IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

JUDGMENT PRONOUNCED AT PRINCIPAL BENCH AT BANGALORE

DATED THIS THE 23RD DAY OF DECEMBER 2010

B E F O R E

THE HON'BLE MR.JUSTICE JAWAD RAHIM

CRL.PETITION NO. 9218/2009

BETWEEN:

REVAPPA GURAPPA GADDAD
S/O GURAPPA R. GADDAD
AGED ABOUT 50 YEARS
SAMRUDDHI # 10/47D,
SADASHIVNAGAR, SOLAPUR ROAD,
BIJAPUR - 586 103

... PETITIONER

(BY SRI SHANKAR HEDGE FOR N.B.KASAR, ADV.)

AND:

KARNATAKA LOKAYUKTA,
REPRESENTED BY THE INVESTIGATING OFFICER
LOKAYUKTA POLICE STATION, BIJAPUR

... RESPONDENT

(BY SRI A.VIJAYAKUMAR, SPL. SPP.,)

CRL.PETITION IS FILED U/S 482, Cr.P.C. PRAYING TO CALL FOR ENTIRE RECORD PERTAINING TO SPECIAL C.C.NO.1/2009 RENDING BEFORE SPECIAL JUDGE PRL.DISTRICT AND SESSIONS JUDGE AT BIJAPUR AND CALL FOR ENTIRE RECORDS IN KARNATAKA LOKAYUKTHA BIJAPUR POLICE STATION CRIME NO.7/2005 ALONG WITH APPLICTION FOR ATTACHMENT NO.1/2006 FURTHER QUASH THE CHARGE SHEET FILED BY THE RESPONDENT

ON 14-11-2008 ALONG WITH FURTHER PROCEEDINGS PENDING IN THE FILE OF SPECIAL JUDGE PRL.DISTRICT AND SESSIONS JUDGE AT BIJAPUR OR ANY OTHER RELIEF AS THIS HON'BLE COURT DEEMS FIRST JUST AND EXPEDIENT UNDER THE CIRCUMSTANCES OF THIS CASE.

This Criminal petition having been heard finally and reserved at Gulbarga Circuit Bench, this day the court pronounced at the Principal Bench at Bangalore the following order:

ORDER

Petitioner who is arraigned as 1st accused for the offences punishable Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 19988, (hereinafter referred to a the Act, for brevity) in Spl. C.C.1/09 on the file of Special Judge, Bijapur, seeks quashing of proceedings.

2. Heard learned counsel Sri Shankar Hegde for the petitioner and Sri Vijaykumar, Special Public Prosecutor for the respondent-State. Perused records in supplementation thereto. It reveals:

a) Deputy Superintendent of Police, Karnataka Lokayukta, on the basis of credible information alleging petitioner-Revappa Gurappa Gaddad, working as Deputy Director of Karnataka Land Army, had amassed wealth

disproportionate to his known sources of income, registered a *suo moto* case on 21.11.2005 in Crime NO.7/09 and raided his residence and other places under his control. During such raid, he seized gold and silver articles, fixed deposit receipts, bank accounts and other documents evidencing acquisition of immovable properties. He seized those properties and documents under mahazars in the presence of witnesses and continued further investigation.

b) During further investigation, he is said to have collected information about his known sources of income and compared it with the estimated value of movable and immovable properties possessed by the petitioner. Ultimately he filed final report alleging petitioner had amassed wealth disproportionate to known sources of income and thus, had committed an offence punishable under clause (e) of Section 13(1) of the Act read with Section 13(2). Final report was registered on the file of Special Judge in Spl.C.C.1/09.

c) All the properties seized were reported to the court. Petitioner filed an application seeking release of movable and immovable properties which was rejected. He has questioned the tenability of prosecution on the ground that computation done by the I.O. to record the value of assets is in excess to known sources of income, is factually incorrect. His contention is, he is an honest officer who joined Govt. service on 15.5.1987 and has proven unimpeachable record of service. He has not only income from salary and other service benefits, but also owns agricultural lands from which he has a regular yield, substantially augmenting his income. He alleges his brother-in-law who is a practising advocate is inimical towards him and had submitted false information to the Lokayukta officer, acting on which a *suo moto* case has been registered without basis. He further submits he has been pleading with the I.O. to furnish him the basis of evaluating properties seized, but the officer has failed to furnish the required information. According to him, the value of properties mentioned by the I.O. is an

exaggeration and does not reflect the true value. If the true value is taken, the assets will be less than the known sources of income and will not be liable for attachment or seizure. He would further submit, for acquiring immovable properties, he had taken the required permission of the official superiors as provided by the service regulations.

d) Referring to the material particulars furnished by him in Schedule 1 to 16 and 23 on 25.8.2005 and 30.8.2005, he submits he has brought to the notice of Sri S.F.Kambar, I.O., all particulars to substantiate that he has income from known sources and no action was permissible under clause (e) of Section 13(1) of Section 13(2) of the Act.

3. To seek quashing of proceedings, Sri Shankar Hegde would contend even presuming the I.O. found the value of assets to be more than the known sources of income, it was incumbent on the I.O. to have called upon the petitioner to furnish relevant information about all sources of income like service benefits and agricultural

land income. He submits without soliciting any information from the petitioner who will be the best person to speak to those facts, a unilateral opinion is formed by the I.O. which is unsustainable. He submits on the basis of such material, no charge can be laid.

