

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

CRIMINAL REVISION CASE No.284 of 2021

ORDER:

Heard Mr. T.Pradyumna Kumar Reddy, learned Senior Counsel for Mr. T.Anirudh Reddy, learned counsel for the petitioner and Mr. K.Surender, learned Special Public Prosecutor for Central Bureau of Investigation (CBI) (as his Lordship then was) for the respondent.

2. This revision has been filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (Cr.P.C) against the order dated 10.03.2021 passed by the learned Principal Special Judge for CBI Cases, Hyderabad, in Memo S.R.No.1056 of 2016 in C.C.No.28 of 2013.

3. By the aforesaid order, learned Principal Special Judge for CBI Cases, Hyderabad (briefly, 'the CBI Court' hereinafter) had taken cognizance of the offence against the petitioner as accused No.7 in C.C.No.28 of 2013 under Section 13(2) read with Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 (briefly, 'the PC Act' hereinafter) and directed issuance of summons to the petitioner as accused No.7.

4. The challenge has been made on the ground that petitioner has filed criminal petition No.11465 of 2018 before this Court for quashing C.C.No.28 of 2013 *qua* the petitioner as accused No.7. CBI had filed charge sheet against the petitioner under Section 120B read with Sections 420, 409 and 477A of the Indian Penal Code, 1860 (IPC) and Section 13(2) read with Section 13(1)(c) and (d) of the PC Act. At the time of filing the charge sheet on 17.09.2013, CBI had informed the CBI Court that sanction for prosecution under Section 19(1) of the PC Act of the petitioner for commission of offences under the PC Act was awaited from the competent authority. CBI only pressed the charges under the IPC saying no sanction was required for the same under Section 197 of Cr.P.C. This Court while issuing notice had stayed further proceedings in C.C.No.28 of 2013 *qua* the petitioner. Notwithstanding such stay, impugned order was passed.

4.1. Another ground of challenge is that after the sanction was granted by the competent authority on 23.03.2016, on the basis of which CBI had filed Memo SR No.1056 of 2016 before the CBI Court, petitioner had filed a representation on

18.03.2016 before the Central Government to review the sanction accorded to prosecute the petitioner under the PC Act. During pendency of such representation and outcome of review not decided, CBI Court ought not to have passed the impugned order.

4.2. It has also been contended that after PC Act was amended on 26.07.2018, Section 13(1)(d) was omitted from the PC Act. CBI Court had taken cognizance on 10.03.2021 under the omitted provision which has vitiated the order of cognizance insofar PC Act is concerned.

5. Petitioner in this case is Sri B.P.Acharya, a retired public servant belonging to the Indian Administrative Service (IAS). At the relevant point of time, he was serving as Chief Managing Director of Andhra Pradesh Industrial Infrastructure Corporation (briefly, 'the Corporation' hereinafter).

6. One P.Shankar Rao, former M.L.A., and late Yerran Naidu, former M.P., had filed W.P.Nos.794 and 6604 of 2011 respectively before the then High Court for the composite State of Andhra Pradesh alleging corruption against late

Y.S.Rajasekhara Reddy, former Chief Minister of Andhra Pradesh, his son Sri Y.S.Jagan Mohan Reddy and others and sought for investigation into such allegations of corruption by the CBI. By the order dated 10.08.2011, the erstwhile High Court of Andhra Pradesh directed CBI to investigate the allegations. Following the High Court order, CBI, Anti Corruption Bureau (ACB), Hyderabad registered a case on 17.08.2011 being R.C.19(A)/2011-CBI-HYD against seventy four accused persons under various provisions of the IPC, such as, Section 120B read with Sections 420, 409 and 477A IPC and also under the provisions of Sections 6, 12, 13(2) read with Section 13(1)(c) and (d) of the PC Act.

7. After completing investigation, CBI filed charge sheet before the CBI Court in final report form under Section 173 of Cr.P.C. In the said charge sheet, as many as fourteen persons were named as accused including Sri Y.S.Jagan Mohan Reddy as accused No.1 and Sri Vijay Sai Reddy as accused No.2. Petitioner was named as accused No.7. All the accused persons were charged for committing offences under Section

120B read with Sections 420, 409 and 477A IPC along with Section 13(2) read with Section 13(1)(c) and (d) of the PC Act.

