

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.1976 of 2014

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ORDER:

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Aggrieved by an order dated 03.10.2013 passed in CrI.M.P.No.523 of 2013 in C.C.NO.106 of 2010 on the file of the Additional Junior Civil Judge, Miryalaguda, the present revision is filed under Sections 397 and 401 Cr.P.C. wherein and whereunder an application filed under Section 245 Cr.P.C. seeking discharge was dismissed.

The facts in issue are as under:

The petitioner/accused is said to have lodged three complaints against the second respondent herein on 27.10.2008, 15.12.2008 and 09.02.2009 alleging corruption in the office of local Gram Panchayat. On 14.07.2009 the accused released a pamphlet against the second respondent herein making allegations of corruption. On 15.07.2009 the second respondent herein approached the police and lodged a report against the accused. The said report came to be registered as Petty case No.60 of 2009 and thereafter police investigated into the matter and filed a charge sheet against the accused for an offence punishable under Section 501 IPC.

The allegations in the charge sheet are that LW.1 was working as Village Sarpanch of Huzurnagar while LW.2 was working as Executive Officer of Gran Panchayat, Huzurnagar. It is alleged that the accused herein came to the Gram Panchayat Office at Huzurnagar and demanded LWs.1 and 2 to give donations to his foundation. As the LWs.1 and 2 failed to satisfy his demand, the accused is alleged to have blamed LWs.1 and 2 by printing pamphlets making defamatory allegations against them and the same were supplied to the villagers. The same was also got published in a newspaper.

It is to be noted that the said case was investigated by the police after obtaining permission from the Magistrate as the offence alleged is non-cognizable. Basing on these allegations a charge sheet came to be filed which was taken on file as C.C.No.106 of 2010. Pending the proceedings before the trial Court an application under Section 245 Cr.P.C. came to be filed seeking discharge which was dismissed on 03.10.2013. Challenging the same the present revision is filed.

The petitioner, who appeared in-person, mainly submits that even accepting the allegations in the report to be true no offence is made out against him. He submits that the report came to be lodged with a delay of one day and in the absence of any explanation for the delay in filing the report the same is fatal to the prosecution case. The other ground raised by the petitioner is that initiation of proceedings at the instance of police itself is bad as the offence alleged can only be initiated at the instance of the aggrieved person.

The counsel for the second respondent herein opposed the revision.

A perusal of the material placed before the Court would show that the trial in the said case has commenced and PWs.1 to 3 are already examined. As seen from the record, the offence with which the petitioner is tried is one under Section 501 IPC. The application for discharge was filed under Section 245 Cr.P.C. after examination of the witnesses. Therefore, the question of entertaining an application for discharge after commencement of trial and examination of three witnesses would not arise. Even otherwise, the case on hand is triable by summons procedure. The Criminal Procedure Code does not anywhere provide entertaining the application for discharge in a summons case more so under Section 245 Cr.P.C. Section 245 Cr.P.C. falls in chapter XIX of the Criminal Procedure Code which deals with trial of warrant cases by a Magistrate. The issue as to maintainability of an application for discharge in a Sessions Case is no more *res integra* in view of the

judgment of the Apex Court in **Adalat Prasad V. Rooplal Jindal**^[1]. In view of the above, the Magistrate was right in rejecting the application for discharge filed under Section 245 Cr.P.C.

Hence, I see no reason to interfere with the order passed by the learned Magistrate.

Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

23.02.2015
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^[1] 2004 (7) SCC 338