HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL REVISION CASE No.824 of 2022

ORDER:

This Criminal Revision Case is filed by the State of Telangana, represented through Assistant Commissioner of Police, Special Investigation Team (for short, 'SIT'), to set aside the orders dated 6.12.2022 passed by the I Additional Special Judge for Trial of SPE & ACB Cases, Hyderabad in Crl.M.P.No.1008/2022 in Cr.No.455/2022, rejecting the Memo filed by the investigating officer to array the proposed accused i.e., Bommrabettu Laxmijanardhana Santosh, Sri Tushar Vellappally, Kottilil Narayanan Jagu @ Jaggu Swamy, Bhusarapu Srinivas as Accused Nos.4 to 7.

2. The facts in brief as per the record are as under:

a) Sri Pilot Rohit Reddy, MLA, Tandur Assembly Constituency has filed an application before the Inspector of Police, Moinabad Police Station on 26.10.2022 alleging that on 26.09.2022 one Ramchandra Bharati @ Satish Sharma, Nana Kumar belonging to BJP met him and negotiated with him to join BJP by resigning TRS party and contest the next elections as BJP candidate for which they offered him Rs.100 crores,

Central Government contract works and high Central Government position. They also stated that in case, if he declines to join BJP, there will be criminal cases against him, raids by E.D. and CBI and that Telangana Government led by TRS would be toppled by them. The complaint further reveals that on 26.10.2022 again they contacted him while informing that Sri Ramachandra Bharathi @ Satish Sharma, Nanda Kumar and Simhayaji Swamy are coming in the afternoon to his farmhouse at Aziznagar, Moinabad for negotiations and informed him to mobilize some other TRS MLAs and offered them Rs.50 crores each to join BJP.

b) On the strength of his complaint given at 11.30 a.m., on 26.10.2022, police have registered a case in Crime No.455 of 2022 for the offence under Sections 120-B, 171-B read with 171-E, 506 read with 34 of the IPC and Section 8 of the Prevention of Corruption Act (for short, "the Act") and investigation was entrusted to ACP, Rajendranagar.

c) On 26.10.2022, A1 to A3 were allegedly apprehended at the farm house of the de-facto complainant while they were allegedly offering money to the *de-facto* complainant and other MLAs to join BJP and were produced before the learned

Principal Special Judge for ACB Cases. However, the learned Special Judge has rejected the remand of A1 to A3 on 27.10.2022 on the ground that the Notices under Section 41A Cr.P.C. were not served on them. Aggrieved by the orders of rejecting the remand, the police filed criminal revision case vide Crl.R.C.No.699/2022 and the High Court has set aside the orders of the Special Judge and as per the direction of the High Court, A1 to A3 surrendered before the Commissioner of Police, Cyberabad and were remanded to judicial custody on 29.10.2022.

d) After registration of FIR, investigation was taken up by ACP, Hyderabad. Later, the Government of Telangana has issued G.O.Ms.No.63, dated 09.11.2022 creating SIT making Commissioner of Police, Hyderabad, as head of the team with 6 members. The said SIT has filed a memo, dated 22.11.2022 on the file of the learned Principal Special Judge for ACB Cases with a prayer to array Bommrabettu Laxmijanardhana Santosh, National General Secretary (ORG), Bharatiya Janatha Party, as accused No.4, Tushar Vellappally of Kerela State as accused No.5, Dr.Kottilil Narayanan Jagu @ Jaggu Swamy of Kerala State as accused No.6 and Bhusarapu Srinivas of Hyderabad as

accused No.7. In the said memo dated 22.11.2022, the SIT has averred mainly as follows:

I. A1 to A3 were caught at the meeting hall offering to pay Rs.100 crores to the complainant- Sri Pilot Rohit Reddy, MLA, Tandur and Rs.50 crores to each of his three fellow MLAs besides providing Central Government civil contract works for monetary benefits and high positions in the Central Government. Their conversation about the commission of offence was recorded in the electronic spy gadgets and audio recorders installed by the Investigating Officer.

II. Analysis of the data of mobile phones seized from A1 to A3 reveals that A1 to A3 and proposed accused known to each other and were communicating among themselves through WhatsApp conversation/messages discussing and conspiring about the poaching of MLAs and other political leaders from different parties from the State of Telangana and other states.