8. The charge sheet is prefaced by a brief narration of facts starting from institution of the two writ petitions and the order passed by the High Court. It was stated that late Y.S.Rajasekhara Reddy, father of accused No.1, was sworn in as Chief Minister of Andhra Pradesh on 14.05.2004. Both late Y.S.Rajasekhara Reddy and his son had adopted several ingenious ways to amass illegal wealth resulting in public injury. *Modus operandi* of the duo was to dole out public properties, licences, allotting/granting various projects, Special Economic Zones (SEZs), mining leases, ports, real estate permissions etc., by violating established norms and procedures of the Government for *quid pro quo*. As part of *quid pro quo*, the beneficiaries paid bribes to accused No.1 under the guise of purchasing shares of companies floated by accused No.1 at huge and unsubstantiated premia.

9. From the voluminous charge sheet, it is seen that the allegation against the petitioner is that in furtherance of

criminal conspiracy and by abusing his official position as Chief Managing Director of the Corporation and in violation of the allotment regulations of the Corporation he had issued certain directions for allotment of government land to M/s.Lepakshi Knowledge Hub Private Limited (briefly, 'Lepakshi' hereinafter) (accused No.5), officials of which were close associates of accused No.1. In this connection, petitioner had addressed letter on the same day of receipt of application from Lepakshi i.e., on 24.03.2008 to the Revenue Secretary for granting advance possession of government land to Lepakshi by relaxing government rules. Investigation revealed that on 17.04.2008 the concerned Tahsildar had handed over possession of more than Acs.1270.00 of land at Kodur, Marrimakulapalli and Naramuddepalli villages to the Corporation. Petitioner had directed handing over of Acs.1000.00 of land to Lepakshi by ignoring all allotment rules. Additionally, petitioner was instrumental in requisition of more than Acs.3500.00 of government land in Kodur and Settipalli villages in the name of the Corporation though he was fully aware of the fact that such lands were being acquired

for allotment to Lepakshi. The charge sheet further discloses that as part of the criminal conspiracy and by abusing his official position, petitioner had directed allotment of further Acs.1000.00 of land to Lepakshi directly or on outright sale basis. In the process he had displayed undue haste and had acted contrary to the proposals of Asset Management Wing of the Corporation. Petitioner had processed and issued directions for acquisition/alienation of about Acs.10,000.00 of land to Lepakshi without exercising any sort of due diligence or analyzing genuineness of such requirement. Investigation further revealed that petitioner had proposed to alienate 1.20 TMC of water out of Somasila Water Supply Scheme to the proposed industrial park in the name of Lepakshi though water was intended for industrial utilization. Such diversion of water jeopardized interest of other projects. Petitioner had also taken steps for alienation of more than Acs.5,700.00 of government land after acquisition in Budili and Vadigepalli villages. In all 11,352.67 acres of government and assigned lands were decided to be allotted to Lepakshi through the Corporation. Such decisions were taken in the absence of

detailed project report, master plan etc., containing details of the proposed units, land requirement and utilization etc. In the process, petitioner had dishonestly omitted to act and wilfully failed to protect the interest of the Corporation as well as the Government of Andhra Pradesh and also facilitated wrongful disposal of vast extent of government/assigned land in favour of the accused.

10. Thus, all the accused were charged with committing the offences of criminal conspiracy, criminal breach of trust by public servant and agent, cheating, forgery for the purpose of cheating, using forged document as genuine, falsification of accounts, taking gratification for exercise of personal influence with public servants to show favour or disfavor to any person, public servant obtaining valuable thing without consideration from person concerned, in proceeding or business transacted by such public servant, abetting a public servant to obtain valuable thing for himself or for any other person, without consideration from person connected in proceeding or business transacted by such public servant, criminal misconduct by abusing his official position, obtaining for

himself or for any other person any valuable thing or pecuniary advantage etc. The charge sheet filed on 17.09.2013 mentioned that no sanction for prosecution is required for the offences committed by the accused public servants under Sections 120B, 409 and 420 IPC for the purpose of taking cognizance. Insofar sanction for prosecution under Section 19(1) of the PC Act for commission of offence under Section 13(2) read with Section 13(1)(c) and (d) of the PC Act is concerned, the same was awaited from the competent authority in respect of the petitioner and three others.

