the trap Dasari Venkata Subbaiah who is the Attender of the Petitioner received the tainted amount and he later gave the amount to the Petitioner. It is the version of the prosecution that the Petitioner remaining at a recreation Club at Kadiri authorised his Attender (AO. 2) Dasari Venkata Subbaiah to receive the tainted amount on his behalf.

4. The learned Senior Counsel Sri. Gangaiah Naidu contended that the Petitioner who was about to retire on superannuation was recommended by the District Collector for extension of his services for two years and some of the officials working along with the Petitioner by name D. Shankar, Senior Assistant, M. Narasimha Prasad, Junior Assistant and one Prabhakar, Surveyor hatched a plan to implicate the Petitioner in ACB case and got lodged a report through Ram Mohan Reddy by planting the said Dasari Venkata Subbaiah, the Attender to receive the tainted amount. The main contention of the learned Counsel for the Petitioner is that even though the Petitioner retired from service on 31.5.2008 sanction u/s 19 of the Prevention of Corruption Act, 1988 is required and without there being any sanction, cognizance of the offences under the Act cannot be taken against the Petitioner. In support of his contention, the learned Counsel for the Petitioner relied on a decision between State of Haryana and others Vs. Ch. Bhajan Lal and others, wherein the Supreme Court formulated certain guidelines which enable the High Court to exercise powers under Article 226 of the Constitution and u/s 482 Code of Criminal Procedure. to interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The guidelines read as follows:

1)...

2)...

3)...

4)...

5) ...

6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

5. The learned Counsel for the Petitioner also relied on Anr. decision between State of Orissa through Kumar Raghvendra Singh and Others Vs. Ganesh

Chandra Jew, wherein the Supreme Court held as under:

We may mention that the Law Commission in its 41st Report in paragraph 15.123 while dealing with Section 197, as it then stood, observed "It appears to us that protection under the section is needed as much after retirement of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecution. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant." It was in pursuance of this observation that the expression "was" came to be employed after the expression "is" to make the sanction applicable even in cases where a retired public servant is sought to be prosecuted.

6. On the other hand, the learned Special Public Prosecutor for ACB cases contended that the 2nd decision relied on by the learned Senior Counsel relates to sanction u/s 197 Code of Criminal Procedure., which does not apply to the facts of the present case, wherein required sanction is u/s 19 of the Prevention of Corruption Act, he would further submit that unless there is some material to show that some oblique motive and some mala fide intention to wreak vengeance against the Petitioner by implicating him in ACB case, it is not possible for the Court to give a finding as to the mala fides in the absence of any material on record and that in the instant case absolutely there is no material except the mere assertion of the Petitioner in the criminal petition and therefore he seeks to dismiss the petition. In support of his contentions, the learned Special Public Prosecutor for ACB cases relied on the following decisions:

- 1) M. China Gopalakrishna Vs. The State of A.P.,
- 2) Kalicharan Mahapatra Vs. State of Orissa,
- 3) State of Kerala Vs. V. Padmnabhan Nair, and
- 5) (1999) 5 SCC 738

7. In all the decisions relied on by the learned Special Public Prosecutor for ACB cases the Supreme Court while dealing with Section 19 of the Prevention of Corruption Act categorically held that if a public servant has ceased to be a public servant when the Court is called upon to take cognizance of the offences under the provisions of the Prevention of Corruption Act, sanction is not necessary. The Supreme Court also clarified the distinction between the sanction required u/s 197 Code of Criminal Procedure. and u/s 19 of the Prevention of Corruption Act and held that the sanction contemplated in Section 197 Code of Criminal Procedure. concerns a public servant who is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, whereas the offences contemplated in the PC Act are those

which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties and that the Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the former PC Act was materially imported in the new PC Act, 1988.

8. The allegation against the Petitioner is that he received bribe from Ram Mohan Reddy through his Attender Dasari Venkata Subbaiah for the purpose of issuing cheque for an amount of Rs. 1,85,000/- to Parvathamma. Demanding and receiving bribe cannot be said to be part of official duty of a public servant. Therefore, to prosecute the Petitioner, even sanction u/s 197 Code of Criminal Procedure. is not necessary. Further, from the decisions relied on by the learned Special Public Prosecutor it is obvious that at the time of taking cognizance, if the public servant ceased to be a public servant no sanction is required u/s 19 of the P.C. Act. Therefore, absolutely I see no merit in the contention of the learned Counsel for the Petitioner that taking cognizance of the offences under the P.C. Act against the Petitioner by the Special Court is bad.

9. As regards the mala fides i.e. the other colleagues of the Petitioner working in the same Department bore grudge against him for the recommendation of the District Collector for two years extension of the Petitioner's services and they all conspired together and hatched a plan to implicate the Petitioner in ACB case and accordingly they took the help of Ram Mohan Reddy, who is the brother of Parvathamma are all the questions of fact which can be decided after the trial is over and only if the Petitioner takes such defence in the trial. There is absolutely no material on record in proof of mala fides canvassed by the learned Counsel for the Petitioner. It is not possible to record a finding on the question of mala fides on the mere assertion of the Petitioner.

10. For the foregoing reasons, there are no merits in the petition and the same is accordingly dismissed.