III. On 26.10.2022, A1, A5 & A6 have made repeated WhatsApp group calls in the presence of A2 and A3 and *de-facto* complainant and other MLAs from the scene of crime, wherein they are heard categorically discussing about the resignation of

MLAs offering to pay money for defection and that they would be taking the *de-facto* complainant and other MLAs for a meeting with A4/Bommrabettu Laxmijanardhana santosh @ B.L.Santosh. A7/Busarapu Srinivas also has arranged flight tickets to A3 to come to Hyderabad and to participate in offering of bribe to four MLAs of TRS party.

e) The trial Court has registered the said memo as Crl.M.P.No.1008 of 2022 and on hearing prosecution, A1 to A3 and proposed accused, learned Principal ACB Judge has passed speaking order rejecting the said memo. Aggrieved by the rejection of the memo, the present criminal revision case is filed by the State mainly on the following grounds:

i) The trial Court has failed to take notice of the fact that the accused persons have no right to be heard at the stage of investigation.

ii) Finding of the trial Court that the SIT is not competent to investigate the offences punishable under the Act is devoid of merits.

iii) The proposed Accused No.4/Sri B.L. Santhosh has also given reply to A1 during WhatsApp conversations, which shows

that all the accused have conspired together to commit the offences alleged.

iv) The FSL reports have confirmed that the voice in the audio and video recordings collected from the scene of offence matched with the voice samples of A1 to A3.

v) The investigating agency has collected material evidence connecting A1 to A3 and the proposed accused, who were arraigned as A4 to A7. The details of material collected as follows:

1) Proposed accused/B.L. Santhosh and A1/Ramchandra Bharati met on 11th April at Haridwar.

2) A1/Ramchandra Bharati sent WhatsApp to A4/B.L. Santhosh on 26.04.2022 giving updates on Telangana operation.

3) On 21-08-2022, A1 Ramchandra Bharati, A3 Simhayaji, Advocate P. Pratap and KC Pandey, President of World Brahmin Federation met at KC Pandey's house in Kalkaji.

4) A1/Ramchandra Bharati, A2/Nadu Kumar Kore, A3/Simhayaji and A7/Advocate Busarapu Srinivas have met at World Brahmin Federation, Delhi on 04-09-2022.

5) A2/Nandu Kumar Kore, A3/Simhayaji and A7/Advocate Busarapu Srinivas went to RSS Headquarter at Nagpur, attended Annual Conference of Bharatiya Raksha Manch and met many leaders.

6) On 26.09.2022, A1/Ramchandra Bharati, A2/Nandu Kumar Kore, A3/Simhayaji, A7/Advocate Busarapu Srinivas, Advocate P. Pratap Munjagalla Vijay Kumar and *de-facto* complainant met at Nandu house and made proposal to the de-facto complainant to change the TRS party and also to bring other MLAs to BJP.

7) On 15.10.2022, at the House of B.L.Santhosh (at government quarters) a meeting was held at 10 am between A4/B.L.Santhosh, A5/Tushar Vellappaly, A1/Ramchandra Bharati, A2/Nandu Kumar Kore and Munjagalla Vijay Kumar.

8) WhatsApp Conversation between 15.02.2022 to 26.10.2022, Calls and regular Calls/Messages were exchanged relating to the poaching of MLAs among A1/Ramchandra Bharati, A2/Nandu, A3/Simhayaji, A6/Dr.Jaggu Swamy, A7/Advocate Busarapu Srinivas, Advocate P. Pratap and Munjagalla Vijay Kumar.

9) Regular Calls and WhatsApp calls exchanged between A1/Ramchandra Bharati, A2/Nandu Kumar Kore, A3/Simhayaji, A4/B.L.Santhosh, A5/Tushar Vellappaly, A6/Dr. Jaggu Swamy and A7/Advocate Busarapu Srinivas.

3. Heard the learned Advocate General for the State and Sri N.Ramchandra Rao and Sri L. Ravichandran, learned Senior counsels appearing for the proposed respondent No.7 and respondent Nos.1 to 3 respectively.

4. Now the point for consideration is:

> Whether the orders dated 6.12.2022 passed by the I Additional Special Judge for Trial of SPE & ACB Cases, Hyderabad in Crl.M.P.No.1008/2022 in Cr.No.455/2022 can be set aside?

5. **POINT**: Learned Advocate General has submitted that the proposed accused have no *locus standi* at all to represent before the learned Principal ACB Court in respect of the memo filed by the SIT. Hence notice need not be given to the proposed accused in this criminal revision case. Learned Advocate General has cited an authority decided between **Ranjeet Singh and others vs. State of U.P. and another**[1], wherein the Allahabad High Court Full Bench at para 86 has held as under:

> "86. Relevant observations of the Hon. Supreme Court in Union of India v. W.N. Chaudhary, 1993 Supp (4) SCC 260 : AIR 1993 SC 1082 practically closes the issue with regard to the accused's rights to be heard before final report is rejected by the Magistrate on allowing the protest petition with or without hearing the Informant. The following observations are relevant: (at Page 1103)
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> "Moreso, the accused has no right to have any say as regards the manner and method of investigation.

