THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1577 OF 2016

JUDGMENT:

1 This Criminal Revision Case, under Sections 397 and 401 Cr.P.C is filed assailing the order dated 28.03.2016 passed in Crl.M.P.No.61 of 2016 in C.C.No.41 of 2015 on the file of the Special Judge for SPE and ACB Cases-cum-II Additional District & Sessions Judge, Nellore.

2 The contention of the learned counsel for the petitioner is three fold: 1) The trial Court failed to see that a false trap was laid at the behest of the local MLA and the de-facto complainant is only a name lender, 2) the trial Court failed to see that there is no demand on the part of the petitioner, therefore, the ingredients of Section 7 and 13 (1)(d) of P.C. Act are not attracted to the facts of the present case, and 3) the trial Court has not considered the probabilities of the case and dismissed the petition filed by the petitioner seeking discharge on erroneous grounds.

3 Per contra, the learned Special Public Prosecutor for ACB submitted that at the stage of framing of charge, the Court shall not conduct roving enquiry in order to ascertain whether the material placed before it is sufficient to convict the accused or not. He further submitted that at the time of framing of charge, the Court has to satisfy itself whether there is any prima facie material to proceed further against the accused or not. It is his further contention that there is no illegality or irregularity in the order

passed by the trial Court, which warrants interference of this Court in exercise of its revisional jurisdiction under Sections 397 and 401 Cr.P.C.

4 The factual matrix leading to filing of the present Criminal Revision Case are, briefly, as follows:

5 The petitioner worked as Mandal Agricultural Officer with effect from 21.11.2011 to 29.05.2013 at Giddaluru town of Prakasam District. One Kusumanu Srinivasulu (L.W.1) lodged a complaint to the ACB officials who in turn registered a case in Cr.No.13/RCT-NPK/2013 of ACB, Ongole, Prakasam District for the offences punishable under Sections 7, 13 (2) r/w Section 13 (1) (d) of Prevention of Corruption Act, 1988. On 29.05.2013 at 2.30 PM, the ACB officials laid a trap at the office of the petitioner and seized an amount of Rs.1.00 lakh from his possession. The ACB officials also conducted Sodium Carbonate test on the spot. After completion of investigation, the Deputy Superintendent of Police, ACB, Ongole Prakasam District, laid charge sheet before the Special Judge for SPE and ACB Cases, Nollore. The trial Court has taken cognizance of the offence against the petitioner / accused for the offences punishable under Sections 7, 13 (2) r/w Section 13 (1) (d) of Prevention of Corruption Act, 1988 and numbered the charge sheet as C.C.No.41 of 2015.

6 While the things stood thus, the petitioner filed a petition under Section 239 Cr.P.C. for discharge and the same was

dismissed by the trial Court on 28.03.2016. Hence the present revision case.

7 To substantiate the argument, the learned counsel for the petitioner has drawn the attention of this Court to the ratio laid down in **Yogesh @ Sachin Jagdish Joshi vs State Of Maharashtra**[1] wherein the Hon'ble apex Court held at para No.16 as follows:

> 16. It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the Section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, makes a conviction reasonably possible. [See: State of Bihar Vs. Ramesh Singh and Prafulla Kumar Samal (supra)]

8 To substantiate the stand of the prosecution, the learned Special Public Prosecutor has drawn the attention of this Court to the following judgments:

Hem Chand vs. State of Jharkhand[2] wherein the Hon'ble apex Court held at Para Nos.9 and 10 as under:

> 9. It is beyond any doubt or dispute that 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 evidences are brought on records at the trial. The

[1] 2009 (1) SCC (Cri.) 51
[2] (2008) 5 SCC 113

documents whereupon the appellant intended to rely upon were: (i) an order of assessment passed by the Income Tax Authority and (ii) his declaration of assets.

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

State Through Inspector of Police vs. A. Arun Kumar and Anr.[3] wherein the Hon'ble apex Court held at Para No.9 as under:

This Court went on to cull out principles as regards scope of Sections 227 and 228 of the Code, which in our view broadly apply to Sections 238and 239 of the Code as well. It was observed thus in para 21:

Exercise of jurisdiction Under Sections 227 & 228 of Code of Criminal Procedure:

21. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges Under Section 227 of the Code of Criminal Procedure has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on

[3] (2015) 2 SCC 417

the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

9 This Court also places reliance on the ratio laid down in ***Amit Kapoor vs. Ramesh Chander***[4] wherein the Hon'ble apex Court held at para No.17 as follows:

> 17. Having examined the inter-relationship of these two very significant provisions of the Code, let us now examine the scope of interference under any of these provisions in relation to quashing the charge. We have already indicated above that framing of charge is the first major step in a criminal trial where the Court is expected to apply its mind to the entire record and documents placed therewith before the Court. Taking cognizance of an offence has been stated to necessitate an application of mind by the Court but framing of charge is a major event where the Court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the Court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the Court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there is a bar and there exists no ground to proceed against the accused, the Court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the Court may discharge him or quash the proceedings in exercise of its powers under these two provisions.

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

[4] (2012) 9 SCC 460

11 The predominant contention of the learned counsel for the is that there are disputes between the petitioner and the local MLA of Giddalur town, therefore, at the behest of the MLA, the de-facto complainant lodged a false case against the petitioner. To substantiate the same, the learned counsel for the petitioner has drawn attention of this Court to the order dated 30.11.2012 passed in O.A.No.6234 of 2012 on the file of the A.P. Administrative Tribunal. A perusal of the same reveals that at the instance of the local MLA, the petitioner was transferred on deputation to Markapur even though there was ban on transfers. Feeling aggrieved by the said transfer order, the petitioner filed the O.A.No.6234 of 2012 before the A.P. Administrative Tribunal. The Tribunal allowed the same on 30.11.2012 setting aside the transfer order of the petitioner. A perusal of the same reveals that there are some disputes between the petitioner and the owners of fertilizers and pesticides shops and the local MLA. The Tribunal passed orders on 30.11.2012 whereas the trap was conducted on 29.05.2013 i.e. nearly six months after passing of the order by the Tribunal.

