

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.9043 of 2010

ORDER:

This criminal petition is filed under Section 482 of Cr.PC to quash the order dated 26.3.2010 in CrI.R.P.No.10 of 2010 on the file of the court of Sessions Judge, Anantapur wherein and whereby the order in CrI.M.P.No.1172 of 2009 in C.C. No.770 of 2009 on the file of the court of Additional Judicial Magistrate of First Class, Anantapur rejecting the prayer of the petitioner-accused to discharge him from the case was confirmed.

2. The contention of learned counsel for the petitioner-accused is two fold:

(1) the findings recorded by the courts below are not based on any material much less legally admissible material; and

(2) the prosecution has no right whatsoever to register a case under Section 409 IPC against the petitioner without initiating proceedings under the provisions of Essential Commodities Act.

The learned Public Prosecutor submitted that the courts below have rightly considered the material on record and dismissed the petition. He further submitted that this court shall not lightly interfere with the orders passed by the courts below.

3. The facts leading to filing of the present criminal petition are briefly as follows: As per the prosecution version, the petitioner misappropriated the rice entrusted to him for distribution of same under Food for Work programme. The quantity of rice misappropriated is 55 Quintals. After completion of investigation, the Investigating Officer laid charge sheet against the accused for the offence under Section 409 IPC. The learned Magistrate has taken cognizance of offence against the petitioner for the offence under Section 409 IPC.

Therefore, the petitioner is facing trial for the offence punishable under Section 409 IPC in C.C. No.770 of 2009 on the file of the court of Additional Judicial Magistrate of First Class, Anantapur.

4. Now the point that arises for consideration is:

Whether the courts below have committed any illegality or irregularity which warrants interference of this court?

5. A perusal of the record reveals that the petitioner filed CrI.M.P.No.1172 of 2009 under Section 239 Cr.PC seeking discharge for the offence under Section 409 IPC in C.C. No.770 of 2009. The trial court, after considering the material available on record, dismissed the petition. Feeling aggrieved by the order of the learned Magistrate, the accused filed CrI.R.P. No.20 of 2010 on the file of the court of Sessions Judge, Anantapur. The learned Sessions Judge, after re-appreciating the material available on record, arrived at a conclusion that there are no grounds to interfere with the order passed by the trial court.

6. In a warrant procedure, the court has to frame charges before commencement of trial. While framing the charges, either under Section 239 Cr.PC or under Section 227 Cr.PC., the court has to take into consideration whether the material placed before it *prima facie* sufficient to proceed against the accused or not. It is not in dispute that the petitioner-accused has been working as a Fair price shop dealer. It is also not in dispute that the Government officials entrusted 91 quintals of rice to the petitioner for distribution of the same under Food for Work programme. On physical verification, the officials found 36.80 quintals of rice only and the petitioner failed to account for 55 quintals of rice entrusted to him.

7. The predominant contention of the learned counsel for the petitioner is that even if the allegations made in the complaint are *ex facie* taken to be true and correct, no case is made out against the petitioner for the offence punishable under Section 409 IPC as the petitioner is not a public servant. A perusal of Section 409 IPC clearly demonstrates that an agent is also liable for punishment under Section 409 IPC. In the instant case, the petitioner has been distributing rice on

behalf of the Government. The Government entrusted 91 quintals of rice to the petitioner as its agent. For one reason or the other, the petitioner failed to account for 55 quintals of rice. If this court expresses any opinion touching the merits of the main case, the same may cause prejudice to the petitioner in view of pendency of main case. At the time of framing charges, the court is not supposed to conduct roving enquiry in order to ascertain whether conviction is possible basing on the material available on record.

8. In **Sheoraj Singh Ahlawat v. State of U.P.**^[1], the apex court, after analysing various decisions on the subject, summed up the following principles:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.

(2) 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.

(3) The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult 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 while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

9. Having regard to the facts and circumstances of the case and also the principles enunciated in the case cited *supra*, I am of the considered view that the material available on record is *prima facie*

sufficient to proceed against the accused. The trial court, after considering the material placed before it *prima facie* arrived at a conclusion that there is material to proceed against the petitioner and rightly dismissed the petition.

10. A perusal of the charge sheet clearly reveals that the Revenue Divisional Officer, Anantapur has initiated proceedings under Section 6A of the Essential Commodities Act and has suspended the authorization of the petitioner as Fair price shop dealer. In view of the recitals of the charge sheet, I am unable to accede to the contention of the learned counsel for the petitioner that no proceedings are initiated against the petitioner under the provisions of the Essential Commodities Act. Viewed from any angle, neither the trial court nor the revisional court has committed any illegality or irregularity, which warrants interference of this court.

11. In the result, the criminal petition is dismissed. Miscellaneous petitions, if any pending in this criminal petition, shall stand closed.

T.SUNIL CHOWDARY, J.

March 14, 2016.

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[\[1\]](#) (2013) 11 SCC 476