

APHC010119932024

**IN THE HIGH COURT OF ANDHRA PRADESH**



**AT AMARAVATI**

**[3369]**

**(Special Original Jurisdiction)**

WEDNESDAY, THE THIRTEENTH DAY OF MARCH  
TWO THOUSAND AND TWENTY-FOUR

**PRESENT**

**THE HONOURABLE SRI JUSTICE T. MALLIKARJUNA RAO**

**CRIMINAL REVISION CASE NO: 234/2024**

**Between:**

The State Of Andhra Pradesh

**...PETITIONER**

**AND**

Prathipati Sarath

**...RESPONDENT**

**Counsel for the Petitioner:**

1. Y L SIVAKALPANA REDDY(SC CUM SPL PP,CID)

**Counsel for the Respondent:**

1. JAVVAJI SARATH CHANDRA

**The Court made the following ORDER:**

1. This petition is filed by the Petitioner/Complainant under Sections 397 and 401 of Cr.P.C., seeking to set aside the Order dated 06.03.2024 in CrI.M.P.No.424 of 2024 in Crime No.63 of 2024 of Machavaram Police Station, Vijayawada City, passed by the learned I Additional Chief Metropolitan Magistrate, Vijayawada (for short, "learned Magistrate").

2. Heard Smt. Y.L. Shivakalpana Reddy, learned Standing Counsel-cum-Special Public Prosecutor, appearing for the Petitioner/Complainant, and Sri B. Adinarayana Rao, learned Senior Counsel for the Respondent/A.1.

**3.** The Revision Petitioner/Complainant filed a petition under Section 167(3) of Cr.P.C., on behalf of the Prosecution before the Additional Chief Metropolitan Magistrate, Vijayawada, in CrI.M.P.No.424 of 2024 in Crime No.63 of 2024 of Machavaram Police Station, seeking an order granting Police custody of A.1 for ten days, with the following allegations, which are as under:

(i) The Respondent/A.1 was an Additional Director of M/s.Avexa Corporation Pvt. Ltd., whose father is an Ex-Minister in the previous Government, indulged in unethical practices, conspired with the other Accused, who created Shell companies fraudulently, tampered with accounts, submitted forged documents to the Government and committed fraud and caused loss to a tune of Rs.26,25,19,393/- to the State Exchequer and committed serious economical offence by diverting the funds under the guise of developmental works at Amaravati during 2017 to 2022 even though no works were carried out by colluding with other companies and gained illegally Rs.8,00,00,000/-. Based on the report given by the Defacto Complainant, i.e. Deputy Director of Revenue Intelligence, A.P., Vijayawada, a case has been registered for the offences under Sections 420, 409, 467, 471, 477(A), 120(B) r/w. 34 IPC. Later, A.1 was produced by the S.H.O., Machavaram Police Station, before the learned Magistrate on 29.02.2024; after that, he was remanded to judicial custody.

(ii) While A.1 was acting as Additional Director of M/s.Avexa Company, a sub-contractor, an amount of Rs.50,00,000/- was transferred from M/s. BSR Infra Tech, who was an original contractor to the Government illegally on 31.01.2020. Abusing the position and influence of his father, A.1 entered into a conspiracy with the companies with a common intention of misappropriating funds which were entrusted

to carry out the earmarked work contracts at Amaravati region, created false documents as if certain supplies or services were rendered by filing false invoices without actually doing no such work and diverted huge Government amounts to the companies by using false documents as genuine and by creating false GST accounts and claimed Input Tax Credit to a tune of Rs.8,00,00,000/-. As such, it is necessary to order the Police custody of A.1 to elicit the hidden facts.

**4.** After considering the arguments presented by both parties, the learned Magistrate rejected the Police custody petition on 06.03.2024, citing that the mere assertions in the petition lacked the adequacy required to authorize Police custody. The rationale behind the dismissal was that the Central GST Department had already completed the entire investigation. According to the learned Magistrate, the petition lacked merit and substantial grounds to warrant the placement of A.1 into Police custody for further questioning. Dissatisfied with this decision, the Petitioner/Complainant has initiated this Revision.

