THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1127 of 2013

ORDER:

1 Assailing the order dated 14.03.2013 passed in Crl.M.P.No.1086 of 2012 in C.C.No.1 of 2012 by the learned Special Judge for SPE & ACB Cases, Visakhapatnam, wherein and whereby the petition filed under Section 239 Cr.P.C seeking discharge was dismissed, the petitioner/accused No.5 filed the present Criminal Revision Case under Sections 397 and 401 Cr.P.C.

2 The factual matrix that led to the filing of the present Criminal Revision Case, in brief, is as follows:

3 The Inspector of Police, ACB, Srikakulam District registered a case in Cr.No.12/RCO-ACB/VZM/2009 under Sections 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act and after completion of investigation he filed charge sheet before the concerned Court. As per the allegations made in the charge sheet, on receiving reliable information, on 27.08.2009 at about 3.00 AM, the Deputy Superintendent of Police, ACB, Vizianagaram Range along with other staff and mediators surrounded the integrated check post at Purushottapuram of Srikakulam district and found accused Nos.8 to 17 collecting bribe from the vehicle drivers on behalf of the staff of the check post. It is further alleged that accused Nos.8 to 17 are collecting money ranging from Rs.10/- to Rs.100/- from the drivers of the vehicles on behalf of accused Nos.1 to 5 who belong to different departments of the State Government. The Police recovered an amount of 3,390/- from accused Nos.8 to 17. The Deputy Superintendent of Police, A.C.B directed the mediators and others to run the counters in their presence from 4.00 AM to 7.00 AM on that day under his supervision. In all the counters, the crew of transport vehicles who came for stamping of their records, handed over the documents of the respective vehicles along with cash ranging from Rs.10/- to Rs.100/- as mamuls as per their earlier practice. All these amounts were kept aside and the papers were processed in accordance with rules and were returned to the

respective crew members. The collection of illegal money came to Rs.32,895/- for just three hours on 27.8.2009.

4 The trial Court has taken cognizance of the offences against the petitioner / A.5 under Sections 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act and Sections 109 and 120B r/w 34 of IPC. The petitioner filed a petition under section 239 Cr.P.C. for discharge. The respondent – Inspector of Police, ACB, Vizianagaram filed counter *inter alia* contending that this is not a fit case to discharge the accused.

5 The trial Court, after having a thoughtful consideration to the material available on record, dismissed the petition. Hence the present Criminal Revision Case.

6 The contention of the learned counsel for the petitioner is four fold. **1)** The material placed before the trial Court is not sufficient to frame charge against the petitioner, **2)** The material placed before the trial Court is bereft of the ingredients of Sections 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act apart from Sections 109 and 120-B of IPC, **3)** Even if allegations made in the charge sheet are *ex facie* taken to be true and correct, no case is made out against the petitioner for the offences punishable under Sections 109 and 120-B of IPC, and **4)** the trial Court passed the order without considering the material available on record in right perspective.

7 *Per* contra, the learned Public Prosecutor submitted that there are no grounds much less valid grounds to discharge the petitioner. He further submitted that this Court shall not lightly interfere with the order passed by the trial Court while exercising the jurisdiction under Sections 397 and 401 of IPC.

8 Now the points that arise for determination for disposal of this Criminal Revision Case are:

i. *Whether the charge against the accused to be groundless?*

ii. *Whether there is any illegality or irregularity or impropriety in the order passed by the trial Court warranting interference of this Court?*

POINT Nos.1 & 2:

9 Both the points are intertwined with each other and hence I am inclined to decide both these two points together in order to avoid repetition of facts.

10 To substantiate the arguments, the learned counsel for the petitioner has drawn my attention to the ratio laid down in ***Baburao Hari Pawar v. State of Maharashtra*** [1] wherein the Bombay High Court held at para No.15 as under:

> 15. The learned Public Prosecutor also urged that the trial had reached the stage of evidence, when accused 1 had filed an application for discharge. He also submitted that the learned trial Judge has rightly rejected the application on the ground of delay. This submission is only to be mentioned for being rejected. The accused is entitled to ask for the discharge from the prosecution at any stage and there is no time limit for filing such an application. Delay even can be overlooked because a right to ask for discharge is always available to an accused at any stage of a trial. It must be borne in mind that the accused is not guilty, unless he is proved to be so and if he is able to point out even before the commencement of the trial that he has been falsely implicated and involved in the trial and that there is no prima facie case against him, he is at liberty to ask for discharge. It is also not a case where some circumstantial material is already placed on record which can be substantiated later on during the trial by the prosecution. The faint basis of the prosecution as regards conspiracy has been brought in during the investigation for the first time 12 months after the incident. This itself lends support to the theory that the charge of conspiracy is being laid at the door of the accused as an afterthought and that too mainly on suspicion. For these reasons therefore the petitioner - accused 1 Baburao is entitled to be discharged from the proceeding of the charges levelled against him.

11 As per the principle enunciated in the case cited supra, the accused can be discharged at any time. The petition in the above case was filed under Section 401 r/w 482 Cr.P.C. and Article 227 of the Constitution of India. It is needless to say that the power conferred on this Court under Section 482 Cr.P.C. and Article 227 of the Constitution of India is more wider than the power conferred under Section 397 Cr.P.C. Admittedly, the petition in the present case is filed under Sections 397 and 401 of Cr.P.C, but not either under Section 482 Cr.P.C or under Article 227 of the

Constitution of India.

