

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.2852 OF 2015

ORDER:

This criminal revision case is filed by the petitioner-accused No.2 under Sections 397 and 401 of the Code of Criminal Procedure (Cr.P.C.) challenging the order dated 26.10.2015 passed in C.C. No.395 of 2010 on the file of the Court of Judicial First Class Magistrate at Zaheerabad.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor. There was no representation on behalf of the second respondent on 26.10.2016, 14.11.2016 and 28.11.2016. Today also, there is no representation on behalf of the second respondent.

3. Learned counsel for the petitioner submitted that even if the 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 offence punishable under Section 468 of the Indian Penal Code (IPC). He further submitted that the trial Court, while discharging the petitioner for the offence punishable under Section 420 IPC, ought to have discharged the petitioner for the offence punishable under Section 468 IPC also. He further submitted that the trial Court has taken cognizance of the offence under Sections 420, 468, 427 and 447 read with 34 IPC and framed charge against the petitioner even though no sanction was obtained.

4. Per contra, the learned Public Prosecutor submitted that the allegations made in the charge sheet *prima facie* constitute the offence punishable under Section 468 IPC. He further submitted that there is no illegality and irregularity in the order passed by the trial Court warranting interference of this Court.

5. Now, the point that arises for consideration is whether the trial Court is not justified in not discharging the petitioner for the offence punishable under Section 468 IPC.

6. A perusal of the record reveals that the petitioner-accused No.2 is facing trial along with the other accused in C.C.No.395 of 2010 on the file of the Judicial First Class Magistrate at Zaheerabad for the offences punishable under Sections 420, 468, 427 and 447 read with Section 34 IPC. During pendency of the main case, the petitioner filed CrI.MP.No.504 of 2014 under Section 239 Cr.P.C., for discharge. The APP opposed the discharge petition by filing counter. After affording a reasonable opportunity to both parties, the trial Court allowed the petition by discharging the petitioner for the offences punishable under Sections 420, 427 and 447 read with 34 IPC and dismissed the discharge petition in respect of the offence punishable under Section 468 IPC.

7. The petitioner has been working as Deputy Tahsildar. As per the prosecution version, the petitioner issued pattadar passbook in favour of the other accused basing on the sale deed, which was impounded by the District Collector. The gist of the allegations made against the petitioner is that he issued pattadar passbook basing on forged sale deed. A perusal of the record reveals that the petitioner was not a party to the sale deed. It is not the case of the prosecution that the petitioner herein, with the connivance of the other accused, created the sale deed. The only allegation made against the petitioner is that he issued the pattadar passbook basing on the sale deed alleged to have been forged by the other accused. It is a known fact that the revenue officials will issue pattadar passbooks basing on the sale deeds and other relevant documents. At the time of issuance of pattadar passbooks, the Tahsildar

is not supposed to verify the genuineness or otherwise of the sale deeds. For better appreciation of the rival contentions, it is not out of place to extract Section 468 IPC.

468. Forgery for purpose of cheating:- Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

8. On a perusal of Section 468 IPC reveals that if a person forged a document for the purpose of cheating then only Section 468 IPC can be pressed into service. It is not the case of the prosecution that the petitioner forged the sale deed. Establishment of forgery is a condition precedent to attract the ingredients of Section 468 IPC. Even if the allegations made in the charge sheet *ex facie* taken to be true and correct, no case is made out against the petitioner for the offence punishable under Section 468 IPC. The trial Court, as rightly pointed out by the learned counsel for the petitioner, having discharged the petitioner for the offence punishable under Section 420 IPC, ought to have discharged the petitioner for the offence under Section 468 IPC also.

9. At the time of the arguments, learned counsel for the petitioner submitted that no sanction was obtained by the prosecution to prosecute the petitioner, who is a Government employee. Undoubtedly the issuance of pattadar passbooks forms integral part of discharge of official duties of a Deputy Tahsildar. The offence alleged to have been committed by the petitioner forms part of discharge of his duties. Therefore, sanction is required. Admittedly, no sanction was obtained from the competent authority before taking cognizance of the offence against the petitioner. Viewed from this angle also the charge framed against the petitioner is

not maintainable. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to allow the revision.

10. In the result, the Criminal Revision Case is allowed and the petitioner-accused No.2 is discharged for the offence punishable under Section 468 IPC in C.C.No.395 of 2010 on the file of the Judicial First Class Magistrate at Zaheerabad. Miscellaneous petitions, if any pending in this criminal revision case, shall stand closed.

(T.SUNIL CHOWDARY, J)

29th November 2016
RRB

