

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.339 of 2015

ORDER:

Assailing the order dated 12.01.2015 passed in CrI.M.P.No.663 of 2013 in C.C.No.158 of 2012 by the Judicial Magistrate of I Class, Khammam, present revision is filed by the petitioner-A.4.

Heard the learned counsel for the petitioner as well as the learned Public Prosecutor for the first respondent-State.

As seen from the complaint, complainant acquired land to an extent of Acs.6-34 gts. in survey No.56/A of Medidapalli Revenue Village of Thirumalayapalem Mandal of Khammam District, from out of his share in family partition. Pattadar passbook and title deed were also issued in his favour. Since A.1 tried to interfere with his possession, the complainant filed O.S.No.489 of 2003 on the file of Principal Junior Civil Judge, Khammam, which was partly allowed. As against the same, the complainant preferred A.S.No.33 of 2007 on the file of I Additional District Judge, Khammam, which was allowed infavour of the complainant herein. While so, A.1 is alleged to have colluded and created forged and fabricated documents and tampered the Revenue Registers. It is alleged by the complainant that A.1 in collusion with A.2, who was the then Tahasildar of Tirumalayapalem, and A.3, the then VRO of Medidapalli Village, tampered the revenue registers and created forged and fabricated documents showing as if the complainant sold the said land to A.1 in the year 1960 itself. Basing on these allegations, the present complaint came to be filed. Seeking discharge from the said offence, petitioner-A.2 filed CrI.M.P.No.663

of 2013, which was dismissed by the trial Judge. Aggrieved over the same, present revision is filed.

Learned counsel for the petitioner mainly submits that even accepting the allegations to be true, no offence is made out against the petitioner. As such, the petitioner is entitled for discharge. The same is strongly opposed by the learned Public Prosecutor.

Learned Public Prosecutor, on instructions, states that charges are already framed on 03.03.2016 and the matter is coming up for trial, hence the present revision is not maintainable.

The question as to whether an application for discharge can be entertained after framing of charges has come up for consideration before the Apex Court in *Ratilal Bhanji Mithani vs. State of Maharashtra and others*¹ wherein the Apex Court held as under:

“ 26. From the scheme of the provisions noticed above, it is clear that in a warrant case instituted otherwise on a police report, 'discharge' or 'acquittal' of accused are distinct concepts applicable to different stages of the proceedings in Court. The legal effect and incidents of 'discharge' and 'acquittal' are also different. An order of discharge in a warrant case instituted on complaint, can be made only after the process has been issued and before the charge is framed. [Section 253\(1\)](#) shows that as a general rule there can be no order of discharge unless the evidence of all the prosecution witnesses has been taken and he considers for reasons to be recorded, in the light of the evidence that no case has been made out. Sub-section (2) which authorises the Magistrate to discharge the accused at any previous stage of the case if he considers the charge to be groundless, is an exception to that rule. A discharge without considering the evidence taken is illegal. If a prima facie case is made out the Magistrate must proceed under [Section 254](#) and frame charge against the accused. [Section 254](#) shows that a charge, can be framed if after taking evidence or at any previous stage, the Magistrate, thinks that there is ground for

¹ AIR 1979 SC 94

presuming that the accused has committed an offence triable as a warrant case.

26-A. Once a charge is framed, the Magistrate has no power under [section 227](#) or any other provision [of the Code](#) to cancel the charge, and reverse the proceedings to the stage of [Section 353](#) and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. After the framing of charges if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in [section 254](#) to [258](#), to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under [the Code](#) to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under [Section 349](#) and [562](#) of the Code of 1892 (which correspond to [Sections 325](#) and [360](#) of the Code of 1973).

In view of the ratio laid down by the Apex Court in the above referred judgment, the request of the petitioner can not be entertained. Even on merits, the averments in the charge sheet reveal that at the instigation of A.1, the other accused i.e. A.2 and A.3 prepared ROR documents with false and incorrect information to make up the file in favour of A.1 instead of issuing pattadar pass book as ordered by RDO, Khammam. Thus, these allegations do *prima facie* make out a case against the petitioner for the offences alleged. Therefore, the petitioner is not entitled for discharge from the offences alleged against him. Hence, the Criminal Revision Case is liable to be dismissed.

Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions pending in this revision, if any, stand closed.

JUSTICE C. PRAVEEN KUMAR

08.09.2016
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