

and Siemens and the Siemens is a combination of M/s. Siemens Industry Software (India) Pvt., Ltd., and M/s. Design Tech System Pvt., Ltd. It was further alleged that a tax investigation by the Additional Director General, GST led to unearthing of huge financial scam involving Crores of rupees by M/s. Siemens Industry Software (India) Pvt. Ltd., and M/s. Designs Tech System Pvt., Ltd. It was further alleged that an in-depth scrutiny by the GST Intelligence revealed that training Software Development including various sub-modules shown as supplied by Skiller to Design Tech were purchased by Skiller from various companies and these companies are shell and defunct companies and they are issuing invoices without providing any services and these companies were formed into a cartel to siphon the public funds and the investigation.

3. That, a Memo was issued dated 11.07.2021 and 04.09.2021 to the Managing Director, APSSDC with a direction to lodge a complaint with the CID. Pursuant to that the Chairman, APSSDC lodged a complaint and the same was registered as a case in Crime No.29 of 2021 under the aforesaid offences.

4. That the petitioner was produced before this Hon'ble Court by the prosecuting Agency along with a remand report and the same has to be rejected in limini for the following reasons/grounds:

- a) That there is a clear statutory violation as per Section 17-A of P.C. Act, 1988 which mandates that to conduct any enquiry or investigation relating to offences relatable to recommendations made or decision taken by public servant in discharge of official duties/

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functions, the same has to be done under a sanction as per the sub-clauses (a), (b) and (c) of Sec.17-A of P.C. Act. In the instant case, the petitioner falls

under category of 17-A (c) and the sanctioning authority is the person competent to remove him from his office. The petitioner was the Chief Minister of Andhra Pradesh when the alleged offence alleged to have been committed and the person who removes the Chief Minister from Office is his majesty i.e., the Governor of Andhra Pradesh and hence the prosecution has to obtain prior sanction of the Governor even to initiate an enquiry/investigation in the above case. Hence there is a statutory violation and hence the remand has to be rejected limini for the aforesaid violation.

- b) That, admittedly the alleged offences are relating to policy decision taken by the Cabinet and also approved by the Cabinet and as such it is a decision of the Government which cannot be questioned by initiating criminal proceedings.
- c) That the Government of Andhra Pradesh allocated Rs.360 Crores in favour of the Department of Skill Entrepreneurship and innovation and the same was incorporated in the budget for the year 2015-16 and the same was voted by the Legislature and hence it is a part and parcel of approved budget and the said allocation cannot be questioned by initiating criminal proceedings.
- d) That, as per the recitals of the complaint as well as the remand report, no role was attributed to the petitioner in siphoning the funds and moreover there is no allegation in the FIR which was registered on 09.12.2021 and moreover no criminal complaint can be made and maintained relating to acts done in discharge of official duties and if there is any misuse of funds at any level, the same has to be dealt in a different manner but not by way of prosecuting a Hon'ble Chief Minister.

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- e) That it is well settled legal proposition that a Magistrate while remanding an Accused under Section 167 (2) Cr.P.C., has to see that a prima facie case is made out against the Accused from the material submitted and relied by the prosecution and in the instant case no such material was brought on record by the prosecuting agency even to remand the petitioner to judicial custody.

- f) That a careful reading of Sec.167 (1) Cr.P.C. would show that the investigating officer can seek for remand only when there are grounds for believing that the accusation or information is well founded and in the instant case there is no such well founded accusation. In Rajpal Singh Vs. State of U.P., the Apex Court observed that a remand order cannot be made without application of mind and it must not be in a routine or mechanical manner.
- g) That, it is well settled legal proposition that before a Magistrate authorizes detention U/s. 167 Cr.P.C., he has to be first satisfied that the arrest made is legal and in accordance with law and all the Constitutional and legal rights of the person arrested were satisfied. In the instant case, there is a clear statutory violation in not obtaining sanction for conducting investigation which is a legal right of the petitioner herein and as such the remand has to be rejected in limini.

It is therefore prayed that this Hon'ble Court may be pleased to reject the remand of the petitioner which was in violation of the statutory provisions U/s. 17-A of Prevention of Corruption Act and without any prima facie accusation in the interest of justice and pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

Vijayawada,
Dated .09.2023

Counsel for the Petitioner