

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-

CRIMINAL PETITION No.2557 of 2015

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') requesting to quash the orders dated 12.09.2014 passed in CrI.M.P.No.3812 of 2007 in C.C.No.65 of 2006 on the file of VI Additional Chief Metropolitan Magistrate, Hyderabad, and confirmed by the order dated 04.02.2015 passed in CrI.R.P.No.359 of 2014 by the learned Metropolitan Sessions Judge, Hyderabad, and to discharge the petitioners, who are arraigned as accused Nos.2 and 4 respectively.

2. Heard both sides.

3. Learned counsel for the petitioners submits that though, initially the discharge petition was filed under Section 239 of the Code, somehow, under the impression that the same would apply to the procedure resorted to in the cases otherwise than police reports, still, subsequently, a memo was filed on 02.11.2007, requesting the Court to treat the CrI.M.P.No.3812 of 2007 as the one filed under Section 245 of the Code, but still, the learned Magistrate has treated it as the petition under Section 239 of the Code and dismissed the same as not maintainable at threshold, and aggrieved by the said order, CrI.R.P.No.359 of 2014 was preferred on the file of Metropolitan Sessions Judge, Hyderabad, and despite bringing to the notice of the Court that there was a memo already filed to treat the petition as the one under Section 245 of the Code, still, ignoring the same, the order under challenge was passed on 04.02.2015. It is his submission that despite the fact that civil litigation was prosecuted between the parties and even execution petition was filed, still, only to harass the petitioners herein and other accused, the instant complaint was filed as a private complaint which was referred by the concerned Magistrate and the same was prosecuted by the complainant alleging the offences punishable under Sections 120-B, 467, 468, 471 and 506 I.P.C. It is also his

submission that it is a clear abuse of process of Court, and, therefore, sought to quash the order passed by the learned VI Additional Metropolitan Magistrate, Hyderabad, as well as the learned Metropolitan Sessions Judge, Hyderabad.

5. Sri Mohd. Shafi, learned counsel, represents that he has filed vakalat on behalf of the 2nd respondent-complainant in the Registry and sought permission to argue the matter and tendered arguments with the permission, stating that the charges have also been framed by the learned Magistrate subsequent to the passing of order by the learned Magistrate, and, therefore, strongly resisted the request of the petitioners.

6. Perused the material placed on record. It is not as though, the learned Magistrate passed the order in CrI.M.P.No.3812 of 2007 just on technical ground but the maintainability under Section 239 of the Code was one of the grounds even considered by the learned Magistrate. As seen from the order, it is clear that the learned Magistrate has gone into other aspects of the case and observing that while framing charges, the Court need not conduct mini trial and meticulous examination or deep investigation with regard to the facts is not required and if really accused did not commit any offences and not involved in creating the impugned documents, they can plead acquittal after recording of evidence at the end of trial, dismissed the petition, which was filed seeking discharge of the accused therein, who are accused Nos.2 and 4. It is no doubt true, a memo was filed dated 02.11.2007, as contended by the learned counsel for the petitioners, and the order was passed by the learned Magistrate on 12.09.2014 and the discharge petition itself was filed in 2007, but somehow, it appears that the said petition was pending throughout. It is also true, the learned Metropolitan Sessions Judge has decided it observing that the petition before the lower Court was under Section 239 read with 240 of the Code and the petition under Section 245 of the Code alone is maintainable as it was a case instituted otherwise than the police report and the discharge can only be effected under Section 245 of the Code and dismissed the petition and that cannot be a ground to accept this petition seeking to quash the orders of the learned Magistrate as well as the orders of the learned Metropolitan Sessions Judge, and more particularly, the order passed by the learned Magistrate is not on technical ground

alone of filing the petition under Section 239 read with 240 of the Code as mentioned herein before. There is also to observe that the allegations constituting the offences levelled against the petitioners are serious in nature, which cannot be resolved at this stage without entering into the arena of merits, basing on which, the ultimate finding can be after full fledged trial. Hence, there is no merit in the present criminal petition to quash the proceedings of the learned Magistrate as well as the learned Sessions Judge.

7. Therefore, the criminal petition is dismissed.

8. At this stage, the learned counsel for the petitioners requested the Court to dispense with the presence of the 1st petitioner/accused No.2 on the ground that he is 86 years old. Having seen from the record and as represented by the learned counsel for the petitioners/accused Nos.2 and 4, amongst the six accused, the 1st and 3rd accused by name, Mohd. Murtuza and Ramesh Kumar Garg, are no more and since the 1st petitioner/accused No.2 is 86 years old, the presence of the 1st petitioner/accused No.2, viz., Chandrakiran Garg, is dispensed with before the learned VI Additional Metropolitan Magistrate, Hyderabad, but with a direction that he shall appear before the Court, as and when the learned Magistrate directs.

9. As a sequel thereto, miscellaneous petitions, if any pending in this petition, shall stand closed.

A. SHANKAR NARAYANA, J

20th April, 2015

siva