
(2010) 09 AP CK 0004

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5078 of 2007

Pothureddy Ramesh Babu

APPELLANT

Vs

Inspector of Police, SPE CBI

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239, 300, 482

Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471

Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 2(9)

Citation : (2010) 09 AP CK 0004

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

Advocate : B. Shiva Kumar, for the Appellant; P. Kesava Rao, Spl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

A. Gopal Reddy, J.—This petition u/s 482 of Code of Criminal Procedure is filed to quash the proceedings against the Petitioner in C.C. No. 354 of 2005 pending on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam wherein the Petitioner was charged for the offences punishable under Sections 120B r/w 420, 468, 471 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act.

2. Learned Counsel for the Petitioner contends that earlier the C.B.I. filed a charge sheet before the Special Judge for C.B.I. Cases, Visakhapatnam against the Petitioner, wherein he was arrayed as A.2 and against one V.S. Prakash Rao-A.1 in C.C. No. 5 of 2003. In the said C.C., the first accused filed CrI. M.P. No. 159 of 2004 to discharge him from the charges stating that he is a retired Area Manager of L.I.C. and not a public servant. The said application was allowed discharging A.1 from the charges and consequently, the Petitioner herein was also discharged. Therefore, once the Petitioner was discharged from the said charges, once again filing the present complaint is not maintainable. Further the C.B.I. cannot file the charge sheet without the prior sanction of the State

Government to investigate into the offences of Indian Penal Code and therefore, the impugned proceedings are liable to be quashed.

3. Rebutting the submissions of the learned Counsel for the Petitioner, the learned standing counsel appearing for the C.B.I. produced copies of two notifications, one issued by the Government of A.P. in G.O. Ms. No. 477 Home (SC.A) Department, dated 18.6.1994; and other issued by the Government of India, dated 10.3.1995 under Sections 6 and Sub-section (1) of Section 5 of Delhi Special Police Establishment Act, 1946, respectively. The learned Counsel, referring to the said two notifications, contends that the C.B.I. was authorized to file the charge sheet. Further it is contended that the Petitioner participated all through the proceedings and three witnesses were examined on behalf of the prosecution and at that stage, the present petition is filed, which cannot be entertained and liable to be dismissed.

4. This Court does not find any merit in the contention advanced by the learned Counsel for the Petitioner that once the Special Judge for C.B.I. Cases, Visakhapatnam discharged the accused for the offences triable for the very same offences, the C.B.I. cannot file a charge sheet second time before the Magistrate. Admittedly, A.1 and A.2-Petitioner herein were charged for the offences punishable under Sections 120B r/w 420, 468, 471 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act by the C.B.I. and they were prosecuted before the Special Judge for C.B.I. Cases, Visakhapatnam, in which, A.1 filed Crl. M.P. No. 159 of 2004 to discharge him contending that he does not come under the definition of "public servant". At that stage, the Special Judge after hearing on the charges, discharged A.1 u/s 239 Code of Criminal Procedure holding that A.1 does not come under the definition of public servant as defined u/s 2(c)(9) of Prevention of Corruption Act. It was of the view that as A.1 was discharged, it cannot proceed against A.2-Petitioner herein as he is a private individual and accordingly discharged him of the charges. However, liberty was granted to the prosecution to file a fresh charge sheet against A.1 and A.2 in the concerned Court, which will have jurisdiction to entertain the case against them.

5. Explanation to Section 300 Code of Criminal Procedure reads that on the dismissal of a complaint or the discharge of the accused is not an acquittal for the purpose of Section 300 Code of Criminal Procedure. Therefore, the accused in C.C. No. 5 of 2003 were discharged on the ground that the Court would not have jurisdiction to entertain the proceedings for the offences under I.P.C. and the prosecution was permitted to file a fresh charge sheet before the appropriate Court having jurisdiction to try the offences under I.P.C. against A.1 and the Petitioner herein, who is A.2. Further the Government of A.P. issued a notification vide G.O. Ms. No. 477, dated 10.6.1994 u/s 6 of the Delhi Special Police Establishment Act, 1946 according general consent to all the members of Delhi Special Establishment to exercise the powers and jurisdiction under the said Act in the State of A.P. for investigation of the offences mentioned therein against private persons for alleged offences committed whether acting separately or in

conjunction with Central Government/undertaking employees etc. Annexure-II to the said notification also included various offences under the Indian Penal Code including the offences for which the Petitioner has been charged. Further the Central Government, in exercise of powers conferred under Sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police establishment Act, 1946, with the consent of the Government of A.P. vide G.O. Ms. No. 477, issued a consequential notification, dated 10.3.1995 extending the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of A.P. for investigation of offences mentioned in the annexure, against private persons for alleged offences committed whether acting separately or in conjunction with central Government/undertaking employees etc. To investigate and lay the charge sheet, no prior sanction is required against the private persons. In view of the same, prima facie, the C.B.I. can file the charge sheet against the Petitioner for the offences alleged, for which he was put on trial. Therefore, the judgment reported in Dharmendra Deo Mishra Vs. Central Bureau of Investigation, on which reliance is placed by the learned Counsel for the Petitioner has no application to the facts of the present case. I see no merits in the petition to quash the impugned proceedings.

6. The Criminal Petition is accordingly dismissed.