11. The charge sheet was taken on file by the CBI Court, whereafter C.C.No.28 of 2013 was registered. Cognizance against the petitioner as accused No.7 was taken on 17.10.2013 under Section 120B read with Section 409 and 420 IPC.

12. In the meanwhile, CBI had sent a requisition to the competent authority for according sanction to prosecute the petitioner under Section 19(1) of the PC Act for offences

committed under Section 13(2) read with 13(1)(c) and (d) of the PC Act.

13. Petitioner had filed criminal petition No.3070 of 2017 before this Court for dispensing with his personal appearance in C.C.No.28 of 2013. This was allowed by this Court vide the order dated 13.04.2017.

14. Thereafter, petitioner filed criminal petition No.11465 of 2018 before this Court under Section 482 of Cr.P.C to quash C.C.No.28 of 2013 *qua* the petitioner i.e., accused No.7. This Court had passed an order on 21.06.2019 staying further proceedings in the trial Court including appearance of the petitioner. This order dated 21.06.2019 was extended from time to time, whereafter because of Covid-19 pandemic Courts started functioning virtually with only urgent matters being taken up.

15. In the *interregnum*, Sri Rajkishan Vatsa, Under Secretary to the Government of India acting as the competent authority accorded sanction on 23.03.2016 under Section 19(1) of the PC Act to prosecute the petitioner for the offences under the

PC Act. It was thereafter that CBI filed Memo SR.No.1056 of 2016 requesting the CBI Court to take on board the sanction order as an additional document and thereafter to take cognizance under Section 13(2) read with 13(1)(c) and (d) of the PC Act against the petitioner as accused No.7.

16. This was objected to by the petitioner contending that petitioner had filed a review application before the Central Government to review the sanction granted. The same was pending. Therefore, cognizance should not be taken on the basis of the sanction granted under Section 19(1) of the PC Act. Further, there was a stay order of the High Court operating.

17. The matter was heard at length by the CBI Court which framed two issues for consideration - firstly, as to whether petitioner had the right of audience at the pre-cognizance stage; secondly, as to whether cognizance of offence under the PC Act should be taken against the petitioner. By the order dated 10.03.2021, CBI Court allowed Memo SR No.1056 of 2016 and took cognizance of offence under Section 13(2) read

with Section 13(1)(d) of the PC Act against the petitioner as accused No.7. Consequently, CBI Court directed issuance of summons to the petitioner for appearance before the CBI Court.

18. Aggrieved, the present revision case has been filed.

19. Learned Senior Counsel for the petitioner in his extensive arguments contended that when there is a stay order by this Court staying all further proceedings, CBI ought not to have passed the order dated 10.03.2021 taking cognizance under the PC Act. That apart, taking cognizance of an offence is not a mechanical exercise. Being part of the judicial process, it must reflect due application of mind. Reliance has been placed on the decision of the Supreme Court in State of **Himachal Pradesh v. M.P.Gupta**¹. Emphasizing on the need for obtaining previous sanction from the appropriate government under Section 197 of Cr.P.C, learned Senior Counsel for the petitioner has placed reliance on the decision of the Supreme Court in **N.K.Ganguly v. Central Bureau of Investigation**². He submits that this aspect was

¹ (2004) 2 SCC 349

² (2016) 2 SCC 143

gone into by this Court in criminal petition No.11465 of 2018, whereafter stay of further proceedings in C.C.No.28 of 2013 was ordered.

19.1. Learned Senior Counsel has referred to the amendment brought to the PC Act by the Prevention of Corruption (Amendment) Act, 2018 whereby Section 13(1)(d) of the PC Act has been completely omitted. Therefore, CBI Court could not have taken cognizance on 10.03.2021 of an alleged offence under an omitted provision. Omission of a provision would mean as if the said provision never existed. In this connection, reference has been made to a constitution bench judgment of the Supreme Court in **Kolhapur Canesugar Works Limited v. Union of India**³. According to him, Parliament had consciously omitted Section 13(1)(d) from the PC Act to allay apprehension of public servants that actions taken *bona fide* in the discharge of official duties would be given a criminal colour and thereby they would be roped in a criminal prosecution.