[1] 1999 SCC Online ALL 1677

Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the Investigation culminates in filing of final report under Sec. 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Sec. 204 of the Code, as the case may be. Even in case where cognizance of an offence is taken on a complaint notwithstanding the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions the accused has no right to have participation till the process is issued………

"True there are certain rights conferred on an accused to be enjoyed at certain stages under the Code of Criminal Procedure such as Sec. 50 whereunder the person arrested is to be informed of the grounds of his arrest and of his right of bail and under Sec. 57 dealing with person arrested not to be detained for more" than 24 hours and under Sec. 167 dealing with the procedure if the investigation cannot be completed in 24 hours which are all in conformity with the 'Right of Life' and 'Personal Liberty' enshrined in Article 21 of the Constitution and the valuable safeguards ingrained in Articles 22 of the Constitution for the protection of an arrestee or detenue in certain cases. But so long as the investigating agency proceeds with his action or investigation in strict compliance with the statutory provisions relating to arrest or investigation of criminal case and according to the procedure established by law, no one can make any legitimate grievance to stifle or to impringe upon the proceedings of arrest or detention during investigation as the case may be, in accordance with the provisions of the Code of Criminal Procedure."

"If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands defeat the ends of justice and make the provisions of law relating to the investigation as lifeless, absurd and self-defeating. Further, the scheme of the relevant provisions relating to the procedure of investigation does not attract such

a course in the absence of any statutory obligation to the contrary".

87. ....

88. It is also to be noted here that the Hon. Mr. Justice J.C. Gupta in Karan Singh v. State, 1997 ACC 163 : (1997 AIHC 376), Hon. Mr. Justice R.R.K. Trivedi in S.C. Misra v. State, 1996 AWC (Supp) 318. Hon. Mr. Justice K. Narain in S.K. Sharma reported in 1994 ACC, 748 and Hon. N.B. Asthana in Anil Kumar v. State, 1994 ACC 535 have held that the Magistrate is not required under the law to hear an accused before rejecting a final report submitted by the Investigating Officer or while hearing an informant in opposition of filing of such final report."

6. Sri N. Ramachandra Rao, learned Senior counsel appearing for the proposed accused No.7, has submitted that the trial Court has permitted the proposed accused No.4 to submit arguments and only thereafter, the impugned orders have been passed, hence, principles of natural justice requires that the proposed accused should also be given the audience in the criminal revision.

7. Learned Senior counsel has relied upon the judgment in **Manharibhai Muljibhai Kakadia and another vs. Shaileshbhai Mohanbhai Patel and others**[2], wherein the Hon'ble Supreme Court has held at para 53 as under:

"53. We are in complete agreement with the view expressed by this Court in P. Sundarrajan [(2004) 13 SCC 472 : (2006) 1 SCC (Cri) 345] , Raghu Raj Singh Rousha [(2009) 2 SCC 363 : (2009) 1 SCC (Cri) 801] and A.N.

[2] (2012) 10 SCC 517

> Santhanam [(2012) 12 SCC 321 : (2011) 2 JCC 720] . We hold, as it must be, that in a revision petition preferred by the complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed the crime is entitled to hearing by the Revisional Court. In other words, where the complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the Revisional Court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed the crime have, however, no right to participate in the proceedings nor are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled."

8. Sri L. Ravichandran, learned Senior counsel appearing for the respondents, has submitted that the persons, who sought to be included as Accused Nos.4 to 7 are not made parties either before the Court of first instance or before the revisional Court, thereby it violates the principles of natural justice. The impugned orders dated 06.12.2022 have been passed by the trial Court only after hearing the proposed accused, hence, while considering the revision as to the legality or correctness of

the impugned orders, the proposed accused shall be given an opportunity.

9. Normally, there is no need to issue notice to the proposed accused prior to arraying them as accused. However, in a given circumstance, in case if the Court is of the opinion that if the proposed accused is not heard, prejudice would be caused, then the Court can issue notice to the proposed accused. The impugned orders are passed rejecting the claim of the police to array the proposed accused as A4 to A7, thereby the proposed accused got the relief in their favour. If this Court decides the revision without hearing the proposed accused, it amounts to violating the principles of natural justice. All the parties, who were heard before the trial Court, are necessary parties and they shall be heard in this revision as well.

