

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL REVISION CASE Nos.365 OF 2011
AND 406 OF 2011

COMMON ORDER :

Both these criminal revision cases are preferred under Sections 397 and 401 of Criminal Procedure Code (for short 'Cr.P.C.') by the petitioner/Central Bureau of Investigation (for short 'CBI') aggrieved by the common order dated 10.03.2010 passed in CrI.MP Nos.3214 of 2008 and 3215 of 2008 both in CC No.21 of 2008, on the file of the learned Special Judge for CBI Cases, Hyderabad wherein and whereunder the accused Nos.1 and 2 i.e. the respondents herein were discharged from the offence under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 (for short 'PC Act') in the said calendar case.

2. Heard Smt.Anandi, learned Special Public Prosecutor appearing for CBI/petitioner and Sri L.Ravi Chander, learned senior counsel appearing for the respondent in CrI.RC No.365 of 2011 and Sri E.Umamaheshwar Rao, learned counsel representing on behalf of Sri C.Sharan Reddy, learned counsel for the respondent in CrI.RC No.406 of 2011. Perused the record.

3. CC No.21 of 2008 on the file of the learned Special Judge for CBI Cases, Hyderabad has arisen out of the crime in RC No.6(E) of 2005, registered by the petitioner against the respondents herein, who are the accused Nos.1 and 2 and others, who arrayed as accused Nos.3 to 6 for the offences under Sections 409, 420, 467, 468, 471 of Indian Penal Code (for short 'IPC') and Section 13(2) read with Section 13(1)(d) of PC Act alleging that the respondents being the public servants in the capacity of Chairman and Managing Director and Executive Director of erstwhile Global Trust Bank, between the years 1994 and 2003, conspired with accused Nos.3 to 6, cheated the said bank in the matter of recommending/sanctioning/disbursing/availing huge credit facilities by dishonestly and fraudulently inducing the bank to part with its funds in the form of letter of credits and bills discounting facility with false and fabricated bills and also in the matter of recommending/sanctioning/disbursing and availing the enhanced limit without adequate security, causing misutilization/diversion of funds and also pecuniary advantage to themselves and pecuniary loss to the bank since the said amounts became irrecoverable and in such process, the bank suffered the loss to a tune of Rs.10.25 crores.

4. The petitioner, after completion of investigation, laid charge-sheet against the respondents herein and others for the offences referred supra. The learned Special Judge for CBI Cases, Hyderabad took cognizance of the said offences and assigned CC No.21 of 2008 and proceeded further.

5. While the things stood thus, the respondents herein filed CrI.MP Nos.3214 and 3215 of 2008 under Section 239 of Cr.P.C., seeking discharge. The Court below, upon hearing both sides and perusing the material placed before it, discharged the respondents herein from the offence under Section 13(2) read with 13(1)(d) of PC Act only in CC No.21 of 2008 holding that the orders passed by the High Court of Mumbai in CrI.Writ Petition Nos.2401 of 2008, 2402 of 2008 and 2403 of 2008 in Criminal Revision Application No.131 of 2007 pertaining to the respondents herein stating that they cannot come under the definition of public servants and the offences under PC Act cannot be levelled against them are binding on the learned Special Judge for CBI Cases, Hyderabad. While giving such findings, the learned Principal Special Judge for CBI Cases, Hyderabad directed the Investigating Officer to take back the charge-sheet along with documents and statements to file the same before

appropriate Court against the accused for relevant offences other than the offences under PC Act.

6. Aggrieved by the said findings, the petitioner/CBI filed the present criminal revision cases mainly contending that the respondents are the public servants as denoted in the provisions of PC Act, especially under Sections 2(b) and 2(c)(viii), Banking Regulation Act, 1949 and also the provisions of Prevention of Corruption Act. Further, under Section 46-A of Banking Regulation Act and under Sections 161 to 171 of Chapter IX of IPC the respondents being the Chairman and Managing Director and Executive Director respectively of the bank, are the public servants. But the learned Special Judge failed to consider the above aspects as well as the findings of several high Courts holding that staff and elected body of the private banks are also the public servants, discharged the respondents from the offences under provisions of PC Act and hence, the said orders are erroneous and are liable to be set aside.

7. On the other hand, learned counsel appearing on behalf of respondents in both the criminal revision cases vehemently contended that in view of incorporation of guilty intention as a necessary ingredient to attract the offence of criminal misconduct as defined under section 13 of the PC Act

1988 the rigour of criminal law has been taken away and in such factual scenario, the respondents cannot be punished for the offence under Section 13 of PC Act. It is further submitted that a private company carrying on banking business as a schedule bank cannot be termed as an institution or a company carrying on any statutory or public duty. The respondents herein were not prosecuted for contravention of Banking Regulation Act, 1949 and hence, they cannot be prosecuted under the said Act. There are no ingredients to prosecute the respondents for the offence under Section 13(2) read with Section 13(1)(d) of PC Act as no pecuniary advantage is received by them. The respondents are not liable for the collective decisions taken by the Board of Directors of the bank. Sections 161 to 167 of IPC contained in Chapter IX of IPC are repealed by Section 31 of PC Act, which does not bring the banking company under the definition of public servant under Section 2(c) of PC Act. It is further contended on behalf of the respondents that the orders of the learned Special Judge are well considered orders, passed on merit consideration of the facts and circumstances of the case and the law enunciated under various decisions and hence, the same cannot be interfered with by this Court. Thus stating it is requested to dismiss both the criminal revision cases.

