

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 703 of 2015

ORDER:

The present revision is filed by A.3 under Sections 397 & 401 Cr.P.C. against an order dated 30.03.2015 passed in CrI.M.P.No.2636 of 2014 in C.C.No.128 of 2012 on the file of the Judicial Magistrate of First Class, Palamaner, wherein his application to discharge was rejected.

The facts in issue are as under:

The informant lodged a report with the Station House Officer, Baireddipalli Police Station, Chittoor District, against the petitioner and others which came to be registered as Crime No.41 of 2012. After completing the investigation, the police filed a charge sheet against the accused for the offences punishable under Sections 447, 341, 506 r/w 34 IPC. The same was taken on file as C.C.No.128 of 2012 on the file of the Judicial Magistrate of First Class, Palamaner.

The gist of the allegations made in the charge sheet are that one R.Ramakrishna Reddy of T.N.Kuppam village, Baireddipalli Mandal, was having a mango garden. L.Ws.1 and 2 jointly took the said mango garden on lease for the year 2012 and paid Rs.40,000/- as advance on 09.04.2012 as against the total amount of Rs.60,000/-. The owner of the mango tope is i.e., R.Ramakrishna Reddy died on 27.04.2012 due to illness. Before his demise, he is alleged to have executed a Will in respect of the mango garden, in the name of his son-in-law by name V.Vijayabhaskar Reddy (L.W.5) and his sons. By virtue of the said Will, L.W.5 became the lawful owner of the mango garden. On 21.06.2012 L.Ws.1 and 2 paid the balance amount of Rs.20,000/- to L.W.5. It is stated that as usual on 28.06.2012 L.W.1 along with his father (L.W.3) and partner (L.W.2) and driver (L.W.4) harvested the mangos and loaded them into a tempo. At about 3.00 p.m. while they were about to move, A.1 to A.3 are alleged to have criminally trespassed into the mango garden, abused them in filthy language, restrained the tempo and claimed their right over the mango garden apart from threatening them with dire consequences. Due to fear, L.Ws.1 to 4 left the mango garden leaving the tempo in the garden.

Pending the proceedings before the trial Court, A.1 to A.3 filed CrI.M.P.No.2636 of 2014 under Section 239 Cr.P.C. seeking discharge. By an order

dated 30.03.2015, the trial Court rejected the said application on the ground that the allegations made in the charge sheet do prima facie make out a case against the accused. Challenging the same, A.3 preferred the present revision.

Learned counsel for the petitioner/A.3 submits that there is absolutely no reference to the execution of the Will in the civil cases which shows that the Will is nothing but concocted and created to suppress the rights of the petitioner and other accused who are the reversioners of the ancestral property of the deceased Ramakrishna Reddy. According to him, Ramakrishna Reddy got the property by way of adoption through one Obi Reddy who is none other than the brother of the petitioner's mother. One of the conditions in the said adoption deed dated 28.09.1945 was that if Ramakrishna Reddy does not have any children, the property automatically would devolve upon the reversioners. For that reason, Ramakrishna Reddy never disputed the adoption deed and he deliberately executed the Will dated 04.06.2008 and through the said Will, the informant is claiming right over the mango garden.

Learned Additional Public Prosecutor opposed the revision contending that the issue involves disputed questions of fact and the same cannot be gone into in this revision.

In ***Chitresh Kumar Chopra Vs. State (Government of NCT of Delhi)***, the Apex Court held as under:

"It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. (See: Niranjana Singh Karam Singh Punjabi & Ors. Vs. Jitendra Bhimraj Bijja & Ors.5)."

In ***State of Maharashtra and others Vs. Som Nath Thapa and others***, a three-judge bench of the Apex Court explained the meaning of the word "presume". The Court held as under:

"...if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that

the accused has commuted the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

In view of the judgments of the Apex Court, it has to be seen whether the prosecution has made out a prima facie case against the petitioner. A reading of the averments in the charge sheet shows that on 28.06.2012 L.W.1 along with his father (L.W.3) and partner (L.W.2) and driver (L.W.4) harvested the mangos and loaded them into a tempo. At about 3.00 p.m. while they were about to move the same, A.1 to A.3 are alleged to have criminally trespassed into the mango garden, abused them in filthy language, restrained the tempo by claiming right over the mango garden apart from threatening L.Ws.1 to 4 with dire consequences. Since the allegations in the charge sheet prima facie make out a case against the petitioner for the offences punishable under Sections 341, 447, 506 r/w Section 34 IPC and as the allegations made in the charge sheet gets support from the statement of L.Ws.4 & 6, I am not inclined to consider the request of the petitioner for discharge. However, having regard to the nature of the allegations made, the presence of the petitioner in C.C.No. 128 of 2012 on the file of the Judicial Magistrate of First Class, Palamaner, is dispensed with except on the dates when his presence is specifically required by the Court. It is needless to say that the trial Court is advised to dispose of the C.C. as expeditiously as possible, preferably, within a period of six (6) months from the date of receipt of a copy of this order.

With the above direction, the Criminal Revision Case is disposed of. As a sequel thereto, Miscellaneous Petitions pending if any in this CrI.R.C. shall stand closed.

C. PRAVEEN KUMAR, J

28th April, 2015

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HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

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