10. The other contention of the learned Advocate General that the trial Court should not have given notice to the proposed accused cannot be appreciated on account of the fact that the trial Court has converted the memo filed by the SIT as criminal miscellaneous petition and numbered as Crl.M.P.No.1008 of 2022. Therefore, while considering correctness and legality of the orders passed, this Court is of the opinion that the proposed

accused shall be given an opportunity of hearing in the criminal revision.

11. A perusal of the grounds of this revision and the submissions made by the learned Advocate General, Sri N.Ramchandra Rao and Sri L. Ravichandran, learned Senior counsels, the following points emerge for consideration of this Court:

> 1. Whether SIT can file a Memo informing the Court that on the strength of investigation done, some persons are proposed to be arrayed as A4 to A7 and whether the trial Court is required to pass any orders basing on the said Memo?
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> 2. Whether other than the ACB any other investigating agency can investigate the offences under the Prevention of Corruption Act, and
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> 3. Whether the trial Court can give a finding as to whether there is a prima facie material against the proposed accused for the offences alleged against them basing on the material available before it?

12. **POINT No.1**:- Learned Advocate General has submitted that orders passed by the Principal ACB Court are without jurisdiction, illegal, irregular, erroneous, unknown to the canons of law and cannot be sustained at all. He has further submitted that during the course of investigation, SIT has filed a memo informing the Court about the progress of the

investigation basing on the incriminating evidence collected against the proposed accused, to the effect that the proposed accused have taken part not only in conspiracy and has actively participated in the commission of the offence.

13. Learned Advocate General further submitted that the Principal ACB Court without considering the purpose for which the memo is filed has usurped the jurisdiction, which is not vested in it, and erroneously numbered the memo as criminal miscellaneous petition and gave a finding in respect of the offences alleged against the proposed accused, decided the jurisdictional issues and competency of SIT etc., as if the trial has already been completed. He has submitted an authority in **Syed Yousuf Ali vs. Mohd. Yousuf and others[3]**, the erstwhile High Court for the State of Telangana and the State of Andhra Pradesh at para 12 held as under:

> "12. The first and foremost contention of the learned counsel for the respondents is that no judicial order be passed based on memo. Filing of memo is not contemplated either under Code of Civil Procedure or under Civil Rules of Practice. The purpose of receiving memos by the Courts is only to receive certain intimation pertaining to the lis pending before it. Since filing of memo is not contemplated under Code of Civil Procedure or Civil Rules of Practice, no judicial order can be passed on memo. But the trial Court passed a judicial order based on memo which is contrary to the established practice. Therefore, the order passed by the trail Court basing on

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[3] 2016 (3) ALD 235

> memo dated 11.09.2015 filed before the trial Court is erroneous and it is an illegal exercise of jurisdiction which is conferred on it."

14. Sri N. Ramchandra Rao, learned Senior counsel appearing for the proposed accused No.4, on the other hand, has submitted that there is no practice or procedure for filing a memo informing the Court about arraying of the accused. It is submitted further that when the SIT has filed memo without jurisdiction, it cannot be alleged that the orders passed by the trial Court are without jurisdiction.

15. The learned counsel has further submitted that the present criminal revision case is not maintainable, as the orders passed on the impugned memo are not a judicial proceedings and if the impugned orders passed by the trial Court are set aside, it would cause great prejudice to the accused.

16. Sri L. Ravichandran, learned Senior counsel appearing for the respondents, has submitted that there is no procedure contemplated in the code of criminal procedure for filing a memo for including or excluding the accused. Police have to justify its powers as vested within four corners of the statute about informing the Court in respect of inclusion of some

persons as accused, he also added that the intention of filing memo for including the proposed accused is bad.

17. Code of Criminal Procedure permits arraying of accused in any criminal case while registering the FIR or while submitting remand report and finally in the form of charge sheet. Even if a person's name is not mentioned in the FIR, if during the course of investigation, name of the proposed accused emerges, he can be arrested and produced before the Court with a prayer to remand him to judicial custody by showing the material against him or at the time of producing the accused, whose name is already mentioned in the FIR, the police can also array the proposed accused, whose names are not mentioned in the FIR as an accused.

18. Similarly, after completion of investigation, at the time of filing of the charge sheet, the police are empowered either to delete the names of some of the persons whose names are shown in the FIR and can also include the names of others, whose names are not at all shown either in the FIR or remand report. Therefore, ultimately it is the charge sheet, which speaks as to against whom, prosecution intends to proceed.

