

ORDER ON THE APPLICATION FILED UNDER SECTION 227 OF
Cr.P.C., R/W SECTION 4 AND 17 OF PREVENTION OF
CORRUPTION ACT

The accused No.5 N.Venkatesh has filed this application seeking his discharge from this case by submitting that an adjudication proceedings was taken place against him after issuance of process and in that proceedings he was exonerated after consideration of the documents placed before the inquiring authority. Therefore, there are no lapses on his part with respect to the allegations made out against him even in this case on hand also. Absolutely there is no material to proceed against him by this Court. Apart from it, the said adjudication proceedings was conducted by a retired District and Sessions Judge and submitted his report and the same was accepted. The disciplinary authority had failed to prove the charges levelled against him in the said adjudication proceedings. Therefore, he is liable to be discharged from this case also. Hence, prays to allow the application.

2. The learned Special Public Prosecutor has filed detailed objections and submitted that the concerned Investigating Officer has filed charge sheet against the accused No.5 and other accused persons alleging commission of offence of cheating and misappropriation of amount to the extent of Rs.63,33,630/-. Therefore, the Court has taken cognizance against this accused No.5 and other accused persons and charge was also framed against them and even some of the witnesses are also examined on behalf of the prosecution. So, at this stage with an intention to drag on the proceedings this application is filed by this accused. Apart from it, the approach and objective of criminal proceedings and disciplinary proceedings are altogether different and distinct. So,

the finding given in the disciplinary proceedings cannot be considered as a ground to discharge him in this criminal proceedings. Hence, prays to dismiss the application.

3. Heard both sides and perused the materials available on record.

4. The sole point that arises for determination of this Court is,

“Whether the accused No.5 has made out grounds to discharge him from this case, as prayed?”

5. My finding on the above point is in the negative, for the following;

REASONS

6. This application is filed by the applicant/accused No.5 seeking his discharge from this case only after levelling charges against him and other accused persons for the offences punishable under Section 13(1) (c) r/w Section 13(2) of Prevention of Corruption Act and under Sections 120(B), 409, 465, 471 and 420 of IPC. The charge levelled against this accused No.5 is that he being a Government employee in District Treasury as SDA played major role in receiving disputed bills submitted by the accused No.1 and issuing account payee cheques for encashment in Vedha Sowharda Credit Co-operative Bank and acted as a mediator between the accused No.7 and remaining accused. So, when charge is levelled against this accused on 15.10.2018 for the various offences as stated above by this Court, question of discharging him at this juncture does not arise. So, with an intention to drag on the

proceedings this application is filed, which deserves to be dismissed.

7. The contention of accused No.5 is that departmental inquiry was conducted against him by a retired District and Sessions Judge and accordingly, report was submitted with observation that there is no material to prove the charges levelled against him and as such, he was exonerated from the charges in the departmental inquiry. Therefore, according to this accused the present proceedings also does not survive. On the other hand, no such order is produced before this Court to substantiate the said contention of accused No.5. Secondly, disciplinary proceedings are quite different from the criminal proceedings existing before the Special Courts. The amputation of charges levelled against him in the departmental inquiry and the charges levelled against him in the criminal proceedings before the Special Court are altogether different. Under such circumstances, even though the accused No.5 was exonerated from the charges levelled against him in departmental inquiry, that itself is not a ground to discharge him from the criminal prosecution proceedings existing against him before Special Court. In this regard the learned Special Public has submitted judgment, dated 27.09.1996 of Hon'ble Supreme Court of India in case of State of Rajasthan Vs. B.K.Meena and others, wherein their Lordships have clearly held as follows;

“There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is

whether offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.”

8. Further in Appeal (Civil) No.7980/2004, in case of Hindustan Petroleum Corporation Ltd., & others Vs. Sarvesh Berry, the Hon’ble Supreme Court of India has highlighted as follows;

“If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated question of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.”

9. So, it is the principle laid down by the Hon’ble Supreme Court of India in several cases that approach and objective of disciplinary proceedings are quite different from the criminal proceeding existing before the criminal Courts and especially before Special Courts in case the offence would attract or punishable under the provisions of PC Act. Therefore, question of discharging the accused No.5 from this criminal proceedings for the reason assigned by him does not arise. Only with an intention to drag on the proceeding this application is filed. Therefore, this application is deserved to be dismissed. Accordingly, I answer this point in the negative and proceed to pass the following;

ORDER

The application filed by the accused No.5 under Sections 227 of Cr.P.C., r/w Section 4 and 17 of PC Act is hereby dismissed.

**PRL. SESSIONS JUDGE,
KOLAR.**