12 As per the case of the prosecution, the petitioner demanded money from the owners of the fertilizers and pesticides shops in Giddalur town. A perusal of the record reveals that there are 30 fertilizers and pesticides shops in Giddalur town. The de-facto complainant is the Vice-Chairman of the fertilizers and pesticides

shops owners association. It is the case of the prosecution that the petitioner demanded money from the owners of the fertilizers and pesticides shops, and if they fail to pay money, he will book cases under section 6-A of Essential Commodities Act or he will recommend for cancellation of the license of the shop owners. It is the further case of the prosecution that 10 days prior to the trap, the petitioner demanded the de-facto complainant to pay an amount of Rs.1.50 lakh, but, ultimately, he agreed to receive Rs.1.00 lakh. On 29.05.2013 the de-facto complainant went to the office of the petitioner, who, in turn, received Rs.1.00 lakh with left hand and kept the same in his left portion of drawer. The de-facto complainant came out from the office and gave signal to the ACB officials, who, in turn entered the office of the petitioner and seized Rs.1.00 lakh form the left portion of the drawer of the petitioner and conducted sodium carbonate test, during which, the left hand of the petitioner turned positive. A perusal of the record prima facie reveals that an amount of Rs.1.00 lakh was recovered from the possession of the petitioner.

13 It is the case of the petitioner that the de-facto complainant kept the money in the drawer of the petitioner and made him to touch the same, therefore, the colour test yielded positive result. It is a known fact that immediately after the trap, the ACB officials recorded the statement of the petitioner on the spot, which is called as spot explanation. The spot explanation given by the petitioner can be looked into by the Court for the purpose of

framing of charge. The contention of the petitioner is that the entire trap is false one. In order to appreciate the contention of the learned counsel for the petitioner, it is apposite to refer to the spot explanation of the petitioner, which was referred in para No.10 of the impugned order, which reads as under:

> "Here it is important to note that the petitioner did not deny that he accepted Rs.1 lakh from the petitioner (sic. de-facto complainant) on the date of trap. His contention is that previously he requested the de-facto complainant to lend Rs.1 lakh and he received the amount from the de-facto complainant as a loan."

14 A perusal of the spot explanation of the petitioner, prima facie, reveals that the petitioner accepted Rs.1.00 lakh from the de-facto complainant. Whether the petitioner accepted the money as bribe or as loan will be decided during the course of trial. If this Court expresses any opinion on this aspect, the same may cause prejudice to any one of the parties to the proceedings. On one hand, the petitioner is contending that the de-facto complainant is only a name lender and the man behind the screen is the local MLA of Giddalur town and on the other hand he is contending that he received the amount of Rs.1.00 lakh from the de-facto complainant as loan. These two statements cannot go together.

15 It is an admitted fact that the petitioner being an agricultural officer, is entitled to inspect the fertilizers and pesticides shops periodically. It is not in dispute that the petitioner being an Agricultural Officer, is entitled to initiate criminal proceedings if the owners of the shops violate the Rules.

16 The predominant contention of the learned counsel for the petitioner is that no case is booked against the de-facto complainant or other shop owners and in such circumstances demanding of money from them to do favour is imaginary and only an illusion.

17 It is the case of the prosecution that the petitioner threatened the de-facto complainant and others that he will book cases against them if they won't pay the money to him. In such circumstances, the possibility of paying bribe by the de-facto complainant and others to the petitioner cannot be ruled out. Whether the petitioner demanded the money or not will be decided during the course of trial only. A perusal of Section 7 of the P.C. Act clearly demonstrates that mere asking of bribe either to do favour or forbear to do a particular act is sufficient to attract the provisions of Section 7 of the P.C. Act. Section 13 (1) (d) of the Act deals with misconduct. As rightly pointed by the learned counsel for the petitioner if the version put forth by the prosecution is highly improbable or unbelievable, then the Court is bound to discharge the petitioner. At the time of framing of charges, the Court has to take into consideration whether there is any prima facie material on record to proceed further or not. Even as per the principle enunciated in the cases cited supra, the Court cannot conduct roving enquiry or decide whether the material

available on record is sufficient to convict the accused or not at the time of framing of charges.

18 The trail Court arrived at a conclusion that the material placed before it is sufficient to proceed further against the petitioner. After going through the material placed before this Court, I am also of the considered view that the material available on record is prima facie sufficient to proceed further against the petitioner. The various contentions raised by the learned counsel for the petitioner involves complexity of disputed questions of fact, which cannot be decided at the time of framing of charge. All these questions can be decided at the time of full fledged trial only.

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. The petitioner failed to prove any one of the above grounds in order to interfere with the order passed by the trial Court while exercising revisional jurisdiction under Sections 397 and 401 Cr.P.C.

20 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, it is not a fit case to interfere with the order passed by the trial Court. The revision lacks merits and accordingly the same is liable to be dismissed as devoid of merit.

21 In the result, the Criminal Revision Case is dismissed. As a sequel, the miscellaneous petitions, pending in this Revision Case, if any, shall stand closed.

T. SUNIL CHOWDARY, J

Date: *5th December, 2016*
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