19. However, the Code of Criminal Procedure does not contemplate any procedure of intimating the Court by the police by way of memo as to which of the persons the investigating agency intending to array as an accused. In the case on hand, the police for the reasons best known to them, has filed a memo intimating the Court that they are proposing to array A4 to A7 as accused. Memos are normally filed before the Court to intimate the Court about certain aspects like granting of stay or vacating of stay, death of any person etc. But in the case on hand, SIT has filed memo to intimate about the arraying of proposed accused Nos.4 to 7.

20. It is to be noted that the investigating agency has not simply filed a memo, but the memo is with bunch of documents, which according to SIT, there is a material to show that four persons are required to be arrayed as accused. That means, on the basis of the material enclosed to the memo/petition, the investigating agency wanted to inform and get clearance from the Court that the four persons are being arrayed as A4 to A7. If at all the trial Court has taken the memo and has kept quite, it amounts to endorsing the views of the investigating agency that proposed accused Nos.4 to 7 can be arrayed as accused along with A1 to A3. The SIT has invited an order from the

Court accepting the memo. Fastening of criminal liability against any person is not a small thing. It takes away personal liberty of an individual. It can not be done hastily, without doing proper exercise and without collecting proper material and without even properly analyzing as to whether there is any material prima facie to conclude that the proposed accused have committed the offences alleged. Therefore, the trial Court is justified in examining the material placed before the Court to see whether such material can be the basis to array the four persons as A4 to A7. Therefore, this Court is of the firm opinion that since the police have filed a memo intimating the Court that it intends to array four persons as A4 to A7 on the strength of some material, the exercise taken up by the trial Court to examine whether there is sufficient material to array three persons as A4 to A7 is also justified.

21. Above all, SIT has though filed memo, the trial Court in its wisdom numbered the memo as Crl.M.P.No.1008 of 2022. Once the memo is converted as criminal miscellaneous petition by the Court, then the Court is empowered to pass orders on the petition. Therefore, the objection raised by the State that the trial Court should not have passed the orders on memo will

not sustain as impugned orders are passed not on the memo but in Crl.M.P.No.1008 of 2022 cannot be accepted.

22. **POINT No.2:-** Learned Advocate General has submitted that the trial Court has came to erroneous conclusion that the ACB alone is competent to investigate the offences under the Act and that the Law & Order police or the S.I.T. has no jurisdiction to register, arrest and investigate. He has further submitted that the matter was carried to the High Court and also to the Honourable Supreme Court on other issues, however, neither Accused Nos.1 to 3 nor any other third parties has raised the issue of jurisdiction of SIT in investigating the case. It is submitted further that the Special Court for SPE & ACB cases is trying number of cases investigated by the CCS Police and CID Police, and those cases were tried and disposed as well. Hence, the trial Court cannot say that the SIT has no jurisdiction.

23. Learned Advocate General has cited an authority in **State by Central Bureau of Investigation vs. S.Bangarappa**[4], wherein the Hon'ble Supreme Court at paras 11 to 13 held as under:

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[4] (2001) 1 SCC 369

"11. The above is the result of a wrong understanding of the scope of Section 17 of the Act. If the investigation is to be conducted by CBI the legislative insistence for the rank of the officer to be not below that of Deputy Superintendent of Police is given exception to. This can be discerned even by a reading of the section in its entirety. We, therefore, extract Section 17 hereunder:

> "17. Persons authorised to investigate.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,—
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> (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
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> (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;
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> (c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the First Class, as the case may be, or make any arrest therefor without a warrant:
>
> Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the First Class, as the case may be, or make arrest therefor without a warrant:
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> Provided further that an offence referred to in clause (e) of sub-section (1) of Section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police."

12. There is no dispute that CBI is a Delhi Special Police Establishment. The Superintendent of CBI, Bangalore has issued the following order on 21-10-1997:

> "Under the provision of Section 17 of the PC Act, 1988, Shri B. Pannir Salvem, Inspector of Police

> Establishment Division, Bangalore is hereby authorised to investigate the said case against Shri S. Bangarappa, Member of Parliament and former Chief Minister of Karnataka for the offences under Section 13(2) read with Section 13(1)(*e*) of the Prevention of Corruption Act, 1988."
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> 13. When there is such an order, any Inspector of Police attached to CBI can conduct the investigation. Learned Single Judge unnecessarily quoted extracts from the decision of this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] perhaps being misled into believing that even when the investigation was conducted by CBI the requirement contained in clause (c) of Section 17 of the Act has to be followed. The word "elsewhere" in that clause is a clear indication that the insistence for Deputy Superintendent of Police can have application only if it does not fall under clauses (a) and (b). We do not wish to delve more into this aspect as Shri Kapil Sibal, learned Senior Counsel for the respondent, has fairly conceded that the High Court has gone wrong on that aspect."