19.2. Learned Senior Counsel also submits that though petitioner was a public servant belonging to IAS, he was

³ (2000) 2 SCC 536

nonetheless serving the State Government during the relevant period as Chief Managing Director of the Corporation. Therefore, not only sanction of the State Government is required under Section 197 of Cr.P.C, but also the Central Government is required to give due credence to the recommendations of the State Government while considering sanction under Section 19 of the PC Act. When a public servant is working under a State Government or State Government Corporation, sanction must be obtained from the State Government.

19.3. Learned Senior Counsel has placed reliance on several other judgments in support of his contentions.

20. Responding to the above submissions, learned Special Public Prosecutor for CBI referred to Section 30 of the PC Act as well as Section 6 of the General Clauses Act, 1897 on the question of effect of repeal. From a careful reading of the aforesaid provisions, he submits that omission of Section 13(1)(d) from the PC Act can only be with prospective effect. In

this connection, he has placed heavy reliance on a decision of this Court in **V.D.Rajagopal v. State of Telangana**⁴.

20.1. Insofar scope of interference in matters relating to taking cognizance by a criminal court is concerned, he has placed reliance on a decision of the Supreme Court in **Nupur Talwar v. Central Bureau of Investigation**⁵. He submits that Supreme Court has made it very clear that correctness of an order whereby cognizance of an offence has been taken by the Magistrate, unless it is perverse or based on no material, should be sparingly interfered with. He has also elaborately referred to the order of the CBI Court dated 10.03.2021 and submits therefrom that the said order is a reasoned one passed with due application of mind and thus calls for no interference. Therefore, he seeks dismissal of the criminal revision case.

21. In reply, learned Senior Counsel for the petitioner has submitted written arguments and once again reiterated the judgment cited by him. He has also referred to the Central Bureau of Investigation (Crime) Manual, 2005, more

⁴ (2019) 2 ALD (CrI) 836

⁵ (2012) 2 SCC 188

particularly to Chapter VII thereof dealing with prosecution. He submits that as per the CBI Manual itself it is necessary for the prosecuting authority to have the previous sanction of the appropriate administrative authority for launching prosecution against a public servant under Section 19 of the PC Act. Such sanction is also necessary under Section 197(1) of Cr.P.C if the public servant is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of official duties. Viewed in the above context, it is evident that CBI Court had erred in taking cognizance of the offence under the PC Act and, therefore, order dated 10.03.2021 is liable to be set aside.

22. Submissions made by learned counsel for the parties have received the due consideration of the Court.

23. Substance of the allegations against the petitioner as contained in the charge sheet has been taken note of. It has also come on record that insofar cognizance by the CBI Court against the petitioner (accused No.7) for having committed offence under Section 120B read with Sections 409 and 420

IPC, it was taken on 17.10.2013; whereafter petitioner made his appearance before the CBI Court. Thereafter, he filed criminal petition No.3070 of 2017 before this Court seeking exemption from appearance under Section 205 of Cr.P.C. This was granted by this Court vide the order dated 13.04.2017.

24. Thereafter, petitioner filed criminal petition No.11465 of 2018 before this Court under Section 482 of Cr.P.C to quash proceedings in C.C.No.28 of 2013 *qua* the petitioner. This Court passed an order dated 21.06.2019 staying further proceedings in C.C.No.28 of 2013 *qua* the petitioner. The said order was extended from time to time till the functioning of the Courts was disrupted from March, 2020 due to Covid-19 pandemic.

25. From the charge sheet itself, we find that sanction for prosecution of the petitioner under Section 19(1) of the PC Act was awaited. Subsequently, Under Secretary to the Government of India accorded sanction under Section 19(1) of the PC Act on 23.03.2016. Relevant portion of the order dated 23.03.2016 reads as follows:

AND WHEREAS, the Central Government, after carefully considering the facts as emanating from records, as assimilated and placed by the Investigating Agency before the competent authority, is fully satisfied that **a prima facie case has been made out for prosecution of Shri B.P.Acharya, IAS (TG:83), for offence under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988** and substantive offence thereunder and that he should be prosecuted before the Court of Law for the aforesaid offences in the interest of justice.

26. Thereafter, CBI filed Memo SR No.1056 of 2016 before the CBI Court for taking cognizance of the offence under Section 13(2) read with Section 13(1)(d) of the PC Act.

