

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.3172 of 2016

ORDER:

It is on the private complaint of Assistant Project Director (Legal) DWMA, Karimnagar District against 4 accused i.e., Sri V.Sudhakar, Ex. Field Assistant, Sri B. Odelu, Technical Assistant, the revision petitioner Sri N. Ramesh, Additional Program Officer and Sri Pokala Rama Devi of Karimnagar District the then. The learned special Mobile Magistrate for Medak and Karimnagar District at Sanga Reddy Camp at Karimnagar taken cognizance against the accused for the offence punishable under Sections 9(1) and 9(4) of APPSA and PCP Act No.3/2012 (for short 'the Act') and also Sections 409, 419 and 477-A IPC. The petitioner/A.3 filed the application in CrI.M.P.No.509 of 2015 seeking for his discharge under Section 245 Cr.P.C. and the same was ended in dismissal by the impugned order of the learned Magistrate dated 21.10.2016 and the revision is outcome therefrom.

The contentions in the grounds of revision vis-à-vis oral submissions of the learned counsel for the petitioner/A.3 are that the Social Audit Mandal Public Hearing report no way contained any accusation against him much less to attract any offence among those that were taken cognizance, the specific instruction for filing complaint was against the Field Assistant and CSP and to initiate the enquiry against Technical Assistant and name of the petitioner was not there even for filing private complaint before the learned Magistrate to take cognizance. The learned Magistrate failed to consider that there is no offence made out

with any worth accusation against the petitioner/A.3. The scheme of the Act No.3/2012 from Section 9 sought to apply with IPC provisions is patently erroneous and liable to be set aside, for no basis and mere negligence no way constitute an offence with penal consequence even, the learned Magistrate ought to have seen that the enquiry report after Social Audit Mandal Public Hearing is a final report which no way contains allegations against the petitioner in ordering discharge of the petitioner from the accusation therefrom and as the dismissal of the discharge application is unsustainable and the same is liable to be set aside by ordering discharge of him.

The learned Public Prosecutor representing the State and the complainant supported the order of the lower Court saying no grounds to discharge.

Heard and perused the material on record.

Before going into the legality and correctness of the impugned order of the lower Court and considering the provisions of the Act No.3/2012 in particular, it is relevant to reproduce Paras 5 and 6 of Crl.R.C.No.3114 of 2016 dated 21.02.2017:

“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.”

From this now coming to the Act No.3/2012 which provides for trial of offences committed by persons indulging in corrupt practices during implementation of the Government schemes and

programs including those as brought out by social audit for matters connected therewith or incidental thereto. It came into force with effect from 19.08.2011 retrospectively. The Assistant Project Director (APO) who filed the complaint as per Section 2(a) means an officer appointed by the Commissioner Rural Development for overseeing the implementation of the schemes and programs above the mandal level. As per Section 2(b) corrupt practice means an act or omission made by any functionary entrusted with a task by the concerned authority of government with the intention of defrauding Government or depriving the beneficiaries for whom the various Government schemes and programs are intended. As per Section 2(c) Court means a special Mobile Court established under Section 3. As per Section 2(g) offence means any act or omission made punishable under this Act. As per Section 2(i) social audit means public auditing of the details of implementation of any Government schemes and programs including by way of ground level verification of works, pay orders or other records with reference to beneficiaries of the scheme and programs conducted by the primary stakeholders with the active involvement of the society for social audit, accountability and transparency (SSAAT). As per Section 2(l) Social Audit Mandal Public Hearing means the social audit public hearing at the mandal level conducted by the District Collector or any other officer authorized on his behalf, in the manner prescribed under social audit rules. As per Section 2(o) special Magistrate means the Magistrate appointed as such under Section 3. The special Magistrate appointed under Section 3 of

the Act is not in dispute for trial of the offence in respect of the area of jurisdiction conferred.

As per Section 5 (1) of the Act, the social audit report finalized in the Social Audit Mandal Public Hearing shall be considered as inquiry report for the purposes stated under the Act. As per Section 5(2) of the Act, the Assistant Project Director shall, based on the report of the social audit after due verification or on the direction issued by the Government, file a complaint before the special Court under this Act.

The private complaint in question filed by the APD in April 2015 is not from direction issued by the Government, but from report of the social audit after due verification by the APD under Section 5(2) of the Act, to have locus to maintain the complaint. Coming to the procedure for trial of offences under the Act, the procedure specified under Sections 251 to 259 Cr.P.C. shall be followed. No doubt there are also other offences punishable under Sections 409, 419 & 477-A IPC and those offences are to be tried by following the private warrant case procedure for not outcome of report to police and their investigation with final report. From above conflict for the Central law prevails over the State law, the procedure under trial of private warrant case has to be followed. As such the application under Section 245 Cr.P.C. any way is sustainable for the case is to be proceeded based on private warrant case procedure, but not as a private complaint under summons procedure among Sections 251 to 259 for trial of summons case by Magistrate provided in Cr.P.C. Chapter XX.

From the above as pointed out on the scope of Sections 245(1) and 245(2) Cr.P.C. and the distinction in between, from the cognizance taken, there is nothing to dispense with the prosecution evidence as part of pre-charge enquiry and adopt hearing before taking up the enquiry. From the above, there is nothing even shown the prosecution evidence is recorded and accused participated with right of cross-examination if at all unless deferred the right of cross-examination for any case to frame charge to avail later.

Having regard to the above by left open all contentions, the learned Magistrate is directed to record the evidence of prosecution as part of pre-charge enquiry and the accused shall participate and submit arguments from said pre-charge prosecution enquiry evidence, if by availing any right of cross-examination or not, able to show any of the charges are groundless to discharge, else to frame charge and proceed according to law.

With these observations, the criminal revision case is disposed of.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 01.03.2017
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