24. Learned Advocate General has also cited an authority in **Narinder Singh vs. State of Himachal Pradesh**[5], wherein the Hon'ble Supreme Court at paras 10 and 11 held as under:

> "10. The learned counsel appearing for the appellant-accused assailed the judgment passed in appeal on the ground, inter alia, that the High Court has not correctly appreciated and interpreted the provisions of the Prevention of Corruption Act, 1988. According to the learned counsel the investigation was done by the police officer who was not an authorised officer in terms of Section 17 of the Act and thereby the entire investigation is vitiated in law. The High Court also erroneously drew presumption under Section 20 of the said Act when the prosecution miserably failed to prove the demand or offer of any gratification.

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[5] (2014) 13 SCC 30

Learned counsel further submitted that the presumption as contemplated under Section 20(2) of the Act can be made applicable only when the public servant accepted the illegal gratification. The learned counsel submitted that all witnesses examined by the prosecution are subordinates of the complainant and no independent witness was examined to prove the charges. It was further contended that the charge was framed by the trial court for the admitted bribe to the complainant for awarding the supply order of double-decker beds, but as a matter of fact no such supply order was processed anywhere. Lastly, it was contended that no implicit reliance on the testimony of the complainant can be placed unless corroborated by independent witnesses.

11. The impugned judgment reveals that the High Court discussed the evidence of the prosecution witnesses as also the evidence of the defence witnesses. On analysing the entire evidence, the High Court recorded a conclusive finding about the guilt of the appellant-accused. It is evident that PW 7 Prem Chand who was posted as ASI/IO in Bharmour Police Station requested the SHO at Chamba to depute a gazetted officer to investigate the matter. Even if the part of investigation had been carried out by PW 7, it cannot be said to be illegal. Nothing has been said from the side of the defence that serious prejudice was caused to the accused by reason of the investigation carried out.

The High Court rightly pointed out that Bharmour being a tribal area, there is a single line administration and lot of power is vested with the Resident Commissioner since the heads of various departments or competent authorities are not available in Bharmour, and at that time the ADM, complainant was also the Resident Commissioner, Bharmour.”

25. Sri N. Ramchandra Rao, learned Senior counsel appearing for the proposed accused No.4, on the other hand, has submitted that the Inspector of Police, who has registered the FIR, was not authorized and competent to register a case for the offences punishable under the Act as prior to registration of the FIR, such officer must have authorization as required under Section 17 of the Act.

26. The trial Court in the impugned order has referred to Section 3 of the Act and also the notifications given from time to time and concluded that the law and order police or the SIT constituted by government by way of G.O.No.63, Home (Legal) Department, dated 09.11.2022 is not competent to investigate the offences under the Act.

27. At this juncture, it is required to see Section 17 of the Act, which runs as under:

> "**17. Persons authorised to investigate.—** Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,—
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> (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
>
> (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

> (c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant:
>
> Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefore without a warrant:
>
> Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police."

28. As per Section 17(b) read with 17(c) of the Act, police officer of the rank of the Deputy Superintendent of Police can investigate the offences under the Act in Hyderabad, metropolitan area, the notification for which was issued under sub-section (b) of Section 17 of the Act.

29. The proviso to Section 17 also further speaks that the Government by a special order may authorise any officer to investigate. In the case on hand, the Government has issued a special G.O.Ms.No.63 Home (Legal) Department dated 09.11.2022 constituting a Special Investigating Team (SIT) to investigate this case and the said team is headed by the Commissioner of Police, Hyderabad. Therefore, when the team

is headed by the Commissioner of Police, Hyderabad and other senior officers are the Members, then the question whether the law and order police or the SIT are competent to investigate cannot be doubted.

30. However, this aspect of competency of SIT to investigate the offence has lost its importance now on account of orders passed by another Bench of this Court in W.P.No.39767 of 2022, setting aside constitution of SIT and directed the police to hand over the investigation to CBI.

31. **POINT No.3:** Learned Advocate General has submitted that when the notices issued by the SIT under Section 41-A of the Cr.P.C., were challenged before this Court vide Crl.P.Nos.10518, 10798 and 10860 of 2022, questioning the merits of memo prior to filing of charge sheet, is uncalled for. He has further submitted that when the crime is at the investigation stage, learned Judge has formed an opinion that Section 171-B R/w. Section 171-E and Sec. 506 of the IPC and Section 8 of the Act, do not apply to the case on hand, ignoring the fact that *prima facie* case is made out basing on the material evidence collected during the course of investigation.

