

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.77 of 2015

ORDER:

This Criminal Revision Case, under Section 397 Cr.P.C., is filed challenging the order, dated 05.12.2014, in CrI.M.P.No.2961 of 2014 in C.C.No.569 of 2013 on the file of XIII Metropolitan Magistrate, Cyberabad at L.B.Nagar, whereby the learned Magistrate dismissed the application filed under Section 239 Cr.P.C., to discharge the petitioner from the charges framed against him for the offences punishable under Sections 120-B, 418, 420, 423 and 464 IPC.

2. For the sake of convenience, the parties will be referred to as they arrayed before the trial Court.

3. The case of the prosecution as per the charge sheet is that the petitioner, who is accused No.2, in the aforesaid Calendar Case colluded with A.1 and in pursuance of their conspiracy, A.2 purchased flat from A.1 even after knowing the fact that A.1 had entered into an agreement of sale with the *de facto* complainant after receiving part of consideration. It is stated that A.2 is a *bona fide* purchaser of property i.e., Flat No.G-2 of J.Rama Rao Apartments, Saroornagar, having purchased the same under a registered sale deed, dated 30.04.2011 on payment of valuable consideration and physical possession of the same was delivered to him. It is stated that as the value of the property was increased, the *de facto* complainant filed a false case against the petitioner/A.2. It is stated that the contents of the charge sheet do not make out any case against the petitioner for the offences

levelled against him. Further, the *de facto* complainant never stated anything against this petitioner about his involvement in the offence. He further stated that there is no *prima facie* material to proceed against the petitioner and requested the Magistrate to discharge him for the aforesaid offences referred supra.

4. The respondent filed counter contending that the petitioner purchased the property with full knowledge about the agreement of sale between A.1 and complainant and even after gaining knowledge, he colluded with A.1 and obtained a registered sale deed, dated 30.04.2011. The petitioner neither visited the disputed flat nor possession was delivered, he never made any attempt to vacate the complainant from the possession of the flat and the material on record is suffice to proceed against the petitioner and prayed to dismiss the petition.

5. The learned Magistrate, upon hearing both counsel and perused the charge sheet and other material including the final report under Section 173 (1) Cr.P.C. by the police after due investigation, concluded that the material on record is sufficient to proceed against the petitioner and dismissed the petition.

6. Aggrieved by the order, the present revision is filed by reiterating the grounds urged before the trial Court mainly on the ground that the petitioner is a *bona fide* purchaser and no material is produced even to decide the complicity of the petitioner in the Calendar Case and in the absence of any material, the trial Court ought to have discharged the petitioner for the aforesaid offences, but committed a grave error in dismissing the petition.

7. The counsel for the respondent while supporting the order of the trial Court submits that the finding of the trial Court is suffice to conclude that the petitioner has full knowledge about purchase of property by complainant from A.1 under a registered sale deed; that A.1 mortgaged the property with IDBI bank, for which the complainant agreed to pay sale consideration in instalments and during the course of time, he paid the entire amount and after payment of the entire amount, A.1 closed the loan account. This aspect of the case suffices to show that A.2 has knowledge about the transaction between A.1 and complainant and therefore, when the Court find sufficient *prima facie* material to proceed against A.2, the Court can dismiss the petition and dismissal order cannot be interfered with by this Court, exercising the jurisdiction under Sections 397 and 401 Cr.P.C.

8. The revision case 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 failure to take 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.

9. According to section 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 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”**².

10. In the case on hand, the petitioner admittedly purchased property i.e., Flat No.G-2 of Rama Rao Apartment from A.1, who allegedly entered into an agreement of sale with the complainant. As per the terms of the agreement, the complainant has to pay the loan amount in instalment and accordingly, he discharged entire loan amount by 18.04.2011 itself. But, A.1 conveniently sold the property to A.2 on 30.04.2011 and took back the documents deposited with the bank without the knowledge of the complainant after loan was cleared by the complainant. Even before collecting the original documents deposited with the bank, the petitioner herein purchased the property from A.2. When the *de facto* complainant requested A.1 to execute a sale deed, he is postponing the same for one reason or other. The complainant apprehended that A.1 is planning to sell the flat to some others, he issued a notice in Eenadu on 06.05.2011 intimating the public about purchase of flat, but by the date of such notification, the petitioner

purchased the property under a registered sale deed, dated 30.04.2011 and also filed suit O.S.No.909 of 2011 on the file of Principal Senior Civil Judge, Ranga Reddy District at L.B.Nagar for specific performance for agreement of sale and interim injunction was obtained. All these material available with the trial Court including allegations made in the complaint, which was referred to the Magistrate by exercising the power under Section 156 (3) Cr.P.C., and the statement recorded by the police, would *prima facie* go to show that the petitioner joined hands with A.1 and purchased the property even without looking into the documents and this Court at this stage, cannot decide whether the allegations made in the complaint would attract the offences punishable or not. Since this Court is not exercising inherent jurisdiction under Section 482 Cr.P.C., and at best this Court can look into the material to find out the prosecution is 'groundless' or there is *prima facie* material to proceed against the petitioner.

11. Taking into consideration the entire material on record, the Magistrate exercised his discretionary power in dismissing the petition having found that there is *prima facie* material to proceed against the petitioner. Therefore, when the trial Court exercised its discretion, this Court cannot interfere with such discretion while exercising the power under Sections 397 and 407 Cr.P.C. Hence, I find no ground to discharge the petitioner for the aforesaid offences and the revision case is merit less.

12. In the result, the Criminal Revision Case is dismissed. However, the learned Magistrate is directed to decide the Calendar Case, as expeditiously as possible in any event not later than six

(06) months from the date of receipt of a copy of this order since the Calendar Case is of the year 2013.

Miscellaneous petitions, if any, pending in this revision case shall stand closed.

M. SATYANARAYANA MURTHY, J

AUGUST 31, 2017

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date: 31.08.2017

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