12 The learned Public Prosecutor has drawn my attention to the ratio laid down in ***R.S.Nayak v. A.R. Anthulay***[2]. The relevant portion in para No.44 reads as under:

> "The Code contemplates discharge of the accused by the Court of Sessions under S.227 in a case triable by it; cases instituted upon a police report are covered by s. 239 and cases instituted otherwise than on police report are dealt with in S.245. The three sections contain some what different provisions in regard to discharge of the accused. Under S.227, the trial Judge is required to discharge the accused if he 'considers that there is not sufficient ground for proceeding against the accused.' Obligation to discharge the accused under S.239 arises when "the Magistrate considers the charge against the accused to be groundless." The power to discharge is exercisable under S.245(1) when "the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction..." It is a fact that Ss. 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under S.245, on the other hand, is reached only after the evidence referred to in S.244 has been taken. Not-withstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under S.245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial Court is satisfied that a prima facie case is made out, charge has to be framed."

13 Let me consider the facts of the case on hand in the light of the above legal principle.

14 By the time of incident, the petitioner who is accused No.5 was working as Motor Vehicles Inspector, Transport Department in Government of Andhra Pradesh. A perusal of the record reveals that accused Nos.1 to 7 are Government officials working in different departments and accused Nos.8 to 17 are private individuals. It is not in dispute that on 27.08.2009 at about 3.00 AM the accused Nos.1 to 7 were deputed at integrated check post of Purushottapuram in order to inspect the vehicles passing through the check post. The Government of Andhra Pradesh opened seven counters at the said check post and deputed one

Government official belonging to each department. A perusal of the record reveals that it is the duty of the Government officials to inspect each and every vehicle and allow them to pass through the check post if they are having necessary documents. The very purpose of deputing these Government officials is to intercept the vehicles which transport any material without proper and valid licence or documents. To put it in a different way, these officials were deputed there to protect the public exchequer.

15 As per the case of the prosecution, accused Nos.8 to 17, who are private individuals, were arranged by the Government officials to collect money from the drivers of the vehicles and heavy goods vehicles irrespective of their holding or non-holding licence or way bills and other relevant documents. The A.C.B officials seized an amount of Rs.3,390/- from accused Nos.8 to 17. As per the allegations made in the charge sheet an amount of Rs.32,895/- was collected towards bribe or mamuls from 4.00 AM to 7.00 AM on 27.08.2009, which, if calculated on the same basis, may be approximately Rs.2,50,000/- per day. As per the allegations made in the charge sheet, out of the total amount collected towards mamuls, 20% goes to Commercial Tax Department, 50% goes to Transport Department and the remaining amount goes to various other departments.

16 At this juncture, this Court feels apposite to refer to the ratio laid down in ***Amit Kapoor v. Ramesh Chander***[3] wherein the Hon'ble apex Court held at para No.17 as follows:

> 17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for *presuming that the accused has committed an offence*, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be

> weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code."

17 Let me consider whether, in the present case, the trial Court has assigned reasons much less cogent and valid reasons while disposing of the application?

18 A perusal of the impugned order clearly demonstrates that the learned trial Judge has considered the allegations made in the charge sheet in order to ascertain whether it is a fit case to discharge the accused or not. The trial Court has elaborately discussed the modus operandi of Government officials while collecting bribe from the drivers of the vehicles. As observed earlier, on the date of incident, the petitioner was on duty. Collection of mamuls by accused Nos.8 to 17 near the check post in the presence of Government officials creates some sort of suspicion with regard to the role played by the Government officials. For just three hours i.e. from 4.00 AM to 7.00 AM, the lorry drivers paid Rs.32,895/- to the persons in the counters. To put it in a different way, the drivers of the lorries paid that amount knowing fully well that they are paying the bribe or illegal gratification to the persons in the counters in order to cover up their laches on their part, though under law there is no obligation on their part to pay the same.

19 It is a settled principle of law that the legality, proprietary or correctness of an order passed by the trial Court is very foundation to exercise jurisdiction under Section 397 Cr.P.C. This Court can invoke jurisdiction under Section 397 Cr.P.C if the decision under challenge is 1) grossly erroneous, 2) in contravention of a specific provision of law, 3) if the finding is recorded by ignoring the material evidence and 4) if the trial Court exercised its judicial discretion arbitrarily or perversely.

20 A perusal of the record clearly reveals that there is prima facie material to frame charge against the petitioner / A.5. In such

circumstances, question of discharge does not arise. Viewed from any angle viz., factual or legal, the order passed by the trial Court will not fall within the ambit of any one of the reasons stated supra.

21 At the time of arguments, the learned Public Prosecutor submitted that the trial Court has already framed charges against the accused and issued trial schedule. On the other hand, the learned counsel for the petitioner submitted that the trial Court has cancelled the trial schedule. Having regard to the facts and circumstances of the case, I am of the considered view that this is not a fit case to allow the petition. Both the points are answered accordingly.

22 In the result, the Criminal Revision Case is devoid of any merit and is accordingly dismissed. The trial Court is hereby directed to dispose of the matter in accordance with law without being influenced by any of the observations made by this Court as the same are confined to the extent of disposal of this Revision Case only. As a sequel, miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand dismissed.

T. SUNIL CHOWDARY, J.

Date: 19.04.2016
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[1] 1987 Cri.L.J. 584
[2] AIR 1986 SC 2045 (1)
[3] (2012) 9 SCC 460