

M7THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.1630 OF 2016

ORDER:

This Criminal Revision Case is preferred by the petitioners/A-1 and A-2 under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") aggrieved by the framing of charges against them by the learned Special Judge for S.P.E. & A.C.B Cases, Visakhapatnam on 28.3.2016.

2. The main grievance of the petitioners is that while framing charges against them by the trial Court under Section 240 Cr.P.C., necessarily, an opportunity should be given to them to avail the remedy of filing an application under Section 239 Cr.P.C. for discharge but the same was not given to them.

3. Learned counsel for the petitioners submits that Section 239 Cr.P.C. specifies that upon considering the police report and the documents sent with it under Section 173 Cr.P.C. and making such examination, if any, of the accused as the learned Magistrate thinks necessary and after giving the prosecution and the accused an opportunity for making their submissions regarding framing of charge, and if the learned Magistrate considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for doing so; that no opportunity was given to the petitioners to make their submissions and the petitioners have lost an opportunity to file an application under Section 239 Cr.P.C. for discharge.

4. Heard and perused the material available on record.

5. Discharge of the accused is under Section 239 Cr.P.C. whereas framing of charge is under Section 240 Cr.P.C. In the present case, according to the petitioners, the learned Magistrate, while examining them under Section 239 Cr.P.C., asked the following question, which

was recorded as question No.2:

“Q.No.2:- State represented by the Inspector of Police, ACB, Vizianagaram Range, Vizianagaram filed charge sheet in Crime No.14/RCT-ACB/VZM/2013 against Accused Officer of you for the offence punishable under section 7, 13(2) read with section 13(1)(d) of Prevention of Corruption Act, 1988. What do you say?”

The petitioners answered as “false” to the said question. Next, the learned Magistrate questioned the petitioners about the framing of charges at question No.3, which reads as under:

*“Q.No.3:- Charges for the offence under section 7 of Prevention of Corruption Act and under section 13(2) read with section 13(1)(d) of Prevention of Corruption Act, 1988 against Accused No.1 of you and under section 12 of Prevention of Corruption Act, 1988 against Accused No.2 of you have been framed, read over and explained in Telugu to Accused of you. What do you say?
Do you plead guilty or claimed to be tried?”*

In reply, the petitioners pleaded not guilty and claimed to be tried.

6. From a perusal of the material available on record, it is evident that the petitioners were not given an opportunity to raise their objections to the charges framed. Hence, this Court is of the view that the trial Court should give an opportunity to the petitioners to raise their objections to frame charges and if the petitioners are not having any grievance on framing of charges, the trial Court can frame charges under Section 240 Cr.P.C.

7. Accordingly, the Criminal Revision Case is disposed of with the following direction:

The trial Court is directed to recall the charges framed against the petitioners and allow them to file an application for their discharge. On filing of such an application, the trial Court shall hear the petitioners and thereafter, pass appropriate orders.

8. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

AMD

THE HONOURABLE SRI JUSTICE RAJA ELANGO

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CRI.R.C.No.1630 OF 2016

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Date:27.6.2016

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