

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 701 of 2015

ORDER:

The present revision is filed by A.2 & A.3 under Sections 397 & 401 Cr.P.C. against an order dated 30.03.2015 passed in CrI.M.P.No.2635 of 2014 in C.C.No.115 of 2012 on the file of the Judicial Magistrate of First Class, Palamaner, wherein their 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 petitioners and another which came to be registered as Crime No.34 of 2012. After completing the investigation, the police filed a charge sheet against the accused for the offences punishable under Sections 109, 379, 447, 341, 506, 509 r/w Section 34 IPC. The same was taken on file as C.C.No.115 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 the wife of the informant (L.W.1) was the adopted daughter of late Ramakrishna Reddy. A.1 to A.3 are the sons of cousin sister of Ramakrishna Reddy. As Ramakrishna Reddy was not having children, the accused are claiming themselves as his legal heirs. Anticipating trouble from the accused, Ramakrishna Reddy was alleged to have given his property to the sons of L.W.1 under a registered deed of agreement and also got injunction orders from the Court of I Additional District Judge at Chittoor in I.A.No.21 of 2011 in O.S.No.5 of 2011. While so, on 27.04.2012 Ramakrishna Reddy died. Taking advantage of the same, on 08.06.2012, with the instigation of A.3, A.1 and A.2 with a common intention are alleged to have criminally trespassed into the mango garden of L.W.1 and committed theft of 1 ½ bags of mangoes. When L.W.1 and his family members objected, A.1 and A.2 are alleged to have abused them in filthy language, threatened them with dire consequences and also restrained them from taking the mango bags. A.1 is alleged to have pushed L.Ws.2 and 5 aside and insulted their modesty by removing his lungi and showing his thighs to them.

Pending the proceedings before the trial Court, A.1 to A.3 filed CrI.M.P.No.2635 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.2 and A.3 preferred the present revision.

Learned counsel for the petitioners/A.2 & 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 petitioners and another 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 second 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 committed 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 petitioners. A reading of the averments in the charge sheet shows that on 08.06.2012, with the instigation of A.3, A.1 and A.2 with a common intention are alleged to have criminally trespassed into the mango garden of L.W.1 and committed theft of 1 ½ bags of mangoes by reaping without the consent of L.W.1 and when L.W.1 and his family members objected, A.1 and A.2 are alleged to have abused them in filthy language apart from threatening them with dire consequences. A.1 is alleged to have pushed L.Ws.2 and 5 aside and insulted their modesty by removing his lungi. Since the allegations in the charge sheet prima facie make out a case against the petitioners for the offences punishable under Sections 109, 379, 447, 341, 506, 509 r/w Section 34 IPC and as the allegations made in the charge sheet gets support from the statement of L.Ws.2, 5 and 6, I am not inclined to consider the request of the petitioners for discharge. However, having regard to the nature of the allegations made, the presence of the petitioners in C.C.No. 115 of 2012 on the file of the Judicial Magistrate of First Class, Palamaner, is dispensed with except on the dates when their 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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