

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.596 OF 2008

ORDER:

This Criminal Revision Case is filed by A.3 to A.6 & A.8 challenging the order of VIII Metropolitan Magistrate, Rajendranagar, R.R.District in dismissing CrI.M.P.No.1317 of 2007 in C.C.No.2678 of 2005 filed under Section 245 Cr.P.C. to discharge the petitioners of the offences under Sections 409, 120B, 109 r/w 34 IPC.

The case of the complainant is that A.1 is Partnership firm and other accused are ex-partners of said firm; that the complainant entrusted the proclaim machine and CK Hydraulic Excavators to the accused on hire basis for execution of contract work but after the completion of work, they failed to pay the hire charges of Rs.1,50,000/- per month apart from the expenses of the machinery such as fuel, spare parts etc. In spite of several oral and written requests, since the accused failed to pay the demanded amount of Rs.30,50,000/-, the complaint is lodged.

The trial Court by the impugned order dismissed the application holding that the application is premature in nature since it being a private complaint, after following the procedure such as examination of witnesses only, the Court will decide the issue whether to frame charges or not.

Heard and perused the material available on record.

Admittedly, basing on the private complaint filed under Section 190 & 200 Cr.P.C., case was taken cognizance for the offences under Sections 409, 120B, 109 r/w 34 IPC against the accused. Since it being a case registered on the basis of private complaint, only after examination of witnesses produced by the complainant, the accused should be called for. On completion of examination of witnesses in-chief produced by the complainant, the petitioners should be given an opportunity for discharge. On filing such an application, the trial Court has to decide whether the Court can proceed further in the case or to discharge the accused. In the present case, even before the examination of witnesses of complainant, the discharge petition was filed. I see no ground to interfere with the impugned order. However, the petitioners can file a fresh discharge application at the appropriate stage. The presence of the petitioners before the trial Court is dispensed with except on the dates so specifically the trial Court insists for their appearance.

The revision is disposed of accordingly. Consequently, pending miscellaneous petitions shall stand closed.

JUSTICE RAJA ELANGO

28.09.2016
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