THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.262 OF 2015

ORDER:

This Criminal Revision Case is filed by the petitioner-A2 under Sections 397 and 401 Cr.P.C. challenging the order, dated 29-01-2015 in Crl.M.P.No.202 of 2015 in C.C.No.1088 of 2014 on the file of the Judl. Magistrate of I Class, Spl. Mobile Court-cum-XI Metropolitan Magistrate, Cyberabad, L.B. Nagar.

2. The contention of the learned counsel for the petitioner is three fold viz., (1) the bank officials ought not to have accepted the cheques in question; (2) the finding of the Court below that there is a *prima facie* case to proceed further against the petitioner is based upon surmises and conjectures and (3) even if the allegations made in the complaint *ex* facie are taken to be true and correct, no case is made out against the petitioner. Therefore, it is fit case to discharge the petitioner.

3. Respondents 2 and 3 are not necessary parties to this revision. None appeared for the respondents 4 and 5.

4. Per contra, learned Special Assistant Public Prosecutor submitted that the allegations made in the complaint *prima facie* constitute the offences alleged to have been committed by the petitioner. He further submitted that the petitioner and others re-deposited the amount in the bank, which itself indicates that they have withdrawn the amount from the bank.

5. The facts leading to filing of the present Criminal Revision Case are as follows: Basing on the complaint lodged by P.Goverdhan Reddy, the Station House Officer,

Cyberabad Police Station registered a case in Cr.No.773 of 2012 for the offences punishable under Sections 420, 403 and 120 (B) I.P.C. After completion of investigation, the Investigating Officer laid charge sheet against the petitioner and others before the Judl. Magistrate of I Class, Spl. Mobile Court-cum-XI Metropolitan Magistrate, Cyberabad, L.B. Nagar, who in turn took the cognizance of the offences against the petitioner and others for the above offences and numbered it as C.C.No.1088 of 2014.

6. While things stood thus, the petitioner herein, who is A2, filed the above Crl.M.P. under Section 239 Cr.P.C. for discharge. The trial Court after considering the material available on record, dismissed the said petition. Hence, this revision.

7. The only question that falls for consideration in this revision is whether there is any *prima facie* material to proceed further against the accused or not?

8. It is not in dispute that A1 is the President, A2 is the Secretary and A3 is the Treasurer of 'Himasai Pujitha Apartments Block 'A' and 'B' owner's welfare Association (for short 'Association') up to 2009. The new body has taken charge in the year 2009. It is the case of the prosecution that the petitioner and others taking advantage of their position, withdrawn the Fixed Deposit Receipts to a tune of Rs.7,47,500/-, which stood in the name of the Association. The gist of the allegations made against the petitioner and others is that without any right of whatsoever, they withdrew the Fixed Deposit Receipts of the Association with an ulterior motive.

9. The contention of the learned counsel for the petitioner is that the bank officials ought not to have accepted the cheques issued by the petitioner and others. At the relevant point of time, they were not the office bearers of the Association.

10. Simply because, the bank accepted the cheques issued by the petitioner and others, that itself is not a valid ground to discharge the petitioner. At the time of framing of charges, the Court cannot conduct roving enquiry in order to ascertain whether the material on record is sufficient to convict the accused or not. The Court has to take into consideration whether material available on record is *prima facie* sufficient to frame charges.

11 I have carefully scanned the order passed by the trial Court in order to ascertain whether there is any illegality or irregularity in the order so as to set aside the same by exercising the revisional jurisdiction under Section 397 Cr.P.C.

12. If the material placed before the trial Court is not sufficient to frame the charges, the trial Court can discharge the accused. At the time of framing of charges, the trial Court has to consider whether there is any *prima facie* material against the accused to proceed further or not. If the Court satisfies that there is a *prima facie* material, then it is not a fit case for discharging the accused.

13. A perusal of the record reveals that the trial Court after satisfying itself that there is a *prima facie* case, dismissed the petition. In **STATE OF HIMACHAL PRADESH V KRISHAN LAL PARDHAN** [1], the apex Court held thus:

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[1] AIR 1987 SC 733

> "For scrutiny within the limits of Section 239 Cr.P.C., all that is required at the stage of framing of charges is to see whether a *prima facie* case regarding the commission of certain offences is made out. The question whether the charges will eventually stand proved or not can be determined only after the evidence is recorded in this case, which cannot be decided on merits without giving the prosecution an opportunity to adduce evidence against the accused."

14. In **STATE OF A.P. v. S. ESHWAR SINGH [2],** the apex Court held thus:

> "State challenged discharge of the accused for the offences under Sections 3(3), 4(3), 5 and 6 of TADA Act. The Supreme Court, after perusing the entire charge-sheet and the material documents filed along with the charge-sheet, held as follows: "*the allegations are to the effect that the main object underlying the alleged crime was to propagate pro-Khalistan cult among Sikh community and to organise a force threatening the Government with dire consequences under the pretext of championing the cause of Sikh community. Therefore, the finding of the trial court that* prima facie *the provisions of TADA Act are not attracted, is clearly wrong.*"

15. In **STATE OF J&K v. ROMESH CHANDER [3],** the apex Court held thus:

> "It is now settled law that the charge-sheet constitutes prima facie evidence constituting the offence for proceeding further in the matter. Necessarily, therefore, the Court has to look into the relevant law and the allegations made in the charge-sheet and then consider whether any offence has been committed to frame charges for trial before discharging the accused. Since the High Court has not done that, we think it proper that the High Court should reconsider the matter and dispose of it in accordance with law. All the contentions raised by the learned counsel on either side are left open. It is open to the counsel to argue the matter in the High Court."

16. In para 7 of the order, the trial Court made an observation that the accused withdrew the amount and again re-deposited in the name of the Association. This itself create a grave suspicion about the conduct of the petitioner, which *prima facie* sufficient to frame charges against the

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[2] (1993) 1 SCC 440
[3] (1997) 1 SCC 90

petitioner. Whether the bank officials committed any mistake or not will come to light during the course of trial only. The material placed before this Court *prima facie* reveals that the petitioner without any authority of whatsoever withdrew the money, which belongs to the Association. This fact itself is sufficient to proceed further against the petitioner.

17. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that there is a *prima facie* material against the petitioner to proceed further. The trial Court considered the material on record in right perspective and dismissed the petition. The trial Court assigned reasons, much less, cogent and valid reasons while dismissing the petition. Therefore, there are no grounds to interfere with the order of the trial Court.

18. Accordingly, the Criminal Revision Case is dismissed. It is made clear that any observations made in this order are only confined to this order. Miscellaneous petitions, if any pending, in this revision shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 07-12-2016.
Hsd