

**HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

**Criminal Revision Case No.2591 of 2017**

**Judgment:**

Assailing the order dated 06-3-2017 passed in CrI.M.P. No.2 of 2017 in C.C.No.14 of 2016 on the file of the Special Judge for Trial of SPE & ACB Cases, Kurnool, whereby the petition filed under Section 239 of Cr.P.C by the petitioner to discharge him from the case was dismissed, the present criminal revision case is preferred.

2. The petitioner is Accused Officer No.2 (for short, A.O.2) in C.C.No.14 of 2016 on the file of the Special Judge for Trial of SPE & ACB Cases, Kurnool.

3. Facts of the case germane to dispose of this criminal revision case may be stated as follows:

(a) The *de facto* complainant by name N.Manga Raju is the husband of a woman by name Sireesha. Both of them are living separately on account of the disputes cropped up between them. Sireesha filed a complaint before the Court of Judicial Magistrate of First Class, Kurnool, against the *de facto* complainant, his parents and sister alleging that they have harassed her demanding additional dowry and subjected her to cruelty and thereby committed the offences punishable under Section 498-A of IPC and under Sections 4 and 6 of the Dowry Prohibition Act, 1961. The said complaint was forwarded under Section 156(3) of Cr.P.C by the Court to Mahila Police Station, Kurnool, for investigation and report. Accused Officer No.1 (for short, A.O.1) is working as Sub Inspector of Mahila Police Station at that time.

A.O.2, who is the petitioner herein, is a Constable working in the said police station under A.O.1. A.O.1, who is the Sub Inspector and Station House Officer of Mahila Police Station, Kurnool, registered the said case, as per the direction given by the Court under Section 156(3) of Cr.P.C to investigate the case and file report, as a case in Crime No.4/RCT-KUR/2015, under Section 498-A of IPC and under Sections 4 and 6 of the Dowry Prohibition Act. Thereafter, A.O.1 issued notice under Section 41C of Cr.P.C to the *de facto* complainant and his family members directing them to appear before him on 26-3-2015 at 10.00 a.m. Pursuant to the said notice, the *de facto* complainant appeared before A.O.1 on 25-3-2015. His family members did not appear due to personal reasons.

(b) When the *de facto* complainant met A.O.1 on 25-3-2015, A.O.1 demanded bribe of Rs.1,00,000/- to not to arrest him and his family members in the said case and to help him and his family members to wriggle out from the said case. On 26-3-2015 also, A.O.1 persisted on the said demand.

(c) Therefore, the *de facto* complainant lodged a report on 07-4-2015 with the Deputy Superintendent of Police, Anti-Corruption Bureau, Kurnool Range, Kurnool, stating that A.O.1 has demanded bribe from him to help him to wriggle out from the said criminal case registered against him. The DSP, ACB, registered a case in Crime No.4/RCT-KUR/2015 under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 against A.O.1 and laid a trap against A.O.1.

(d) On 08-4-2015, A.O.1 was trapped at the Mahila Police Station at about 11.20 a.m. when he accepted the illegal gratification of Rs.1,00,000/- from the *de facto* complainant as demanded by him to do favour to the *de facto* complainant. The *de facto* complainant paid a sum of Rs.1,00,000/- to A.O.1 as demanded by him. A.O.1 received the said money from the *de facto* complainant with his left hand and again returned the said money to the *de facto* complainant with his right hand. Thereafter, he called the petitioner, who is A.O.2, a Constable working in the said police station, into his room and directed the *de facto* complainant to handover the bribe amount to A.O.2. Accordingly, the *de facto* complainant handed over the said money to A.O.2. A.O.1 directed A.O.2 to go to the bank and exchange the said money which is in a denomination of Rs.1,000/- notes with denomination of Rs.500/- notes. Accordingly, A.O.2, the petitioner herein, went to Andhra Bank to exchange the said currency notes. The ACB Police after completing the formalities in the police station while apprehending A.O.1 for receiving the bribe amount as demanded by him, while laying trap against him, went to Andhra Bank and they have seized the bribe amount from the possession of A.O.2 when he was at the bank. Therefore, it is the case of the prosecution that A.O.2, the petitioner herein, knowing fully well that the money that was given to him is a bribe amount has taken the said money to the bank to exchange the same with Rs.500/- notes and thereby he has aided A.O.1 in committing the said offence and he has also committed an offence of making an attempt to screen the evidence and the offence.

(e) Therefore, after completion of investigation in the case, charge-sheet was filed against A.O.1 and A.O.2 for the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and under Section 201 read with Section 511 of IPC.

(f) After the charge-sheet is filed in the trial Court, the petitioner, who is A.O.2, filed a petition under Section 239 of Cr.P.C to discharge him from the said case on the ground that he never demanded any bribe from the *de facto* complainant and he never accepted or received any such bribe amount to do any official favour to the *de facto* complainant and he does not know that it is a bribe amount. Therefore, he prayed to discharge him from the said case stating that he has been falsely implicated in the above case.

