

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Revision Case No.3114 of 2016

ORDER:

The revision petitioner is the sole accused in C.C.No.362 of 2015 on the file of the VI Addl.Judicial Magistrate of First Class, Warangal which is outcome of private warrant procedure case that was taken cognizance on private complaint, u/sec.210 to 202 r/w 190CrPC for the offences punishable u/ sec.420 and 506 IPC and after appearance of the accused in the course of pre-charge enquiry u/ sec.244 and 245 CrPC, he filed petition in CrI.M.P.No.2294 of 2016 u/ sec.245(2) of CrPC seeking to discharge him from the accusation and as the same was dismissed by the impugned order dated 17.11.2016, he filed the present revision with the averments that the complainants, no other than wife and husband in their private complaint suppressed real facts and made false allegations against him with an evil motive to harass him and evict him from the leasehold premises by adopting illegal means of purely the civil dispute by invoking criminal proceedings by private complaint which is not maintainable, they are well educated and well aware of the contents of the documents and signed the lease deed and got the same registered and it is after lapse of 11 months with misrepresenting of the facts filed the false complainant with malafide intention as if they were cheated. The accused in fact filed civil suit O.S.No.52 of 2015 against the complainants and one Ganesh S/o V.G.Narayana Rao for permanent injunction restraining them and their men from interfering with the peaceful possession and enjoyment of the accused over the leased premises. The complainants herein are also contesting said suit. At their instance the matter was earlier referred to the Lok Adalath for settlement, but was not settled. The complainants used to take the rent at the rate of Rs.60,000/- through cheques and Rs.65,000/- by cash

from the accused and used to pass receipts in his favour and if they were cheated by the accused, that does not arise. It was they who got executed lease deed for avoiding payment of income tax to the government and receiving the cash of Rs.65,000/- in addition the original rent per month. Hence ingredients of Section 420 and 506 IPC do not attract to take the cognizance of offence against the accused. The complainants have grossly failed to show prima facie case and cause of action to register the Criminal Case against the accused. Hence, it is just to discharge him for no grounds to frame charges by conducting pre-charge enquiry.

2. The complainants filed counter before the lower Court by denying the averments supra, with contest that the accused with dishonest intention and mala fide motives to defraud not only them, but also to cause loss to the public exchequer, in order to avoid payment of stamp duty to the Sub-Registrar on the lease deed but also working as an Assistant Professor at Kakatiya Medical College/ MGM Hospital-cum-Director in Max-care Private Hospital, besides maintaining a private hospital along with his wife under the name and style of 'Koorapati Laparoscopy and Fertility Center' and minting money daily from all the sources deliberately cheated the State Government and also the house owners/respondents by the dubious methods. The accused filed this petition to divert the issue and come in the way to the conducting of trial, which is not the spirit of law, hence the petition is not all tenable. They further stated that the 1st complainant V.G.Narayana Rao, is aged 73 years a retired principal of Engineering colleges and the 2nd complainant is a senior doctor also worked as Govt.Doctor till she resigned from the service and is running a private maternity hospital at Hanumkonda, who due to acute Rheumatic pains, underwent total left knee replacement. For that reason, she let out the premises to Sri Raju in the year 2013. Subsequently, the accused herein

stepped into the shoes of the earlier lease holder, executed lease agreement with the respondents on 11.02.2014 itself. The accused himself voluntarily prepared a lease deed for five years and it was registered. He gave assurance that, the entire lease deed Dt.25.02.2014 is in consonance with the earlier lease agreement, dated 11.02.2014, but the accused deliberately deceived and cheated the respondents intentionally. The respondents/ complainants believed the accused due to their old age ailments and the accused himself convinced the Sub-Registrar, to send their officials upto the vehicle, where the respondents waited in front of the Sub Registrar's office and collected their signatures on the document. The complainants believed the accused and signed the documents. The accused managed the Registrar and paid the necessary fees and about six months after execution of the document, at last he given a copy, after several reminders and requests by them, but he used to pay the rents at Rs.1,25,000/- p.m. under separate acknowledgments, on going through the lease agreement, these respondents were shocked and dismayed about the quantum of the rent mentioned in the lease deed as if of Rs.60,000/- p.m. When they questioned the accused, he stated that, for avoiding stamp duty, it was reduced but gave assurance to pay the rents as usual. The complainants doubted the mala fide intention of the accused and with no other go as signed in the agreement; But, for the reasons best known to the accused, he avoided payment of rents to the respondents. The accused issued cheques for the months of November on 5th December, 2014, and for the month of December on 5th January, 2015, which cheques were prepared with anti-date and sent by registered post with acknowledgment due in the month of May,2015. The original cheques were presented by the accused himself before the Court after expiry of three months validity from the date mentioned on the cheques. Thus, he deliberately cheated the respondents.

He prepared the cheques with anti-dates and submitted before the IIAddl. Senior Civil Judge's Court, where he filed a suit in O.S.No.52 of 2015 for permanent injunction. He agreed the quantum of rents and paid rents upto 31st October, 2014 and even after filing of the suit also, he deposited the two cheques of Rs.1,25,000/- per mensem for the months of November, and December, 2014 at a belated stage after expiry of three months validity, before the Court. Thus all the above ill-will and dishonest activities and attitude amounts to deliberate cheating with dishonest designs of the accused and the same will be decided only in the full length trial, but not at the threshold of the matter. The cheating is criminal in nature. Though the accused shifted his hospital without handing over the possession to the respondents/ landowners, he handed over the keys of the premises to the Court by filing a memo only after the respondents filed a petition, for appointment of commissioner to visit the suit schedule property and to know whether there is any hospital running in the premises or equipment available in the suit schedule property. At that juncture, he submitted the keys, before the Court in O.S.No.52 of 2015. Hence, to dismiss his discharge petition.

