THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.1176 OF 2011

ORDER:

This revision case is filed under Sections 397 and 401 Cr.P.C. challenging the order, dated 03-03-2011 in Crl.M.P.No.810 of 2006 in C.C.No.9 of 2005 on the file of the Special Judge for C.B.I. Cases, Visakhapatnam.

2. The contention of the learned counsel for the petitioner (A1) is two fold viz., (1) the trial Court ought to have allowed the petition as there is no material, much less, *prima facie* material to frame a charge and (2) the trial Court failed to consider that sanction order issued by L.W.52 is not in accordance with law and therefore, this is a fit case to discharge the petitioner.

3. Per contra, learned special standing counsel for C.B.I. cases submitted that the material placed before the trial Court is *prima facie* sufficient to frame a charge against the petitioner. He further submitted that there is no defect in the sanction order issued by L.W.52.

4. The facts, leading to filing of the present revision are briefly, as follows:

The Inspector of Police, CBI, SPE, Visakhapatnam, registered F.I.R.No.RC.7(A)/2001-CBI-VSP, dated 09-03-2001. After completion of investigation, the Investigating Officer laid charge sheet against the petitioner, who is A1 and others for the offences punishable under Sections 120-B IPC and 7 & 13 (2) r/w 13 (1)(d) of Prevention of Corruption Act, 1988 (for brevity 'P.C. Act'). The learned Special Judge for CBI cases after satisfying himself with the material placed, has taken the cognizance of the offence under Sections 120-B IPC and 7 & 13 (2) r/w 13 (1)(d) of the P.C. Act and issued summons. During the pendency of the case, the petitioner herein filed a petition under Section 239 Cr.P.C. for discharge. The trial Court after affording reasonable opportunity to both parties, dismissed the petition. Hence, this revision.

5. As per the allegations made in the complaint, the Central Excise Department conducted raids during 1998-99 and issued separate show cause notices to the three sister concern

viz., 1)M/s Saritha Synthetics, 2) M/s SML Dyetex and Industries Ltd., and 3) M/s Manasa Industries Ltd., demanding payment of duty to a tune of Rs.4.88 crores evaded by them. M/s Saritha Synthetics and others filed an application before A1 for adjudication. The petitioner herein passed orders on 09-03-2001 reducing fine amount to Rs.1,03,71,378/- in case of M/s Saritha Synthetics, Rs.1,31,91,073/- in case of M/s SML Dyetex and Rs.12,24,052/- in case of M/s Manasa Industries and directed his personal secretary to put up the file for signature on
12-03-2001. It is further alleged that the petitioner herein demanded an amount of Rs.25 lakhs from the management of the above companies in order to waive the fine amount to certain extent and ultimately agreed for Rs.15 lakhs. It is the further case of the prosecution that A3 and A4 came to Hyderabad for collection of the said amount from M/s Saritha Synthetics. The C.B.I. people conducted raid and seized Rs.15 lakhs from the possession of A3 and A4.

6. In order to appreciate the contention of the learned counsel for the petitioner, this Court placed reliance on the decision reported in ***R.S.Nayak v. A.R. Anthulay***[1]. 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."

7. In another decision reported in ***State of M.P. vs. Mohanlal Soni[2]*** the Hon'ble apex Court held at Para No.7 as under:

"**7.** The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

8. One of the grounds raised by the learned counsel for the petitioner is that L.W.52 issued two sanction orders on 25-05-2004 and 14-09-2004 respectively. If there is any defect in the sanction order, the petitioner can agitate the same at the time of trial. It is not the case of the petitioner that prosecution was launched against the accused without obtaining necessary sanction from the competent authority. The contention of the learned counsel for the petitioner is that initially one B. Sambasiava Rao, G.Eswar Rao and M.Kama Raju were also arrayed as accused and thereafter, they were deleted without following the procedure. As per the prosecution version, these three persons handed over the money to A3 and A4. In order to obtain evidence to substantiate the case of the prosecution, the prosecution given up these three persons by granting pardon as contemplated under Section 306 Cr.P.C. A perusal of the record *prima facie* reveals that the prosecution has followed the procedure as contemplated under Section 306 Cr.P.C. Whether the testimony of these witnesses will satisfy the ingredients of Section 133 of the Indian Evidence Act, 1872 (for brevity 'the Evidence Act') or not cannot be looked into at this point of time. Therefore, I am unable to accede to the contention of the learned counsel for the petitioner that the case of the prosecution is based on inadmissible evidence. If this Court expresses any opinion with regard to the probative value of the evidence of the above three persons, the same may cause

prejudice to one of the parties to the proceedings. Various questions raised by the learned counsel for the petitioner involve complicity of disputed questions of fact, which cannot be gone into while exercising the powers under Sections 397 and 401 Cr.P.C. in view of pendency of main case. At this point of time, the Court has to consider whether there is any *prima facie* material to proceed further against the accused or not. It is settled principle of law that the Court cannot conduct roving enquiry at the time of framing a charge. No doubt, as rightly pointed out by the learned counsel for the petitioner, the Court has to consider whether the material placed before the Court is *prima facie* sufficient to proceed further against the accused or not.

9. The trial Court has considered the scope of Sections 239 and 306 Cr.P.C. and 133 of Evidence Act in a right perspective. The trial Court has considered the entire material placed before it and arrived at a conclusion that the material placed before it is *prima facie* sufficient to proceed further against the accused. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am fully agreeing with the findings recorded by the trial Court. There is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court by exercising powers under Sections 397 and 401 Cr.P.C.

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

T.SUNIL CHOWDARY, J

DATED: 12-07-2016.
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[1] AIR 1986 SC 2045 (1)
[2] (2000) 6 SCC 338