

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CRIMINAL REVISION CASE No.1940 of 2013

ORDER:

The criminal revision case is filed questioning the correctness of the order dated 26.08.2013 in CrI.M.P.No.465/2012 in CC No.3/2011 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/A1 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/A1 and the learned Special Public Prosecutor, representing the ACB/State.

3. The case of the prosecution is that on 28.08.2007 the District Collector, Medak District issued a notification for acquisition of land of an extent of Ac.41.34 gunts in Sy.No.10 of Kuncharam village, Toopran Mandal, Medak District for industrial development. Pursuant to the said notification, the lands of the *de facto* complainant R.Bharath Kumar and his mother Smt.R.Jyotsna Bai of an extent of Ac.12.30 guntas was notified to be acquired. The *de facto* complainant-R.Bharat Kumar filed objections and met the petitioner/A1-Special Dy.Collector, Land Acquisition (Industries), Medak District and requested him to de-notify their land from the acquisition, for which, the petitioner/A1 demanded Rs.40 lakhs as bribe. Subsequently, the Government dropped the proposal of acquiring the lands for some time. Later, in July, 2008 a draft declaration was issued by the District Collector, Medak. The *de facto* complainant and two other affected persons, viz., Krishna Reddy and Sada Siva Reddy @ Sivudu met the petitioner/A1 seeking his help, but the petitioner/A1 demanded Rs.80 lakhs as bribe to send favourable proposals to the

District Collector and asked them to share the said amount as per ratio. On 22.08.2008 the petitioner/A1 contacted the *de facto* complainant through his cell phone No.9849904212 about their readiness to pay the demanded amount, and on acceptance, the petitioner/A1 directed the *de facto* complainant to contact him on 23.08.2008 at 11 a.m. The *de facto* complainant recorded the conversation that took place in between himself and the petitioner/A1 on 22.08.2008 through voice recorder and lodged a complaint before the DSP, ACB, City Range-I, Hyderabad on 23.08.2008.

4. Basing on the complaint of the *de facto* complainant-R.Bharath Kumar, the ACB officials prepared a sketch to trap the culprits, and in that process they gave a Nokia Cell Phone Model No.N-72 bearing No.9440446102 with host No.9440446111 of Miss Charu Sinha, Joint Director (City), ACB, Hyderabad for purpose of hearing and recording the conversation from host cell phone and directed the *de facto* complainant to contact and meet the petitioner/A1. Accordingly, on 23.08.2008 the *de facto* complainant along with two others viz., Krishna Reddy and Sadashiva Reddy went to the office of the petitioner/A1 and contacted him and the petitioner/A1 directed them to contact on 25.08.2008. On 25.08.2008 at about 2.15 the *de facto* complainant-R.Bharat Kumar contacted the petitioner/A1 on his cell phone No.9849904212 and the petitioner/A1 instructed him to contact and meet the non-petitioner/A2-Laxminarsimha Rao at Park Hotel, Public Gardens, Nampally, Hyderabad. Accordingly, the *de facto* complainant-Bharat Kumar, as per the instructions of the ACB officials, met the non-petitioner/A2 and gave tainted amount of Rs.11 lakhs to the non-petitioner/A2, and on his signal, the ACB officials seized the said amount from the possession of the non-petitioner/A2 and on being questioned, the non-petitioner/A2 stated that on the instructions of the petitioner/A1 he came and received the amount.

On enquiry, the petitioner/A1 admitted his guilt. Basing on the complaint of the *de facto* complainant, a case was registered in Cr.No.22/ACB-CR/2008 under section 7, I, 13(2) r/w.13(1) (d) of Prevention of Corruption Act, 1988 against the petitioner/A1 and under section 12 of Prevention of Corruption Act, 1988 against the non-petitioner/A2.

5. The petitioner/A1 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 and 164 Cr.P.C. statements he was implicated in the crime, that his duty is only to receive objections under Section 5A of the Land Acquisition Act, 1894 in respect of the lands proposed to be acquired and submit a report to the District Collector, then the Government has to take decision for acquisition of the lands and de-notifying the lands and he has nothing to do with Section 4(1) or 6 notification. It is stated that at first the *de facto* complainant requested him to exclude their lands, the petitioner/A1 refused his request, on that he bore grudge against him and created a false story to implicate him as an accused in the present case.