32. Learned Advocate General has further submitted that when the police have got the material to proceed with the investigation in respect of a cognizable offence against the proposed accused, the learned Principal ACB Judge should not have given a finding in respect of the offences alleged against them are not attracted to the proposed accused. He has cited an authority in **Central Bureau of Investigation (CBI) and another vs. Thommandru Hannah Vijayalakshmi alias T.H. Vijayalakshmi and another**[6], wherein the Hon'ble Supreme Court at para 44 held as under:

> "44. In a more recent decision of a three Judge Bench of this Court in Neeharika Infrastructure (supra), Justice M R Shah, speaking for the Bench consisting also of one of us (Justice D Y Chandrachud), enunciated the following principles in relation to the Court exercising its jurisdiction under Article 226 of the Constitution or Section 482 of the CrPC:
>
>> "80. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers

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[6] 2021 SCC Online SC 923

under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit

the investigating agency/police to investigate the allegations in the FIR;

xvi) **The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.** However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted"

> within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."
>
> (emphasis supplied)"

33. Learned Advocate General also cited an authority in **Dinubhai Boghabhai Solanki vs. State of Gujarat and others**[7], wherein the Hon'ble Supreme Court at para 7 has held as under:

> "7. During the pendency of the public interest litigation filed by Jethwa, the name of the appellant and his nephew emerged as the powers behind the illegal mining mafia. Therefore, by order dated 6-7-2010 [Amit B. Jethava v. Union of India, Special Civil Application No. 7690 of 2010, order dated 6-7-2010 (Guj)] , the appellant and his nephew Pratap Bhai Solanki were impleaded by the High Court as respondents. The order dated 6-7-2010 [Amit B. Jethava v. Union of India, Special Civil Application No. 7690 of 2010, order dated 6-7-2010 (Guj)] was served on the appellant on 19-7-2010."

34. Per contra, Sri N. Ramchandra Rao, learned Senior counsel, has submitted that when A4 to A6 have challenged the notices issued under Section 41-A of the Cr.P.C., before this Court on various grounds vide Crl.P.Nos.10518, 10798 and 10860 of 2022, there was no need for the investigating agency to file a memo before the trial Court.

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[7] (2014) 4 SCC 626

35. It is further submitted that merely because some persons have mentioned the names of the proposed accused during the discussion and in WhatsApp chats and because some photographs were taken and messages were exchanged, it cannot be said that the said persons have committed an offence. Great prejudice will be caused if they are made as accused.

36. Learned senior counsel has further submitted that in **R.A.H. Siguran vs. Shankare gowda Alias Shankara and another**[8], the Hon'ble Supreme Court has held that the accused shall question the investigation at the threshold of investigation, but not at subsequent stage. The trial Court has stated that investigation has not been properly conducted by the appropriate agency.

37. Sri L. Ravichandran, learned Senior counsel, has submitted that the Court of first instance has observed that no case is made out against Accused Nos.1 to 3. If no case is made out against Accused Nos.1 to 3, then the collusion of other accused with Accused Nos.1 to 3 will also be not made out. When investigating agency wants some persons to be arrayed as accused and if the Court is of the opinion that they cannot be arrayed as accused, the Court cannot blind fold itself and

[8] (2017) 16 SCC 126

accept the proposal. If Court feels that those persons cannot be arrayed as accused either on facts or on law or on both, the Court has to come to rescue.

38. He has submitted further that during the course of investigation, mobile phones seized from A1 to A3 were forwarded to FSL, verified and extracted data from the phones and analysis of the data reveals the involvement of proposed accused. But, how can the said analysis of information be based to include the accused without filing an affidavit under Section 65-B of the Evidence Act. It is also submitted further that if the order is set aside, it amounts to permitting the police to perpetuate illegally.

39. The trial Court has done exercise to consider whether the offences alleged under Section 171B read with Section 171E of the IPC and Section 8 of the Act can be fastened on the proposed accused. Normally, such exercise is not permissible to be taken up even prior to arraying proposed accused as A4 to A7, it appears to this Court that on the face of it, it is clear that the offence punishable under Section 171B read with Section 171E of the IPC are no way connected to the facts of the case.

