THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.260 of 2016

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ("the Code" for brevity) is filed by the petitioners/A3 and A4 assailing the order, dated 18.12.2015, of the learned Special Judge for SPE and ACB Cases-cum-II Additional District & Sessions Judge, Nellore, passed in Crl.M.P.No.13 of 2015 in C.C.No.4 of 2014 insofar as it related to the refusal of the request of the present petitioners/A3 and A4 for their discharge from the above case.

2. I have heard the submissions of Sri *T.Sreedhar*, learned counsel for the petitioners/Accused nos.3 and 4, and of Sri *P.Udaya Bhaskara Rao*, learned Standing Counsel-cum-Special Public Prosecutor for ACB Cases, representing the respondent/complainant. I have perused the material record.

3. The facts of the prosecution case, which are to be stated as preface to this order, in brief, are as follows:-

A1 and A2 are residents of Chirala and Ongole Towns respectively. A1 & A2 are doing liquor businesses in the names of benami persons. AO3 worked as P & E Inspector, Chirala of Prakasam District from 19.12.2009 to 28.08.2012. AO4 worked as Inspector, P & E, Chimakurthi of Prakasam District, from 19.12.2009 to 16.07.2012. On credible information, the ACB officials conducted a surprise check in Karimnagar Town, on 13.12.2011. During the course of the said check, the officials of the Prohibition and Excise Department were found carrying an amount of Rs.3,62,640/- which was suspected to have been collected as bribe from the owners of the wine shops of Karimnagar District; and, hence, the same was seized and a case in Crime No.15/ACB-KNR/2011 was registered, on 14.12.2011, by the DSP, ACB, Karimnagar, against the petitioners/accused nos.3 and 4 and three others for the offences punishable under Sections 13(1)(a)(d) of Prevention of Corruption Act,1988 ['the PC Act', for short] and Sections 120-B and 34 of Indian Penal Code, 1860, ('IPC', for short) and Sections 41(1)(a) and 102 of the Code and the case was investigated into. During course of investigation, on the request of DSP, ACB, Karimnagar, searches were conducted, on 16.12.2011, at the liquor syndicate offices of Abburi Venkata Rao at Ongole and Chilukuri Satyanarayana at Addanki. During the searches, documents and records pertaining to payment of mamools to the officials of excise and police departments and others were seized. On scrutiny of the seized documents, occurrence reports were drafted separately and cases vide Crime No.3/RCO-NPK/2012, against Abburi Venakteswara Rao & others and Crime No.4/RCO-NPK/2012 against Chilukuri Satyanarayana & others were registered. During the course of investigations into the said cases, it was revealed that some irregularities took place while conducting auction of A4 wine shops for the lease period 2010-2012 years in Prakasam District. Searches were conducted on the offices of Excise Superintendents, Ongole and Markapur, on 06.03.2012, and records pertaining to auction of A4 wine shops for the said period were seized under mediators' reports. On the information from the Collector's office it is revealed that out of 321 licence holders of wine shops in Prakasam District 29 licence holders are outsiders and out of remaining 292, 85 licence holders possessed ration BPL cards, and 84 licence holders possessed white ration cards and one licence holder possessed a ration card issued under Anthyodaya scheme. On scrutiny of auction file of A4 wine shops, it is revealed that tenders of benami persons were accepted and that the same were filed by influential and financially sound persons to have control over the wine shops during the auction period and the said acts are against excise rules. As per Laws and Rules, the forms submitted have to be attested by excise officials in token of certification. Even after auction process also there are opportunities at the times of inspections and monitoring of the functioning of the shops to detect the benamies and initiate action; but, the officials did not take any action and abused their official positions; and, by corrupt and illegal means obtained pecuniary advantage for themselves and others ignoring public interest. They did not take prompt action as mandated under law. Hence, after obtaining necessary permission from the head office, the case in Cr.No.8/RCO/NPK/2012 was registered, on 11.04.2012, for the offences under Sections 465, 468, 471, 120(B), 34, 109 IPC and Sections 13(2) read with 13(1)(d) of the PC Act against licence holders and the case was investigated into. During the course of investigation, on 25.04.2012, searches were conducted in the office of Managers, APBCL Depots, Pernamitta and Markapur, and records were seized. Seized records disclosed that single transporters/single persons are lifting stocks from IMFL depots on behalf of several A4 wine shops of liquor syndicates operating in the Districts. The same is against Excise Rules & Regulations. Statements of depot managers are recorded. Search was conducted on the house of A1. A1 made a confessional statement about formation of benami group of A4 wine shops. Cell phone outgoing call records were obtained from the network service providers in respect of mobile numbers of the mobiles used by A1 to A4 and the same disclosed that they were in frequent touch with each other as well as nowkarnamadars and transporters of A4 wine shops falling within their liquor groups. Tahasildars concerned furnished that there are 2041 belt shops in the District during the lease years 2010-2012 including 109 belt shops in Chirala P & E station jurisdiction of AO3 and 147 belt shops in the Chimakurthi P & E station jurisdiction of AO4. Wine shop owners ran belt shops in the neighbouring areas violating the laws, rules and regulations and AOs 3 & 4 allowed A4 wine shop owners to run belt shops in their jurisdiction. Investigation revealed that A1 & A2 furnished false information in forms for their benamies while filing tenders during the lease period. Investigation proved pumping of amounts from accounts of A1 & A2 in favour of several wine shops belonging to the members of their liquor group. A1 & A2 who are financially sound, to have control over the wine shops during the said period, connived with Excise officials and filed tenders in the names of benamies and the same were accepted against excise rules, and licences were granted and businesses were allowed to be run in violation of provisions of Excise Act and Rules obtaining; and, acts such as sale of liquor above MRP rates, sale of cheap liquor, operation of illegal belt shops, conducting sales beyond stipulated business hours, sale of loose liquor for consumption at the wine shops without licences or permissions etcetera were permitted for the purpose of making unlawful gains. A1 by conspiring with AO3 gathered benami persons prior to conducting auction of wine shops, got the tenders filed on the names of white ration card holders and benami persons and got bank accounts opened in their names for doing liquor business and the accused acted with common intention and the liquor group formed paid mamools to AO3 and other excise officials to facilitate the conduct of liquor business in violation of the provisions of the Excise Act and Rules. A2 by conspiring with AO4 gathered benami persons prior to conducting auction of wine shops, got the tenders filed on the names of white ration card holders and benami persons and got bank accounts opened in their names for doing liquor business and the accused acted with common intention and the liquor group formed paid mamools to AO4 and other excise officials to facilitate the conduct of liquor business in violation of the provisions of the Excise Act and Rules. Thus, Petitioners/A3 & A4 (AO 3 & AO4) allowed benamies to operate and allowed irregularities to be committed by all the wine shops within their respective jurisdictions and allowed running of belt shops by accepting bribes for their pecuniary gains and failed to discharge their lawful duties and take prompt action to control violations of the provisions of the Excise Act and Rules. Hence, the charge sheet is filed opining that all the accused are liable to be punished for the various offences committed by them. The Court below took cognizance of the aforementioned offences; and, a case in C.C.No.4 of 2014 was taken on file.