8. Learned Special Public Prosecutor for the petitioner/CBI relied upon the decision of the Hon'ble Supreme Court rendered in **Central Bureau of Investigation, Bank Securities and Fraud Cell Vs. Ramesh Gelli and others**¹ contending that the respondent in CrI.RC No.406 of 2011 is an habitual offender of committing economic offences and that the Hon'ble Apex Court while deciding Criminal Appeal Nos.1077 to 1081 of 2013 held that the respondents herein are the public servants and they are liable to be prosecuted for the offences under PC Act in pursuance of the allegations levelled against them. Further, the amendment to PC Act cannot have any retrospective effect to shield the acts of the respondents attracting from the offence covered under the said Act.

9. Learned counsel for the respondents in both the criminal revision cases relied upon the following decisions :

- (1) **Pawan Kumar Rula Vs. The State of West Bengal and another**².
- (2) **Federal Bank Limited Vs.Sagar Thomas and others**³.
- (3) **Central Bureau of Investigation, Bank Securities and Fraud Cell Vs. Ramesh Gelli and others**⁴.
- (4) **Neeraj Dutta Vs. State (Govt.of N.C.T. of Delhi)**⁵.

¹ (2016) 3 Supreme Court Cases 788

² 1998(2) CLJ

³ (2003) 10 Supreme Court Cases 733

⁴ (2016) 3 Supreme Court Cases 788

⁵ CrI.A.No.1669 of 2009 of Hon'ble Supreme Court

- (5) **CK Satyanathan and others Vs. State of Kerala and others⁶.**
- (6) **Basheer Alias N.P.Basheer Vs. State of Kerala⁷.**
- (7) **T.Barai Vs. Henry AH Hoe and another⁸.**
- (8) **Rattanlal Vs. The State of Punjab⁹.**
- (9) **Nemichand Vs. State of Rajasthan¹⁰.**

10. This Court perused the entire material available on record including the orders of the Special Judge and also the decisions relied upon by both sides. It is pertinent to mention herein that the object of enactment of P.C. Act, was to make the anti-corruption law more effective and widen its coverage. The law is well settled that any officer whose duty is to prevent any offences or to report the offence, to bring the offenders to justice, and to protect the public their well-being and safety and that any person in the service or pay of the Government remunerated by fees or commission for the performance of any public duty by the Government.

11. Section 2(c) of PC Act defines the public servant as under:

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

⁶ MANU/KE/0741/2017

⁷ (2004) 3 Supreme Court Cases 609

⁸ (1983) 1 Supreme Court Cases 177

⁹ AIR 1965 Supreme Court 444

¹⁰ CrI.A.No.214 of 2016 Supreme Court
Arising out of SLP (CrI.) No.2148 of 2013

(ii) any person in the service or pay of a local authority;

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a Court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such Court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a Court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or

controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

12. No doubt, in view of definition of public servant in Section 46A of Banking Regulation Act, 1949, as amended, Section 21 IPC and Section 2 of PC Act, the Managing Director and Executive Director of a banking company operating under licence issued by the Reserve Bank of India, were already public servants, as such they cannot be excluded from definition of 'public servant'.

13. Furthermore, the Hon'ble Supreme Court in the case between **Central Bureau of Investigation, Bank Securities and Fraud Cell Vs. Ramesh Gelli and others**¹¹ while deciding Criminal Appeal Nos.1077 to 1081 of 2013 with Writ Petition (Crl.) No.167 of 2015 held that the respondents herein are the public servants and they are liable to be prosecuted for the offences under PC Act. The respondents are also the parties to the above referred case. When the core issue i.e. whether the respondents are public servants or not is decided by the Hon'ble Apex Court holding that they are public servants and they also come under the purview of the PC Act, this Court is not inclined to take any different view on this aspect. In such circumstances, without looking into the contentions advanced on both sides and also the merits and demerits of the case, this Court holds that the respondents are public servants and they are liable for the charges prescribed under the provisions of PC Act and their complicity or otherwise with regard to the allegations levelled against them in the charge-sheet are to be decided by conducting full-fledged trial.

14. Section 13 of PC Act denotes that a public servant is said to commit the offence of criminal misconduct if he

¹¹ (2016) 3 Supreme Court Cases 788

dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do or if he intentionally enriches himself illicitly during the period of his office he is liable for penal prosecution under the Act.

15. In the above settled principle of law, this Court is of the considered view that the respondents come under the definition of public servants. Further, the gravamen of allegations levelled against them in the charge-sheet is that they misused their official position while they were entrusted with the public money being the Chairman and Managing Director and Executive Director respectively of Global Trust Bank and hence, they are liable to be prosecuted for the offences covered under the provisions of PC Act. However, the truthfulness or otherwise of the said allegations has to be decided after full-fledged trial only. Surprisingly, the Court below, failed to appreciate the above referred facts and circumstances and held that the respondents herein are not the public servants and accordingly, exonerated them from the offences under the provisions of PC Act in CC No.21 of 2008. The said action of the Court below warrants interference of this Court to set aside the said impugned order.

16. The edifice of the findings of the Court below to hold that the respondents herein are not the public servants is the order of the High Court of Mumbai passed in Criminal Writ Petition Nos.2401 of 2008, 2402 of 2008 and 2403 of 2008 in Criminal Revision Application No.131 of 2007 however, the said findings of the Mumbai High Court were ruled out by the Hon'ble Supreme Court in Criminal Appeal Nos.1077-1081 of 2013 with Writ Petition (Crl.) No.167 of 2015 holding that the respondents herein are the public servants. In such circumstances, in the considered view of this Court, these two criminal revision cases are fit for merit consideration warranting interference of this Court by setting aside the impugned order of the Court below.

17. In the result, the criminal revision case Nos.365 of 2011 and 406 of 2011 are allowed. Taking into consideration the age of the respondents, their presence before the Court below is dispensed with unless and until the same is required. Interlocutory applications, if any pending, shall also stand closed.

E.V.VENUGOPAL, J

Dated :14-03-2024
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