**5.** It is also established that while considering the legality, propriety or correctness of a finding or a conclusion, normally, the Revisional Court does not dwell at length upon the facts and evidence of the case. A Court, in Revision, considers the material only to satisfy itself about the legality and propriety of the findings, sentence, and order, and it refrains from substituting its conclusion on an elaborate consideration of the evidence.

**6.** Thus, the scope of the Revision is limited to whether the Order refusing police custody was legally correct or not with regard to the material placed before the learned Magistrate.

7. The learned Special Public Prosecutor, representing the Petitioner/ Complainant, contends that the learned Magistrate failed to recognize the severity of the offence and the necessity for a more in-depth investigation. Emphasizing the financial nature of the offence, involving substantial fraud amounting to crores committed by the Accused, she argues that the investigation conducted by DGGI, Hyderabad, should not be equated with a Police investigation. According to her, custodial interrogation of the Accused is imperative. Notably, the Respondent/A.1 served as an Additional Director of the Company for a mere 47 days. Referring to Section 161 of Cr.P.C., she points out statements from witnesses that indicate the Accused, albeit for a short duration as a Director, actively participated in the company's affairs. Furthermore, as the son of a former Minister, he allegedly exploited his position successfully to obtain input tax credit from the erstwhile Government.

8. The learned Special Public Prosecutor contends that DGGI, Hyderabad's investigation is confined to determining the evasion of input tax credit by the AVEXA company and issued a show cause notice for the payment of Rs.16/- crores as a penalty under section 74(1) of the provisions of the CGST Act, 2017; the investigation done by DGGI, Hyderabad unit established that M/s. Avexa company is in conspiracy with shell companies, created fake invoices, and committed misappropriation of tax amount to Rs.16,06,78,558/-.

9. The Hon'ble Supreme Court, while considering the grant of custody to the police in a criminal investigation under section 167 (2) of Cr.P.C, in ***Satyajit***

***Ballubhai Desai v. State Of Gujarat***<sup>1</sup>, at paragraphs Nos. 9, 16 and 19 had held as follows:

*"9. Having considered and deliberated over the issue involved herein in the light of the legal position and existing facts of the case, we find substance in the plea raised on behalf of the appellants that the grant of an order for police remand should be an exception and not a rule and for that the investigating agency is required to make out a strong case and must satisfy the learned Magistrate that without the police custody, it would be impossible for the police authorities to undertake further investigation and only in that event police custody would be justified as the authorities, especially at the magisterial level would do well to remind themselves that detention in police custody is generally disfavoured by law. The provisions of law lay down that such detention/police remand can be allowed only in special circumstances granted by a Magistrate for reasons judicially scrutinised and for such limited purposes only as the necessities of the case may require. The scheme of Section 167 of the Criminal Procedure Code, 1973 is unambiguous in this regard and is intended to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers, which at times may be at the instance of an interested party also. But it is also equally true that police custody, although it is not the be-all and end-all of the whole investigation, is one of its primary requisites, particularly in the investigation of serious and heinous crimes. The legislature also noticed this and has, therefore, permitted limited police custody.*

*16. While examining the case of the appellants in the light of the aforesaid legal position, it is apparent from the provisions of CrPC that the Order permitting police remand cannot be treated lightly or casually, and strict adherence to the statutory provision is mandatory. In view of this, the Order for police remand of the appellants cannot be sustained for more than one reason....."*

**10.** It is not in dispute that M/s Avexa received a work order dated 27.10.2017 from M/s BSR Infratech Private Limited for the construction of the N9 road from Uddandurayunipalem to Nidamaruru in Amaravati on a subcontract basis.

