

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1707 of 2011

ORDER:

This Criminal Revision Case is filed by accused No.3, under Sections 397 and 401 Cr.P.C., challenging the order dated 12.7.2001 passed in CrI.M.P.No.825 of 2011 in Sessions Case No.81 of 2011 on the file of the Court of Principal Sessions Judge, Karimnagar, wherein and whereby the petition filed under Section 227 of Cr.P.C., was dismissed.

2. The learned counsel for the petitioner submitted that the trial Court failed to consider that there is no material on record to frame charge against the petitioner except the confession of co-accused, which is not admissible under law. He further submitted that the trial Court failed to consider contradiction between the confession of co-accused and the statement of L.W.18. He further submitted that if the order of the trial court is allowed to stand, certainly it would amount to miscarriage of justice. *Per contra*, learned Additional Public Prosecutor representing the State submitted that material placed before the trial Court is *prima facie* sufficient to frame the charge against the petitioner. He further submitted that the trial Court rightly considered the scope of Section 227 of Cr.P.C., and dismissed the petition.

3. The facts leading to filing of the present revision are as follows: The petitioner along with other accused is facing trial in Sessions Case No.81 of 2011 on the file of the Court of Principal Sessions Judge, Karimnagar, for the offence under Section 302 read with 109 of IPC. The petitioner filed Criminal Petition No.2823 of 2010 under

Section 482 of Cr.P.C., to quash the proceedings against him in Crime No.31 of 2010 on the file of the Station House Officer, Manthani Police Station, and the same was dismissed by this Court on 29.3.2010. Again the petitioner filed Criminal Petition No.5879 of 2010 under Section 482 of Cr.P.C., and the same was disposed of by this Court on 30.3.2011 with liberty to the petitioner to urge the points, which were raised in the Criminal Petition, before the trial Court at the time of framing of the charges. Thereafter, the petitioner filed the petition under Section 227 of Cr.P.C., before the trial Court.

4. Before advertent to the facts of the case, it is apt to refer the case law on the point:

Union of India v. Prafulla Kumar Samal¹ wherein the Hon'ble apex Court at para No.10, held as under:

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

¹ (1979) 3 SCC 4

Dilwar Balu Kurane v. State of Maharashtra² wherein the

Hon'ble apex Court at para No.12, held as under:

12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weight the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial [See ***Union of India v. Prafulla Kumar Samal***, 1979 CriLJ 154] .

Yogesh @ Sachin Jagdish Joshi vs. State of Maharashtra³

wherein the Hon'ble apex Court at para No.23, held as under:

23. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement.

5. Let me consider the facts of the case on hand in the light of the above legal principles.

6. As rightly pointed out by the learned counsel for the petitioner, the petitioner was arrayed as accused No.3 basing on the allegation that he abetted accused Nos.1 and 2 to kill Badhe Sambaraju (the deceased). There is no quarrel with regard to the proposition of law, as submitted by the learned counsel for the

² (2002) 2 SCC 135

³ (2008) 10 SCC 394 = 2008 (8) SCJ 662

petitioner, that the confession of co-accused is weak piece of evidence. While deciding Criminal Petition No.2823 of 2010, this Court made an observation that saree piece was seized from the possession of the petitioner in pursuance of the alleged confession. The learned counsel for the petitioner submitted that factually it is incorrect. Whether it is factually correct or not cannot be decided without going into the trial. The observation made in Criminal Petition No.2823 of 2010 is not challenged by the petitioner. Admissibility or otherwise of the confession of co-accused has to be decided at the time of trial along with the other material available on record. Admittedly, the Prosecuting Agency recorded the statement of L.W.18, which also *prima facie* indicates the involvement of the petitioner in the commission of the offence. The contradiction, if any, between the confession of co-accused and the statement of L.W.18 has to be considered at the appropriate stage of the proceedings. At the stage of framing of charges, the Court has to satisfy itself whether there is *prima facie* material to proceed further against the petitioner or not. Whether the material available on record is sufficient to convict the accused under any circumstances, is not the relevant aspect to be considered at the time of framing of the charges.

7. 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 the material placed before the Court is *prima facie* sufficient to proceed further against the petitioner. There is no illegality or irregularity in the order passed by the trial Court which warrants interference in this revision. The revision lacks merits.

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

T.SUNIL CHOWDARY, J

Dated: 12.10.2017

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