3.1 In the said Calendar Case, the petitioners herein/accused nos.3 and 4 and two others filed the subject interlocutory application under Section 239 of the Code requesting to discharge them from the case. The respondent/complainant/State filed a counter and opposed their request for discharge. On merits and by the order impugned in this Criminal Revision Case, the Court below dismissed the petition of all the petitioners therein. Aggrieved thereof, the petitioners/A 3 & 4 filed this revision before this Court.

4. The case of the petitioners/A 3 & A 4, in support of their request to discharge them from the Calendar Case, in brief, is as follows: - The petitioners/A 3 & A 4 are in no way concerned with the alleged offences. There is no whisper or attribution of anything in particular against the petitioners/A3 & A4 by the respondent, except a bald allegation in the charge-sheet that they being the Prohibition and Excise Inspectors, Chirala and Chimakurthy of Prakasam District, at the relevant point of time, allowed irregularities in group of wine shops in connivance with the members of the syndicate by overlooking various omissions & commissions and violation of license conditions etcetera by the group of wine shop owners. The respondents registered the case against the petitioners/A3 & A4 without any basis and on the basis of omnibus allegations and based on the case in Crime No.15/RCO-KNR/2011 on which basis, the raids were conducted. There is no *prima facie* material to prove the allegations levelled against the petitioners/A3 & A4 and to proceed against them. The alleged documents said to have been seized have no nexus with the alleged cases registered against the petitioners/A3 & A4. The allegation that irregularities took place during their tenures is only a hypothetical assumption of the respondent/complainant. The allegations levelled against the petitioners/A3

& A4 and the averments in the charge-sheet are only invented so as to implicate them in the case. The petition is liable to be allowed and the petitioners/A3 & A4 are entitled to be discharged from the case.