(g) The Special Public Prosecutor, Anti-Corruption Bureau, Kurnool, resisted the said petition and he has filed a detailed counter in the trial Court opposing the claim of the petitioner to discharge him from the case.

(h) After hearing both the parties, the learned Special Judge for Trial of SPE & ACB Cases, Kurnool, has dismissed the said petition by the impugned order on the ground that there is *prima facie* case against the petitioner for the offences punishable under Section 201 read with Section 511 of IPC.

(i) Aggrieved thereby, the petitioner, who is A.O.2 in the said case, preferred the present criminal revision case questioning the legality and validity of the impugned order.

4. Heard Smt. K.Tulasi Durgamba, learned counsel representing Sri Akkam Eshwar, learned counsel for the petitioner and Sri S.M. Subhani, learned Special Public Prosecutor cum Standing Counsel for ACB, appearing for the respondent/State.

5. As per the facts of the case narrated supra, it is the specific case of the prosecution that A.O.1, who is working as Sub Inspector of Police in Mahila Police Station, Kurnool, has demanded the *de facto* complainant to pay a sum of Rs.1,00,000/- to her to not to arrest him and his family members against whom a case under Section 498-A of IPC and under Sections 4 and 6 of the Dowry Prohibition Act was registered in the said police station and to help them to wriggle out from the said case. It is also the specific case of the prosecution that the *de facto* complainant paid the said amount of Rs.1,00,000/- as demanded only to A.O.1 and A.O.1, who received the said money from the *de facto* complainant with his left hand, again returned the same to the *de facto* complainant with his right hand and thereafter called the petitioner, who is A.O.2, who is outside the room of A.O.1 and after A.O.2 entered the room that A.O.1 directed the *de facto* complainant to handover the money to A.O.2 and accordingly the *de facto* complainant handed over the money to A.O.2. Thereafter, A.O.1 directed A.O.2 to go to Andhra Bank and exchange the said currency notes which are in denomination of Rs.1,000/- with denomination of Rs.500/-. Accordingly, A.O.2 went to the bank to exchange the said currency notes as directed by A.O.1 and at that time when he was at the bank that the Police seized the said currency notes from him.

6. Thus, from the substance of the accusation made by the prosecution as per the version of the *de facto* complainant and also as per the charge-sheet laid by the ACB Police after completion of investigation, the petitioner who is A.O.2 never demanded any bribe from the *de facto* complainant to do any official favour to him or to help him to wriggle out from the said case and nothing whatsoever transpired between the *de facto* complainant and the petitioner, who is A.O.2. No dialogue whatsoever regarding any such demand for payment of the bribe amount or to do any help to the *de facto* complainant in the matter of the said case took place between the *de facto* complainant and A.O.2. As per the specific case of the prosecution, it is only A.O.1 who demanded bribe from the *de facto* complainant to not to arrest him and to help him in the case and the *de facto* complainant also paid the bribe amount to A.O.1. It is significant to note here that after A.O.1 received the said money that he has again returned the said money to the *de facto* complainant and thereafter he called A.O.2 and asked the *de facto* complainant to give the said money to A.O.2 and he directed A.O.2 to go to Andhra Bank and exchange the said currency notes. So, it is evident that A.O.2, who is the petitioner, was not at all present at the scene of offence in the office room of A.O.1 where the *de facto* complainant initially paid the said bribe amount to A.O.1. The petitioner was outside the office room of A.O.1. He does not know what transpired between the *de facto* complainant and A.O.1 inside the room of A.O.1. As the petitioner, who is working as a Constable, is a subordinate to

A.O.1, who is the Sub Inspector of the said police station, the petitioner only obeyed the directions of A.O.1 to go to Andhra Bank to exchange the said currency notes with Rs.500/- notes. Therefore, without having knowledge as to for what purpose the said money was given by the *de facto* complainant, as a subordinate employee in the police station, it is evident, that he has taken the said money as per the direction of A.O.1 and went to the bank to exchange the said currency notes by following the instructions given to him by his superior officer, who is A.O.1.

7. So, in the said facts and circumstances of the case, it cannot be said under any stretch of reasoning that A.O.2 had knowledge about the fact that it was tainted money or that the said money was given to A.O.1 by the *de facto* complainant towards bribe to help him in the case that is pending against the *de facto* complainant and his family members. There is absolutely no evidence against the petitioner, who is A.O.2, to show that he got knowledge that the money was paid to A.O.1 towards bribe by the *de facto* complainant. There is also no evidence whatsoever even to hold that the petitioner, who is A.O.2, has instigated or aided A.O.1 to commit any such offence of demanding and receiving illegal gratification from the *de facto* complainant to help him in the said case. Therefore, in the said facts and circumstances of the case, it cannot be said under any stretch of reasoning that the petitioner, who is A.O.2, made an attempt to screen the evidence or the offence in the case to help A.O.1, to hold that he is guilty for the offences punishable under Section 201 read with Section 511 of IPC.