6. The respondent/ACB filed counter opposing the said petition, stating that the investigation clearly discloses his role in the alleged offence and hence the petitioner/A1 is not entitled to be discharged.

7. 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/A1 played key role in directing and collecting illegal gratifications from the *de facto* complainant and two others through the non-petitioner/A2.

8. Aggrieved by the said order, the petitioner/A1 filed the present revision contending that the Court below failed to consider the nature of

duties of the petitioner/A1 in acquisition proceedings and his role is limited to the extent of receiving objections and sending report to the District Collector. It is further contended that the court below failed to consider that the petitioner/A1 has never met the *de facto* complainant and received any amount either from him nor any persons for doing official favour, as he has no power either to notify or to de-notify the lands after receiving objections.

9. The learned counsel appearing for the petitioner/A1 submits that no *prima facie* case is made out against the petitioner/A1 for the alleged offence, and no role is attributed by the prosecution on his part in collecting illegal gratification from the *de facto* complainant and others for doing official favour. The learned counsel further submits that there is no iota of evidence against the petitioner/A1 to continue the criminal proceedings against him and hence the petitioner/A1 is entitled to be discharged.

10. The learned Special Public Prosecutor, representing ACB, submits that there is *prima facie* case against the petitioner/A1 to proceed. He further submits that the investigation and documentary evidence produced clearly discloses the key role played by the petitioner/A1 in collecting illegal gratification from the *de facto* complainant through the non-petitioner/A2. He further submits that the conversation recorded clearly reveal the role played by the petitioner/A1 in the alleged offence.

11. The point for consideration is as to whether the petitioner/A1 is entitled to be discharged under Section 239 Cr.P.C.

12. 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.

13. In *Hem Chand v State of Jharkhan*¹ 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.

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

¹ (2008) 5 SCC 113

say that for the said purpose he could rely upon some documents whereupon the prosecution would not rely.”

14. In *State of T.N. v N.Suresh Rajan*² 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.”

15. 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/A2-P.Laxminarasimharao collected the bribe amount from the *de facto* complainant on the

² (2014) 11 SCC 709

instructions of the petitioner/A1 and in this regard, the Investigating Officer recorded his statement.

16. The case of the prosecution is that the *modus operandi* attributed against the petitioner/A1 is that when the *de facto* complainant requested him to save his land from the acquisition proceedings, the petitioner/A1 demanded bribe and there were talks in between the *de facto* complainant and the petitioner/A1 in this regard and the petitioner/A1 altogether demanded Rs.80 lakhs for doing official favour to the *de facto* complainant and two others and in that process, on the directions of the petitioner/A1, the *de facto* complainant went to Park Hotel, Nampally, Hyderabad and gave Rs.11 lakhs as part payment to the non-petitioner/A2 and the non-petitioner/A2 confessed that on the instructions of the petitioner/A1, he came and collected the amount from the *de facto* complainant.

17. Statements of the *de facto* complainant and other prosecution witnesses have been recorded and they all *prima facie* show that on being demanded by the petitioner/A1, and on his instructions over his phone, the amount was given to the non-petitioner/A2 and the conversation between complainant and A1 is recorded.

18. The contention of the petitioner/A1 is that even if the entire material is perused, there is nothing against the petitioner/A1, even though there is material against the non-petitioner/A2. There is nexus in between the non-petitioner/A2 and the petitioner/A1 as the non-petitioner/A2 confessed that he collected the amount on the instructions of the petitioner/A1. The cell phone that is used to communicate the demand was that of the petitioner/A1.

19. If we go through the voluminous material that is placed on record, *prima facie* it is established that it is a fit case where the

petitioner/A1 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/A1 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/A1 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.

20. 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.

Date: 24.11.2015
Dsr

M.S.K.JAI SWAL,J