5. The case of the respondent/complainant, as per the counter filed before the Court below and the submissions made, in brief, is as follows:-

The petition is neither maintainable under law nor on facts. The petitioners have nothing to do with the allegations and that basing on the confession of A1, the other persons were dragged into the arena and that there are no benamidars and there is no liquor syndicate and there is no conspiracy between A1 & AO3 and A2 & AO4 and that no irregularities were committed by them and the other allegations mentioned in the petitions of the petitioners/A3 & A4 are all false. The allegations of the petitioners/A3 & A4 that except the imagination of the investigating officer there is no material and that no incriminating material is collected by the investigating officer against the petitioners and that the petitioners had no authority over the wine shops mentioned in their applications and that they never did any official favour to anyone and that none of the witnesses spoke about their involvement in the alleged offences and that the allegations against them are all false and invented for the purpose of filing the vexatious cases etcetera, are all false. The ACB officials thoroughly investigated the cases against the petitioners/A3 & A4 and the other accused. The charge-sheets in all the crimes including the instant case were filed, after securing required standard of oral and documentary evidence and after scrutiny of the same and after getting sanction to prosecute the petitioners. The truth or otherwise of the prosecution case has to be appreciated after giving opportunity to both sides to lead evidence. At the time of framing charges, the Court has to only look into the material produced by the prosecution to just know as to whether a *prima facie case* is made out or not, but the evidence produced need not be examined in a meticulous manner. The prosecution has got ample evidence to establish that the petitioners/A3 & A4 misused their official positions in connivance with A1 and A2 and opted for corrupt practices and received bribes from the liquor syndicate. The seized documents have nothing to do with the complicity of the petitioners/A3 & A4 and that they did not allow A1 and A2 and the shops in the alleged syndicate to commit any irregularities and that no confessions were made by any of the accused are false. The Supreme Court in a number of decisions held that the accused cannot be discharged when there is material showing *prima facie* case against them. The petitioners have chosen the short cut method of seeking discharge to escape from criminal liability.

6. At the hearing, the learned counsel for the petitioners/accused nos.3 & 4 would submit as follows:-

The order of the Court below is unsustainable. The Special Court failed to appreciate the facts correctly and the legal position obtaining in proper perspective. The Court below failed to take note that consideration of the entire material before it does not disclose a prima facie case against the petitioners/A3 & A4. The Court below ought to have seen that there is no evidence prima facie showing the complicity of the petitioners/A3 and A4 and even after the case is accepted on its face value, there is no possibility of establishing the guilt of the petitioners/A3 & A4 for the alleged offences. There is no basis to proceed against the petitioners/A3 & A4. The allegations baselessly alleged with regard to allowing benamidars and irregularities are invented to implicate these petitioners/A3 & A4. The Court below misread the facts and misinterpreted the legal aspects. The Court below was not correct in drawing presumptions. The reasoning in the order of the Court below is erroneous. No precise particulars like the bribes given, the details with dates of the bribes given and the amounts of bribes given are conspicuously absent in the prosecution evidence and material produced before the Court. There is only a vague and dubious reference of payment of alleged mamools to the Excise Officials and Police Officers etcetera, and on such baseless allegations, the petitioners are falsely implicated in the crime.

7. The learned Public Prosecutor while supporting the orders of the Court below reiterated the case of the prosecution which is stated supra. His submissions are already adverted to while stating the case of the respondent herein.

8. Before proceeding further, it is profitable to refer to the undisputed legal position obtaining. A charge can be framed against an accused in a case where the prosecution has placed on record sufficient evidence to show a *prima facie* case against him under a particular penal provision of law. In case the prosecution fails in its primary duty to show a prima facie case to proceed against the accused i.e., when the Court comes to the conclusion that there is no sufficient ground to proceed against the accused, he shall be discharged forthwith under Section 227 CrPC. It is a well settled principle of Criminal Jurisprudence that a Court would not require the prosecution to prove its case beyond any shadow of doubt at the time of framing of the charge as it is required to do so only at the time of conclusion of its case in order to bring home the guilt of the accused. At the stage of framing of charge or at the time of considering the request made by the accused for quashing the proceedings, the prosecution is under an obligation to place only that much material against the accused which may be sufficient enough in the circumstances of a given case to draw a presumption that the accused has committed an offence. Further, in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others [1990 Cri L.J. 1869], the Supreme Court held as follows: "From the above discussion it seems well settled that at the Section 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients

constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case." In Union of India v. Prafulla Kumar Samal and another [1979CriLJ154], the Supreme Court held as follows: "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. 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. 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. In exercising his jurisdiction under Section 227 the Judge which under the present Code is a senior and experienced 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, 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."