40. This Court also gone through the material available before the Court and found that there is no correlation at all to the facts of the case and the allegation that proposed accused have committed the offence punishable under Section 171B read with Section 171E of the IPC. Apparently, it is crystal clear that not even remotely the offences alleged cannot be fastened to the proposed accused, thereby this Court is of the opinion that the trial Court has rightly appreciated that offence under Sections 171B and 171E of the IPC are not applicable to the facts of the case, even if all the allegations levelled against the proposed accused are accepted to be true.

41. Sections 171B and 171E of the IPC read as under:

> "**171B. Bribery.—** (1) Whoever—
>
> > (i) gives a gratification to any person with the object of induc-ing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or
> >
> > (ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right; commits the offence of bribery:
>
> Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.
>
> (2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

> (3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward."
>
> "**171E. Punishment for bribery.—** Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:
>
> Provided that bribery by treating shall be punished with fine only.
>
> Explanation.—"Treating" means that form of bribery where the gratification consists in food, drink, entertainment, or provision."

42. The above provision clearly goes to show that Section 171B of the IPC can be invoked in case if any person gives a gratification to others for inducing a person for exercising the electoral right in favour of a particular person. The allegation of the investigating agency in this case is that A1 to A3 have induced the *de-facto* complainant and other three persons and MLAs to join their political party. It is not the case of the police or investigating agency that the proposed accused have induced the *de-facto* complainant and the MLAs to exercise their vote to a particular political party or a person. Similarly, Section 171E of the IPC deals with punishment for committing offence as bribery as defined under Section 171B of the IPC.

43. Therefore, since none of the ingredients of Section 171B read with Section 171E of the IPC applicable to the facts alleged by the police, the trial Court has rightly gone to the extent of exercising power as to whether there is any *prima facie* material for the Court. The trial Court has also observed that Section 8 of the Act is also not applicable to the facts of the case.

44. Above all, it is significant to note that on the file of this Court, Bharatiya Janata Party filed W.P.No.39767 of 2022 seeking the following relief:

> "… to issue a Writ, order to orders or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in undertaking biased and unfair investigation in FIR No 455/2022 on the file of Moinabad PS with a sole intention to frame the Petitioner Political Party and damage its reputation at the instance of the ruling party dispensation as being illegal, arbitrary and in gross violation of Article 14 and 21 of the Constitution of India and also contrary to settled principles of free and fair investigation and consequently to transfer the investigation in FIR.No.455/2022 on the file of Moinabad PS to 7th respondent Agency or alternatively to constitute a special investigation team to conduct enquiry in crime number 455/2022 Registered on the file of Moinabad PS in a free and fair manner."

45. Another Bench of this Court by way of common order dated 26.12.2022 has dismissed W.P.No.39767 of 2022 while observing in para 44.1 as under:

> "**44.1.** For the aforesaid reasons, W.P. Nos.40733, 43144 and 43339 of 2022 are allowed. G.O.Ms. No.63 Home (Legal) Department dated 09.11.2022 appointing SIT is quashed. The investigation in FIR.No.455 of 2022 shall be forthwith transferred to the Central Bureau of

> Investigation, who shall proceed with de novo investigation taking into consideration the report lodged by Mr. Pilot Rohit Reddy in FIR.No.455 of 2022, observation panchanama dated 26.10.2022 and mediator's panchanama dated 27.10.2022. The remaining investigation done by Assistant Commissioner of Police, Rajendranagar Division; the Station House Officer, Moinabad Police Station, and the SIT are also quashed."

46. On perusal of the finding at para 44.1 of the common order referred to above, it is clear that while transferring the investigation of this Case to Central Bureau of Investigation, CBI has quashed G.O.Ms.No.63, dated 09.11.2022 appointing SIT. A direction was also given that the CBI shall proceed with the de novo investigation on the basis of complaint lodged by Mr. Pilot Rohit Reddy, which has become FIR in Crime No.455 of 2022 and mediator's panchanama dated 27.10.2022 and further held that remaining investigation done by the SIT is quashed.

47. The present criminal petition is filed questioning the impugned orders passed by the trial Court on the basis of memo. Once, except three documents, entire investigation done by SIT was set aside, the memo, which is filed by the SIT before the Court, is also deemed to have been quashed. Since memo filed by the SIT is part of investigation which was quashed, the orders passed by the Principal ACB Court cannot be quashed.

48. Therefore, considering the discussion made above, this criminal revision case is liable to be dismissed.

49. In the result, the criminal revision case is dismissed.

Miscellaneous petitions, if any, shall stand closed.

DR. D.NAGARJUN, J

Date: 02.01.2023
AS/ES