**11.** The learned Special Public Prosecutor contends that the investigation revealed that Avexa had issued outward invoices having a taxable value of Rs.23,43,92,315/- along with GST of Rs.2,81,27,078/- to M/s. BSR Infratech India Private Limited implies that Avexa received a total amount of Rs.26,25,19,393/- from BSR Infratech

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<sup>1</sup> (2014) 14 SCC 434

Private Limited, the principal contractor. But the statement of Sri Kurra Jogeswarao, present director of Avexa, recorded by the investigation officer of DGGI on 22.07.2022, shows that "they have not provided any services to M/s. BSR Infratech India Limited." Therefore, as per the investigation, M/s. Avexa has transferred funds to the above fake entities outside the state of Andhra Pradesh, and Avexa only received inward bills/invoices without receipt of Goods/Services from them.

**12.** It is not in dispute that Avexa has received a work order regarding the investigation design and construction of roads and utilities in the green buffer of N6 road in Amaravati capital city from M/s. Jakson Eminence for values of Rs.19,49,94,000/- and Rs.35,85,95,506/- dated 28.02.2019, the above-said work was claimed to have been sub-contracted by Avexa to M/s. Tanisha Infra XZone Private Limited, M/s. Rollon Projects, M/s. Annai Infra Developers Limited and M/s. Allways Town Planners Private Limited.

**13.** The learned Special Public Prosecutor further contends that Avexa had diverted huge public money, i.e., Rs.17,85,61,864/- from the M/s. Aditya Enterprises, M/s. Sanjay Kumar Bhatia, M/s. Tanishq Steels Limited and M/s. Mount Business Build Private Limited: several sub-contracts were entered into without the permission of Amaravati Development Corporation Limited (ADCL), a Government body; the subcontract between BSR and Avexa does not have prior approval of the authority mentioned above, violating the terms of the contract, there were invoices issued and transfer of funds were carried out by the Respondent in colour of carrying out of works, whereas there was no supply of any goods and services by the Respondents; hence, stating that there is a diversion of funds. So, the diversion of Government funds by the Avexa through the shell companies has to be investigated.

**14.** Sri B. Adinarayana Rao, learned senior counsel appearing for the Respondent/A.1 submits that the parties are the private entities and there is no contractual relationship with the Government; the invoices issued cannot be considered as a valuable security and there is no privity of contract between the parties, thereby charges under sections 471, 420, 477 and 467 of IPC cannot be attracted in the present case; there is no privity of contract between the BSR (Principal) and the Government, hence, case against the Respondent/A.1 cannot be upheld; the execution of work is already done and therefore, there is no question of diversion of funds, as the funds are all utilized towards the works; the claim of investigating agency stating that execution of work nonetheless is of no relevance at this stage of case cannot be upheld; any concerned case against the Respondent is to be carried out by the GST authorities, as the orders are not granted yet in relevance to irregular input tax credits and the present allegations cannot be proved by the Petitioner/State.

**15.** He further contends that section 132 of the Central Goods and Services Act, 2017 (hereinafter referred to as 'the Act') provides **punishment for certain offences.**- Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:

*(a) supplies any goods or services or both without the issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;*

*(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;*

**16.** He further contends by relying on section 134 of the Act, **Cognizance of Offences.**- *No court shall take cognizance of any offence punishable under this Act*

*or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class shall try any such offence.*

**17. He further contends by relying on section 137 of the Act, **Offences by companies.-****

*(1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.*

*(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*

*(3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, mutatis mutandis, apply to such persons.*

*(4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.*

**18.** At this stage, this Court is not supposed to consider the merits of the case, as if hearing an appeal against an order of conviction or acquittal, as the investigation has yet to conclude.

**19.** There is no dispute that the Respondent/A.1 served as an Additional Director at Messrs. Avexa Corporation Private Limited for 67 days, specifically from 09.12.2019 to 14.02.2020. In the impugned Order, the learned Magistrate noted

that the alleged forged invoices, submitted by the Accused company's Directors to claim the input tax credit, and Annexure-9A, consisting of purported fake bills from the shell company Tanisha Infra Zone Private Limited, as referenced on pages 15, 16, and 17, were relied upon by the Prosecution. Notably, these bills were raised on 18.03.2019, 22.03.2019, and 26.02.2019, respectively, when A.1 was not serving as an Additional Director at M/s. Avexa Corporation Private Limited. The learned Magistrate arrived at this conclusion based on the documents presented by the Prosecution, considering it as one of the reasons for denying the Order for police custody.