8. In order to prove a case for abetment of an offence, the ingredients contemplated under Section 107 of IPC are to be established. As per the ingredients of Section 107 of IPC, there must be intentional instigation given by the accused to drive a person to commit the offence or he must intentionally aid a person to commit the offence. There is no material whatsoever to hold that the petitioner, who is A.O.2, either intentionally instigated A.O.1 to commit any such offence of demanding and receiving bribe or aided him in commission of the said offence. As already noticed supra, he does not know what has transpired between the *de facto* complainant and A.O.1 prior to the direction given by A.O.1 to A.O.2 to go to the bank and exchange the currency notes. Therefore, no offence whatsoever is made out against the petitioner to frame any charge against him either for the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act or under any of the provisions of the Prevention of Corruption Act or under Section 201 read with Section 511 of IPC to prosecute him for the said offences. The charge, if any, framed against him would be wholly groundless and unsustainable under law in the facts and circumstances of the case.

9. In an identical case, the common High Court of Hyderabad in the case of **State ACB v. V.C. Satyanarayana** in CrI.R.C. No.1656 of 2017 held that no charge against A.O.2 therein, who is the Head Constable, who merely counted the tainted notes at the instance of A.O.1, who is the Sub Inspector of Police, can be framed for the offences punishable under the



Prevention of Corruption Act and upheld the order of the trial Court in discharging A.O.2 therein for the offences punishable under Section 12 read with Sections 7 and 13(1)(d) of the Prevention of Corruption Act. As per the facts of the said case, A.O.1 is the Sub Inspector of Police and A.O.2 is the Head Constable. A.O.2, the Sub Inspector, demanded Rs.5,000/- as bribe from the *de facto* complainant to do official favour to him of not seizing the crime vehicle which was involved in an accident and to not to file the charge-sheet against him in the Court. As demanded, the *de facto* complainant paid Rs.5,000/- towards bribe to A.O.1 and he in turn asked A.O.2, who is the Head Constable in the said police station, to count the said amount of Rs.5,000/- given towards bribe and while he was counting the said money, the trap party raided and caught both A.O.1 and A.O.2 red-handedly at that time. A.O.2 filed a petition to discharge him before the trial Court on the ground that he merely acted on the instructions of A.O.1, who is the Sub Inspector and was counting the currency notes on his instructions and he never demanded any bribe from the *de facto* complainant and accepted any such bribe amount from him. The trial Court, while accepting his contention, discharged him from the case. The prosecution challenged the said order before this Court. This Court upheld the finding of the trial Court that the alleged act of A.O.2 in counting the money received by A.O.1 towards illegal gratification *prima facie* do not constitute any offence punishable under Section 12 read with Section 7 and 13(1)(d) of the Prevention of Corruption Act and in discharging A.O.2 from the said case.

10. The present case on hand is on a better footing. As per the facts of the above case, the Head Constable was found along with A.O.1 counting the bribe amount and at that time, the Police raided and caught them red-handedly. Yet, the Court held that as the Head Constable was counting the money that was received by A.O.1, who is the Sub Inspector of Police at his instructions that he is not liable for any prosecution and that the facts do not *prima facie* constitute any offence under the Prevention of Corruption Act against him and as such the charge against him is groundless. In the instant case, the petitioner, who is A.O.2, was not even found at the scene of offence when the offence took place in the office room of the Sub Inspector of Police, who is A.O.1. After the amount was paid to A.O.1, he called A.O.2, who is outside the room and when he entered the room, he asked the *de facto* complainant to give money to him and directed him to exchange the said currency notes. So, as already noticed supra, no criminal liability can be fastened against him to prosecute him for the offence in the facts and circumstances of the case. It is not a case where A.O.2 has received the bribe amount on behalf of A.O.1 as per the prosecution case. The petitioner also did not commit any act of screening the offence or the offender. Therefore, the trial Court grossly erred in dismissing his petition to discharge him from the case by a cryptic order that there is a *prima facie* case against him for the offences punishable under Section 201 read with Section 511 of IPC. The trial Court completely overlooked the fact that as a Police Constable being a subordinate to the Sub Inspector of Police that he has only acted

as per the instructions of his superior officer and while obeying the instructions of his superior officer that he has only taken the said money to the bank to exchange the currency notes without knowing for what purpose, the same was given by the *de facto* complainant and without knowledge as to what has transpired between both of them in the said room.

11. Therefore, the criminal revision case is allowed. The impugned order is set aside. The petition filed under Section 239 of Cr.P.C by the petitioner stands allowed and the petitioner, who is A.O.2 in C.C.No.14 of 2016 on the file of the Special Judge for Trial of SPE & ACB Cases, Kurnool, stands discharged from the said case. Pending applications, if any, shall stand closed.

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**CHEEKATI MANAVENDRANATH ROY, J.**

31<sup>st</sup> January, 2020.  
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**HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

**Criminal Revision Case No.2591 of 2017**

31<sup>st</sup> January, 2020.  
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