THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No.2398 of 2013

ORDER:

The criminal revision case is filed questioning the correctness of the order dated 25.10.2013 in Crl.M.P.No.250/2013 in CC No.3/2012 on the file of the Principal Special Judge for SPE & ACB Cases, Hyderabad, by and under which, the Court below dismissed the petition filed by the petitioner/A2 under section 239 Cr.P.C seeking to discharge him from the charges levelled against him.

2. Heard the learned counsel appearing for the petitioner/A2 and the learned Special Public Prosecutor, representing the ACB/State.

3. The case of the prosecution is that on credible information that the officials of the Office of the Commissioner & Director, Agriculture, Basheerbag, A.P.Hyderabad are collecting illegal gratifications for renewal of fertilizer licenses from the dealers, a case was registered in Cr.No.17/RCO-CIU/2010 of Central Investigation Unit, Anti-Corruption Bureau, Hyderabad under section 7, 13(2) r/w.13(1) (d) of Prevention of Corruption Act, 1988 and Section 34 of IPC on 13.09.2010 and during investigation, it is found that the petitioner/A2 was working as Superintendent and the non-petitioner/A1 was working as Senior Assistant and both of them conspired together with each other and were collecting illegal gratifications ranging from Rs.1,000/- to Rs.25,000/- from the dealers for purpose of renewal of their licences in the course of discharge of their official duties. Further investigation disclosed that both the petitioner/A2 and non-petitioner/A1 used to direct the renewal applicant-dealers over their mobile phones, ie..through Mobile Ph.Nos.9246195828 and 9247306695 to deposit illegal gratification through online from their respective areas into the Bank Account No.53117541396, belongs to the non-petitioner/A1 and another Bank Account No.20043876228, belongs to one P.Venkata Krishna Reddy, and accordingly, the petitioner/A2 and the non-petitioner/A1 have collected from the dealers an amount of Rs.10,74,555/- in the account of the non-petitioner/A1 under 145 instances and Rs.94,550/- in the account of one P.Venkata Krishna Reddy

under 15 instances from 22.02.2008 to 09.09.2010. It is stated that the another account holder P.Venkata Krishna Reddy is the classmate and friend of the daughter of the non-petitioner/A1.

4. The petitioner/A2 filed a petition under section 239 Cr.P.C seeking his discharge from the offences alleged against him, contending that there are no specific allegations made against him in the charge sheet, that there is no role played by him in the alleged crime, that basing on 161 cr.p.c. statements he was implicated in the crime, that his duty is very limited in the process of renewal of licences, he has to only cross-check and scrutinize the notes put up by the Senior Assistant of the section, as to whether it is in conformity with the procedure and rules laid down for purpose of renewal of licences, that the Deputy Director, Agriculture is the competent authority to renew the licences to the dealers, and that though the name of the Deputy Director was cited in the FIR, but in the charge sheet, his name was deleted without assigning any reasons.

5. The respondent/ACB filed elaborate counter opposing the said petition, stating that the investigation clearly discloses his role in the alleged offence and hence the petitioner/A2 is not entitled to be discharged.

6. The Court below, on hearing either side, dismissed the petition filed by the petitioner, observing that there is *prima facie* evidence to show that the petitioner/A2 played key role in directing and collecting illegal gratifications from the dealers through on line.

7. Aggrieved by the said order, the petitioner/A2 filed the present revision contending that the Court below failed to consider the nature of duties of the petitioner/A2 in processing the files of renewal of licences and there is no role played on his part in taking a decision of reviewing the licences. It is further contended that the court below failed to consider that it is not the case of the prosecution that the petitioner/A2 violated the procedure for his personal gain.

8. The learned counsel appearing for the petitioner/A2 submits that no *prima facie* case is made out against the petitioner/A2 for the alleged offence, and no role is attributed by the prosecution on his part in collecting illegal gratification from the dealers for purpose of renewing their licences. The learned counsel further submits that the alleged bank accounts are not in the name of the petitioner/A2 and no amounts were credited in his account. The learned counsel further submits that there

is no iota of evidence against the petitioner/accused to continue the criminal proceedings against him and hence the petitioner/A2 is entitled to be discharged.

9. The learned Special Public Prosecutor, representing ACB, submits that there is *prima facie* case against the petitioner/A2 to proceed. He further submits that the investigation and documentary evidence produced clearly discloses the key role played by the petitioner/A2 in collecting illegal gratifications from the dealers through his mobile phone. He further submits that one of the registered documents seized during search operations discloses that the non-petitoner/A1 is shown as the wife of the petitioner/A2 and hence there is nexus in between the petitioner/A2 and the non-petitioner/A1 in committing the alleged offence.

10. The point for consideration is as to whether the petitioner/A2 is entitled to be discharged under Section 239 Cr.P.C.

11. What is the scope of the powers of the Court while considering the petition of an accused for discharge filed under Section 239 Cr.P.C has been laid down by several Authorities of the Hon'ble Supreme Court. The well settled position of law is that the trial Court is entitled to sift and weigh the material on record, and if there is no *prima facie* evidence or evidence is totally unworthy of credit, the accused is entitled to be discharged. The powers are conferred on the trial Judge to discharge an accused at the threshold, if upon consideration of the record and documents, the trial Judge considers that there is no sufficient ground for proceeding against the accused. However, at that stage, the Court would not delve deep in the matter for the purpose of appreciation of the evidence at the stage of framing of charges. The evidentiary value of the evidence so far gathered and proposed to be adduced during course of trial cannot be weighed in the golden scales at the threshold.