3. After hearing both sides the learned Magistrate dismissed the petition holding that the petitioner would not be entitled for discharge.

4. Impugning the dismissal order dated 17.11.2016, the accused preferred the revision with almost self-same grounds raised before the learned Magistrate in saying without any proper adjudication and without considering the contents of the complaint and statements recorded pursuant to the complaint under enquiry 202 of CrPC, the learned Magistrate took cognizance of the offences alleged supra against him, that the trial Court ought to have seen that the allegations in the private complaint as well as the statements of the complainants even if they were

accepted in its entirety, no case is made out for the offence under Section 468 of IPC, that the trial Court ought to have seen that in the registered lease deed, rent payable by the petitioner was mentioned as Rs.60,000/- at the instance of the complainants to avoid income tax. But the petitioner paid the rent even as per the original understanding. The trial Court ought to have seen that the leased premises was earlier used as an hospital with certain equipment which are listed in the lease deed dated 11.02.2014 and the rent was mutually fixed for using the premises as a hospital and when the petitioner wanted to return the hospital equipment, furniture and other fuxtures, to which rent was charged, for the disputes arose, the complainants unilaterally terminated the lease vide letter dated 25.09.2014 w.e.f.25.12.2014. The trial Court ought to have seen that complainants issued legal notices dated 08.4.2014, 17.04.2014 and 21.07.2014 and in none of these letters, it is mentioned about fraud on the part of the accused in incorporating a rent of Rs.60,000/- instead of Rs.1,25,000/- in the lease deed, that even in a complaint given to police also there was no mention about reduction of rent in registered lease deed. The trial Court ought to have seen that the petitioner has filed a suit O.S.No.52 of 2015 in the Court of II Addl. Senior Civil Judge, Warangal for permanent injunction restraining the complainants from interference with his peaceful possession and enjoyment of the suit schedule property for running hospital and the said suit is pending. The trial Court ought to have seen that the complainants are well educated and they signed in front of the Registrar and they also answered to a question put by the Registrar stating that they have gone through the contents of the lease deed in which the amount is specifically mentioned. Thus there is a presumption in favour of the petitioner that the contents of the lease deed are true and mentioning of rent in a lease deed does not amount to forgery or cheating. Hence to set

aside the dismissal order of the trial Court by allowing the revision. Whereas, it is the submission of the learned counsel for the respondents 1 and 2/ complainants in the course of hearing on 13.02.2017 that it was on that day just before hearing, the 1st respondent-1st complainant-professor V.G.Narayana Rao breathed last however the 2nd complainant-the legal representative, his wife, already on record with no need of bringing any other legal heirs to continue the proceedings, however, the lower Court's order holds good supported by reasons and there is nothing to interfere and it is not a quash petition to impugn the cognizance order to avoid revision against the dismissal of the discharge application which is also pre-mature to consider without conducting enquiry contemplated by Section 244 and 245(1) Cr.P.C. if at all to proceed u/sec.246CrPC from no grounds to discharge even at the stage under Section 245(2) CrPC, and but for that if at all to impugn the order of the lower Court, there are no other merits to interfere for no illegality, impropriety and incorrectness otherwise.

5. For more clarity, it is relevant to reproduce the Sections 244 to 246 CrPC which read as follows:-

B.- Cases instituted otherwise than on police report

244.Evidence for prosecution.-

(1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

245.When accused shall be discharged.-

(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

246.Procedure where accused is not discharged.-

(1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

(3) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

(4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under sub-section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.

(5) If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged.

(6) The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross-examination and re-examination (if any), they shall also be discharged.

247.Evidence for defence.-

The accused shall then be called upon to enter upon his defence and produce his evidence; and the provisions of section 243 shall apply to the case.

6. From reading of the same and from the scope of law, the accused in the course of pre-charge enquiry entitled to participate if at all to test by cross-examining the witness and it is only after pre-charge enquiry either by his cross-examination if willing, else in seeking to defer, if there are no grounds to frame charge from the evidence of prosecution in the pre-charge enquiry to be recorded u/ sec.244 to u/ sec.245(1) to discharge. No doubt, as per Section 245(2)CrPC, the Magistrate got power of discharge even at any previous stage if for reasons to be recorded, he considers the charge to be groundless.

7. In fact, the crucial aspect to be considered is whether to avoid registration charges and to cheat the government, the accused with

dishonest intention created the lease deed by undervaluing of the monthly rent actually of Rs.1,25,000/- as if agreed of Rs.60,000/- and obtaining receipts separately for Rs.60,000/- and Rs.65,000/-or sending of Demand Draft in toto for Rs.1,25,000/- earlier, as the case may be. Once it is required to be considered at the post-cognizance stage in the pre-charge enquiry, there is nothing to discharge without invoking Section 245(1) of Cr.P.C. Thus, invoke Section 245(2) of CrPC, for this Court while sitting in revision against the dismissal order for an enquiry shall go on as observed by the lower Court, there is nothing to interfere.

8. Accordingly and in the result, the revision is dismissed, however by holding that the revision petitioner shall participate in the pre-charge enquiry and if there are, from the evidence of prosecution with right of accused if at all chosen to cross-examine if no grounds to frame charge, the trial Court is bound to discharge by invoking Section 245(1) CrPC, else to the trial Court to proceed with trial further u/ sec. 246 and 247 CrPC, if at all there is any material to frame charge, uninfluenced by the observations of this Court. Consequently, miscellaneous petitions, if any, pending in this revision, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.21.02.2017.

vvr.