4. Referring to the information compiled in the form of charge sheet, he submits manifestly it is exaggerated and far from truth which, on perusal, renders the proceedings vitiated. For instance, he submits the best way to compute income from agricultural lands was to have obtained statistical information from agricultural produce market committee which is the normal method to be adopted. He submits there is no investigation by the I.O. about the yield of various crops and value it has fetched in terms of money. He submits if such income is added to his income from salary from other sources, no charge would be tenable.

5. He has appended to the petition Schedule 1 to 16 and 23 as also other documents pertaining to agricultural

lands. On the basis of such material, it is submitted it can be taken into consideration by this court to prevent misuse of the process of law and to avoid the ordeal of unjustified prosecution of the petitioner.

6. Per contra, learned Special Public Prosecutor for the Lokayukta, has refuted all contentions pointing out to the fact that accused had full opportunity of furnishing the value of assets, not only at the time of seizure, but during further investigation, which he has failed to do. In the alternative, he submits there is no stage carved out during investigation to question the accused about the value of assets because it is the duty of the I.O. to value the assets seized, taking into consideration all attending circumstances. He submits investigation conducted is unbiased and is supported by all material information collected which is in the form of charge sheet. He submits if at all accused has any material to prove his innocence, that will be a valid defence during trial, but at this stage no order to quash the proceedings is called for.

7. All contentions have received my consideration. It must be observed that not only before investigation, but even during investigation, I.O. has secured information about the movable and immovable assets owned by the petitioner. The value of properties seized is indicated in the inventory prepared and it is further substantiated from the mahazars. It is material to note apart from movable and immovable properties, value of which is brought in question by the accused, I.O.has seized fixed deposit receipts showing liquid cash owned by the petitioner.

8. Of course, the question is, whether the total value of assets is more than known sources of income indicting him for amassing wealth disproportionate to his income. As against the information collected by the I.O., accused has furnished Schedule 1 to 16 and 23. According to him, the value of properties furnished is realistic and the schedule also contains relevant information about his known sources of income. Such material undoubtedly would accrue to the benefit of the accused in proving his

innocence. But the question is, **Whether quashing of proceedings is justified?**

It is not in dispute investigation is complete end and final report has been filed. Therefore, the proceedings before the special judge in Spl.C.C.1/09 has to reach a logical end.

9. It must be noticed the charge against the petitioner is for offences punishable under Sections 7, 13(1)(e) and 13(2) of the Act which are triable only by the designated special judge appointed for the purpose by virtue of Section 3 of the Act. By virtue of Section 5, the special judge may take cognizance of the offence without the accused being committed to him for trial, and in trying the accused persons, shall follow the ***procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by magistrates.*** Therefore, it leaves no doubt that the procedure to be followed by the special judge to try the petitioner is the

procedure prescribed for trial of warrant cases by the magistrate as enumerated in Chapter XIX.

10. There are several stages carved out in the proceedings during such trial, one amongst which is the stage provided to hear before charge engrafted in Section 239, Cr.P.C. which envisages *'if, upon considering the police report and documents sent with it under Section 173 and* ***making such examination****, if any, of the accused as the magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.'*

10. Sri Shankar Hegde expressed apprehension contending if the accused makes a request to the special judge go give him an opportunity to refer to all the material in his defence, it will not be considered as the trial judge will only look into the material and documents submitted in the form of charge sheet. In other words, his

apprehension is, learned special judge may not permit the petitioner to rely on material documents which accrue to his defence on the ground it is only the material available in the form of charge sheet that has to be considered. This apprehension could be dispelled by comparing the provision of Section 227, Cr.P.C. and the language of Section 239, Cr.P.C.

11. The provision of Section 227 is a part of Chapter XVIII which lays down the procedure for trial before the court of sessions. During such proceedings, the sessions judge is bestowed with power under Section 227 to discharge the accused. The language of Section 227 spells out '*Discharge – If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so long.*' Therefore, it is seen in Section 227, there is no mention like in Section 239 to '**examine the accused.**'

Thus, while Section 227 does not permit examination of the accused, Section 239 permits examination of the accused by the magistrate.

12. At this stage, it is also necessary to clarify that though the special judge appointed under provisions of the Act will be of the rank of district and sessions judge, yet for trial of cases for offences punishable under the provisions of the Prevention of Corruption Act, by virtue of Section 5 of the Act the procedure prescribed to try warrant case by Magistrate only applies. I have already adverted to the said provision. However, it needs reiteration that even though the special judge will be of the rank of sessions judge, for all intent and purposes, to try the accused for the offence under the Act, he has to follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974) for trial of warrant cases by magistrates, and not the procedure prescribed by Chapter XVIII in the provisions of Sections 225 to 237, Cr.P.C. which is applicable to trial of sessions case.

13. It is now well settled by the dictum of the apex court that if the accused is prepared to produce material of sterling quality which, on the face of it, indicates prosecution initiated against him is on insufficient material, the proceedings could be quashed or accused could be discharged.

14. In this view, though I am of the opinion quashing of proceedings at this stage is not justified yet the right of the accused to advance all pleas put forward in this petition before the special judge to seek discharge should be reserved and he should be given an opportunity. If the petitioner-accused makes such a request before the special judge/trial court, he shall consider his plea uninfluenced by any observations made in the course of this order.

13. With the above observations, the petition is dismissed.

Sd/-
JUDGE

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