

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2515 of 2017

ORDER:

This Criminal Revision, under Sections 397 and 401 Cr.P.C. is filed questioning the propriety and legality of the Docket Order dt.23.06.2017 in CrI.M.P.No.623 of 2016 in C.C.No.97 of 2011 passed by I Additional Judicial Magistrate of I Class, Warangal.

Heard Sri Hari Prasad Podila, learned counsel for the petitioner and the learned Public Prosecutor appearing for the State of Telangana.

The petitioner/A.2 filed a petition under Sections 239 and 245 Cr.P.C. to discharge the petitioner for the offences punishable under Sections 406,417, 420,172 and 177 IPC. But, the trial Court passed a cryptic Order, which runs as follows:

“Perused the petition and material on record that the petitioner submit that the petitioner are no way connected to this case and they were falsely implicated in this case and there is no incriminating material evidence against the accused as such, seeking permission to discharge the petitioner for the alleged offence against her, for which, the respondent objected. Considering the facts and circumstances of the case, the Court feel, that after trial it will disclose that whether the alleged offence took place at the scene of offence or not. Whether there is incriminating material evidence against the petitioner to bring home guilt of the accused also will disclose only after full trial, but not at this stage. As such, the Court is not inclined to discharge the accused at this stage.”

The reason recorded by the trial Court for dismissal of the petition is that whether the alleged offence took place at a particular place has to be find out only after full pledged trial and so also the incriminating evidence available against any one of the accused. While deciding an application under Sections 239 and 245 Cr.P.C, the Court has to verify entire material produced along with Final Report or Charge sheet, under Section 170 Cr.P.C., and after affording reasonable opportunity to both the parties, pass appropriate orders in

accordance with law. But, the trial Court, instead of passing such an Order, passed a cryptic order, which is under challenge now. The Apex Court laid down certain principles to be followed while deciding an application under Section 239 and 245 Cr.P.C.

The present petition is filed under Sections 397 and 401 of Cr.P.C. Jurisdiction of this Court under Sections 397 and 401 of Cr.P.C. is limited and the High Court may exercise such power only when the Court found that there is a manifest perversity in the order or the finding recorded by the Court is without any evidence or material, though section 401 of Cr.P.C. confers a kind of paternal and supervisory jurisdiction on the High Court, over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity or procedure, neglect or proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. The revisional power conferred on the High Court by Section 401 of Cr.P.C. is discretionary power, has to be exercised in the aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon facts and circumstances of each case. The discretion conferred on the High Court by Section 401 of Cr.P.C. has to be exercised judicially, on judicial principles and not arbitrarily. Therefore, keeping in mind the scope of revision, I would like to decide the present issue before this Court.

According to sections 238 & 239 of Cr.P.C., if the Court is of the opinion upon considering the police report and documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate or Sessions Judge thinks necessary and

after giving the prosecution and the accused an opportunity of being heard, the Magistrate or Sessions Judge considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing.

The documents referred to in Section 207 of Cr.P.C. also must relate to such documents which can be subsequently transferred into evidence at the time of the trial. Hearing of the prosecution and the accused under this section does not mean the hearing of arguments only, it includes the hearing of the evidence if needed. The word “groundless” would mean the absence of reasonable ground to expect a conviction. “Groundless” is equivalent to saying that there is no ground for framing the charges, which depends on the facts and circumstances of each case. Therefore, only when the Magistrate or Sessions Judge comes to conclusion that there are no grounds to frame a charge for specific offence, the Court can discharge the accused for such offence. Even the scope of Section 238 and 239 Cr.P.C. is limited, such power has to be exercised only when the Magistrate or Sessions Judge came to conclusion that it is groundless, based on charge sheet and documents filed under Section 173 of Cr.P.C.

Consideration of records and documents at the stage of framing charge is for the limited purpose of ascertaining whether or not there is sufficient ground to proceed against the accused. Whether the material at the hands of the prosecution is sufficient and whether the trial will end in conviction or acquittal are not relevant considerations at the stage of framing of charge as held by the Apex Court in “*P. Vijayan v. State of Kerala*”¹

¹ AIR 2010 SC 663

In view of the above judgment, the Court is bound to verify the material produced, more particularly, the evidence produced along with Final Report or Charge sheet under Section 173 Cr.P.C. after affording an opportunity of being heard to both prosecution and the accused and the Court has to pass reasoned Order by applying its mind after considering the evidence produced by the parties, but in the present case, the trial Court passed a cryptic Order, which I extracted in the earlier paras, and that apart, it is observed in the Order dt. 23.06.2017 that if there is any incriminating material against the petitioner to bring home the guilt of the accused would disclose after full fledged trial, but this observation is totally baseless. The duty of the Court is to verify the material produced along with the report under Section 173 Cr.P.C., to come to a conclusion *prima facie* whether the charge levelled against the petitioner is groundless or not. If the Court finds that it is groundless or without *prima facie* material, it may proceed to discharge the petitioner for the offences punishable under Sections 406, 417, 420, 172 and 177 IPC.

But, the trial Court instead of following settled principles laid down by the Apex Court, passed a cryptic order. Hence, the Order dt.23.06.2017 in CrI.M.P.No.623 of 2016 in CC No.97 of 2011 is hereby set aside while remitting the matter to the trial Court to decide the application in accordance with the law.

With the above direction, this Criminal Revision Case is allowed at the stage of admission.

Consequently, miscellaneous applications pending, if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:03.10.2017
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C. No.2515 of 2017
Dt. 03-10-2017

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