**20.** The learned Magistrate has additionally considered the remarks provided in the remand report, which highlight that the Directorate General of Goods and Services Tax Intelligence (DGGI) had previously investigated the submission of counterfeit invoice bills by the shell companies associated with the firm. These entities purportedly claimed to be engaged in development activities in the Amaravati region, although no actual work transpired. Consequently, the DGGI recommended a penalty of Rs.16 crores against A.1's company under the Central Goods and Services Tax Act, 2017. This indicates that the DGGI, Hyderabad, has already undertaken a significant portion of the investigation

**21.** This is evident from the comprehensive report of the committee regarding the allegations against M/s. Avexa Corporation Private Limited by APSDRI, Vijayawada; the matter originated from a letter sent by the Special Commissioner of APSDRI, Vijayawada, to the Special Chief Secretary, Finance (DP-I) Department. The Special Commissioner requested the forwarding of the letter to the Special Chief Secretary, MA & U.D., for further action. In response, the Commissioner of APCRDA constituted

a committee comprised of Chief Engineers from APCRDA/ADCL through Rc.No. 23/24-Estt., dated 08.02.2024, to investigate the purported diversion of funds by M/s. Avexa Corporation Private Limited. The committee members include:

- (i) Sri N.V.R.K.Prasad, Chief Engineer, H&B
- (ii) Sri P.Siva Prasada Raju, SE/Chief Engineer (FAC)
- (iii) Sri G.V.Pallam Raju, SE/Chief Engineer (FAC), T&T

**22.** It is observed in the report that as per note of APSDRI/DGGI, dated 06.07.2023, in Para (11), the main allegation of diversion of public funds by M/s. Avexa Corporation Private Limited, Vizianagaram, A.P., to the extent of Rs.45.37 Crores, is resorting to inward and outward bill trading. After having examined all the available records with ADCL (Amaravati Development Corporation, Vijayawada), it is concluded that there is no agreement between ADCL and M/s. Avexa Corporation Private Limited, the total mobilization advance was paid to M/s. BSRIIL is Rs.20.80 crores. The total bill amount paid to the Principal Contractor, i.e., M/s. BSRIIL so far is Rs.118.82 crores, and the GST Component Paid & released to the Principal contractor is Rs.5,18,10,138/-. Hence, the allegation has not been substantiated per ADCL's available records.

**23.** It is also observed in the report that after verifying all the existing records available with ADCL, the payment was released to the extent of work done after following the due procedure of the Department and per the terms and conditions of the agreement and after due certification by PMC M/s. LEA Associates South Asia Private Limited, at every stage, as mentioned in Para No.6(A), to ensure that the requisite quality & quantity checks are done both by the PMC in the presence of the Department & the Principal Contractor. PMC (M/s. LEA Associates South Asia Private

Limited) is responsible for "*Supervise the construction works of contractor strictly by the performance indicators and other stipulations contained in Contract documents and ensure complete compliance concerning technical specifications and various stipulations contained in the Contract documents with high standards of quality assurance in supervision and the execution of work as per agreement*".

**24.** Having not disputed the detailed report of the committee, it is now somewhat difficult to appreciate the contention of the Petitioner/Complainant that the diversion of Government funds by Avexa through the shell companies has to be investigated.

**25.** Upon considering the entire material on record, this Court finds no illegality in the Order passed by the learned Magistrate, and it needs not be interfered with.

**26.** Nothing stated above shall be construed as a final expression of opinion on the merits of the case, and the observations made in the present case are only for adjudicating the present Revision Case.

**27.** As a result, the Criminal Revision Case is ***dismissed***.

Miscellaneous applications pending, if any, in this Criminal Revision Case, shall stand closed.

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**JUSTICE T. MALLIKARJUNA RAO**

**MS/SAK**

**Date: 13.03.2024**

**THE HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO**

**CRIMINAL REVISION CASE NO.234 OF 2024**

**Date: 13.03.2024**

**SAK**