27. Opposing the same, petitioner filed a memo contending that such cognizance should not be taken.

28. CBI Court referred to a decision of the Patna High Court in **Halimuddin Ahmad v. Ashoka Cement Limited⁶**, whereunder Patna High Court held that the test to be applied while considering whether the accused should be summoned or not is, whether there is sufficient ground for proceeding against the accused. Sufficiency has to be judged from the complaint, the solemn affirmation and the evidence, if any, on record.

⁶ 1976 CrI.LJ 449

Defence of the accused is not a material to be considered at the stage of taking cognizance. CBI Court also referred to a decision of the Supreme Court in **Asian Resurfacing of Road Agency Private Limited v. Central Bureau of Investigation** (Criminal Appeal Nos.1375-1376 of 2013, decided on 28.03.2018), which clearly says that challenge to an order framing charge should be decided expeditiously.

28.1. In the above backdrop, CBI Court held that it was not necessary to hear the petitioner while taking the sanction order dated 23.03.2016 on record as an additional document and on that basis, for taking cognizance against the petitioner for offence under Section 13(2) read with Section 13(1)(d) of the PC Act.

28.2. Insofar stay granted by this Court in criminal petition No.11465 of 2018 is concerned, CBI Court noted that last time this Court had extended the stay order was on 26.02.2021. By the said order dated 26.02.2021 this Court stayed further proceedings in C.C.No.28 of 2013 till the next date of hearing, fixing 05.03.2021 as the next date of hearing. Thereafter, CBI

Court found that there was no further extension of stay and accordingly proceeded to deal with Memo SR No.1056 of 2016.

29. From the above, a view can be taken that this Court in criminal petition No.11465 of 2018 had granted stay in so far prosecution of the petitioner for the IPC related offences are concerned. However, as noted by the CBI Court, even there also there is no continuation of stay after 05.03.2021. Technically speaking, there was no bar on the CBI Court to act on the sanction granted by the Central Government under Section 19(1) of the PC Act. Insofar submission of representation by the petitioner to the Secretary to the Government of India, Department of Personnel and Training to review the sanction order is concerned, CBI Court has rightly held that such representation would not come in the way of the CBI Court in taking cognizance under the PC Act. There was nothing on record to show any consideration of the said representation or any decision of the Central Government reconsidering the sanction granted. In such circumstances, CBI Court held as follows:

24. As prima facie case is made out against Sri B.P.Acharya/A-7 under Section 13(2) r/w 13(1)(d) of the P.C. Act, 1988, the same is reiterated in the sanction order, as stated in para No.16 supra, the memo filed by CBI is allowed, sanction order dated 23.03.2016 in File No.107/16/2013-AVD.I is taken on record as additional document No.79 and further cognizance against Sri B.P.Acharya/A-7 is taken under Section 13(2) read with 13(1)(d) of the P.C. Act, 1988. Hence, points No.1 & 2 are answered accordingly.

30. As regards contention of the petitioner that sanctioning authority could not have granted sanction to prosecute the petitioner under Section 13(1)(d) of the PC Act since the said provision stood omitted by the Prevention of Corruption (Amendment) Act, 2018, the said issue is no longer *res integra*. In **V.D.Rajagopal** (supra), one of the arguments advanced was on similar lines. It was contended that petitioner in that case was entitled to the benefit of amended PC Act which came into force with effect from 26.04.2018. Therefore, prosecution of the said petitioner under Section 13(1)(d) of the PC Act was liable to be quashed. Such a contention was negated by this Court in paragraph 118 of the said decision. This Court held that the

said amendment cannot be given retrospective effect and shall be given prospective effect.

31. The other contentions raised by the petitioner are really matters of trial though Section 19(2) of the PC Act makes it very clear that it would be that government which is competent to remove the public servant from his office at the time when the offence was alleged to have been committed. Admittedly at that stage, petitioner was an IAS officer under the disciplinary control of the Central Government.

32. For the aforesaid reasons, this Court finds no error or infirmity in the order passed by the CBI Court dated 10.03.2021. No case for interference is made out. Criminal revision case is accordingly dismissed. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

UJJAL BHUYAN, CJ

25.11.2022
Pln