12. In ***Hem Chand v State of Jharkhan*** the Hon'ble Supreme Court held as under:

> "At the stage of framing of charge, the court will not weigh the evidence. The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidence is brought on record at the trial.
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> The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a *prima facie* has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found

during investigation should be the concern of the court. It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any.

It is one thing to say that on the basis of the admitted documents, the appellant was in a position to show that the charges could not have been framed against him, but it is another thing to say that for the said purpose he could rely upon some documents whereupon the prosecution would not rely."

13. In ***State of T.N. v N.Suresh Rajan*** the Hon'ble Supreme Court held as under;

"True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

14. Applying the above well settled proposition of law to the facts of the present case, what is required to be seen is as to whether the material placed on record by the prosecution is *prima facie* sufficient for framing the charges or whether there exist any grounds to discharge the accused. As already noticed, the non-petitioner/A1-Sailaja was working as Senior Assistant, whereas the petitioner/A2 was working as Superintendent. Their main duty was to process the applications of the fertilizer dealers received for the purpose of renewals. It is the non-petitioner/A1

who is firstly supposed to process the application and put up a note, and after approval by the petitioner/A2, it goes to the superior officers, who were originally shown as accused in the complaint, but subsequently, no charge sheet was filed against the Deputy Director and the Joint Director.

15. The case of the prosecution is that the *modes operandi* attributed against the petitioner/A2 and the non-petitioner/A1 is that whenever applications for renewal of licence were received from the fertilizers dealers, they used to contact the dealers over mobile phone Nos.9246195828 and 9247306695, which stood in the name of the petitioner/A2, and demand illegal gratification for processing the renewal applications. The demand is in the range of Rs.1,000/- to Rs.25,000/- and in a span of about 10 months in the year 2010, a sum of more than Rs.9 lakhs has been collected by the non-petitioner/A1 and strangely the manner of collection of the illegal gratification was by the dealers being made to transfer the amounts into the Bank accounts at Hyderabad which stood in the name of the non-petitioner/A1. On some occasions, the amount was also made to be deposited by way of transfer into the account of one P.Venkata Krishna Reddy, who happened to be the friend of the daughter of the non-petitioner/A1.

16. Statements of several dealers who are listed as LWs 8 to 22 have been recorded and they all *prima facie* show that on being demanded by the non-petitioner/A1 on a phone call being made from cell phone which admittedly belongs to the petitioner/A2, the amounts were being transmitted into the Bank accounts, as directed. The material so far gathered also shows that such of the amounts that were deposited into the Bank account of P.Venkata Krishna Reddy were withdrawn by the non-petitioner/A1 with the help of ATM card.

17. The contention of the petitioner/A2 is that even if the entire material is perused, there is nothing against the petitioner/A2, even though there is material against the non-petitioner/A1. There is nexus in between the non-petitioner/A1 and the petitioner/A2 as the petitioner/A2 was working as Superintendent, whereas the non-petitioner/A1 was working under him as Senior Assistant. The cell phone that is used to communicate the demand to the various dealers was that of the petitioner/A2. There seems to be some relationship in between the non-petitioner/A1 and the petitioner/A2 other than official. *Prima facie*, the material in that connection

is to the effect that when the house of the non-petitioner/A1 was searched, a registered sale deed was found in respect of the immovable property, wherein the non-petitioner/A1-Sailaja has been described as wife of the petitioner/A2. It is also on record that the husband of the non-petitioner/A1, by name, D.Sudhakara Rao died while he was working as Agricultural Officer and by way of compassionate appointment, the non-petitioner/A1 was given the job in the Department. She joined the service in 1994 as Junior Assistant and was promoted as Senior Assistant in the year 2004. The non-petitioner/A1 had two daughters through her late husband D.Sudhakara Rao. The name of the daughter of the non-petitioner/A1 is Ms.Alekhya Singh and the name of the petitioner/A2 is Ravikumar Singh. The statements of various fertilizer dealers are to the effect that it is the petitioner/A2 and non-petitioner/A1 who were telephoning them and asking them to deposit amounts in certain banks at Hyderabad. There were about 145 such instances and amount that was transferred was in the range of more than Rs.10 lakh. The Investigating Agency also recorded the statements of LWs 26 to 68 who are all the Branch Managers of different banks, from whom the details about the transfer of the amounts by the dealers into the accounts of the non-petitioner/A1 and one P.Venkata Krishna Reddy was gathered. The Investigating Agency also recorded the statements of the authorized officer of Tata Tele Services and the Sub-Registrar, Champapet of Ranga Reddy District, who are stated to have given details of ownership of the cell phone and also the fact that the sale deed found in the house of the non-petitioner/A1 was registered.

18. If we go through the voluminous oral and documentary evidence that is placed on record, *prima facie* it is established that it is a fit case where the accused should be called upon to face the trial and the charges are to be framed. The material so far gathered and produced cannot be said to be not sufficient for *prima facie* coming to the conclusion that charges can be framed or for that matter the petitioner/A2 is liable to be discharged. The learned Special Judge has considered all the aspects in proper perspective and on being satisfied with the material placed on record, dismissed the petition of the petitioner/A2 and the said findings cannot be said to be improper or suffer from any infirmity, warranting any interference. There are no merits in the revision and the same is liable to be dismissed.

19. In the result, the Criminal Revision Case is dismissed. It is needless to mention that the trial Court shall not be influenced by any of the observations made in this

order while proceeding with trial of the calendar case, in accordance with law.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: .11.2016

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