8.1 The learned counsel for the petitioner relied upon the following undisputed propositions in the following decisions: (i) Dilawar Balu Kurane vs. State of Maharashtra[1] the Supreme Court held as follows: “In exercising

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[1] (2002) 2 SCC 135

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 weigh 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 and Anr.1979CriLJ154]." In Central Bureau of Investigation v. K. Narayana Rao[2] it was held as follows: "if the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defendant evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial." B.S. Neelakanta v. State of A.P.[3] is also relied upon in support of the same proposition, which is stated supra. In this cited case, this Court referred to the proposition of law stated in CBI v. K. Narayana Rao (supra). In State and Ors. vs. Bhupinder Singh Bisht and Ors.[4], the High Court of Delhi on consideration of the authorities about the scope of Section 227 and 228 of the Code, observed that the

[2] (2012) 9 SCC 512
[3] 2014(1) ALD (Crl) 611 (AP)
[4] 220(2015)DLT266

following principles emerge: (i) The Judge while considering the question of framing the charges Under Section 227 of the Code of Criminal Procedure 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. The test to determine *prima facie* case would depend upon the facts of each case. (ii) 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. (iii) The Court 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, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. (iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. (vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. (vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

9. I have carefully gone through the material record. The case of the prosecution is already stated in paragraph no.3 of this order. The case of the prosecution as is evident from the material brought on record, when examined in the light of the legal position adverted to supra, makes out a *prima facie* case as well as a sufficient case for proceeding against the petitioners/A3 & A4. The allegations in the charge sheet and the entire material on record when taken on their face value do disclose the existence of the ingredients constituting the offences alleged, in the considered view of this Court. Hence, the contention of the petitioners/A3 & A4 that the allegations in entirety do not disclose even a *prima facie* case for framing charges and that the proposed charges alleged are groundless, is a contention which needs no countenance. Further, there is no need at this stage to form an opinion that petitioners/A3 & A4 are certainly guilty of the offences alleged against him. This Court examined the issue involved, keeping in view the limited scope of interference and the restricted ambit of jurisdiction and also the afore-sated settled legal position and guidance in the decision in State of Rajasthan v. Fatehkaran Mehdu[5]. On consideration of the broad probabilities of the case, the total effect of evidence including the documents produced before the Court and in the absence of any basic infirmities in the case warranting acceptance of the request of the petitioners/A3 & A4 and also in view of the limited scope of jurisdiction, which vests with the Court, it is noticeable that this is a case where a final adjudication of the proposed charges against the petitioners/A3 & A4 has to be made only after oral and documentary evidence is adduced in a full-fledged trial.

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[5] 2017 (1) ALD (Crl) 842 (SC)

10. Before parting it is apt to note that the learned counsel for petitioner relied upon the decision in L.K. Advani vs. Central Bureau of Investigation[6]. In the said decision, the High Court of Delhi observed that the entries in the books of account by themselves are not sufficient enough to fasten the liability on the head of a person against whom they are produced and that they are not a substantive piece of evidence and that the said entries in the books of account can be used only by way of corroboration to other pieces of evidence which is led by a party. Placing reliance on the above observations it is contended by the learned counsel for the petitioners/accused 3 & 4 that based on entries in made up file or a register or an account book of a third party no liability can be fastened against the petitioners/accused herein and hence, the alleged entries in the books of account and registers by themselves are of no avail to the prosecution. In reply the learned special Public Prosecutor contended that in the case on hand the seized books of accounts or registers are regularly maintained and that the that the entries therein are regularly made in the course of businesses of the group of shops/syndicate shops and that books of accounts are not the only pieces of evidences and that there are other evidences collected during searches and seizures conducted, besides evidences like seizures of made up file, registers and cash, and confessional statements of the accused and statements of the witnesses examined during the course of investigation besides information secured from other departments etcetera and that therefore the observation in the decision do not advance the case of the petitioners/accused. Be it noted that Section 10 of the Evidence Act reads as under:- "Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring,

[6] 66(1997)DLT618

as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it." Be it also noted that Section 10 of the Evidence Act is an exception to the rule of hearsay as is Section 21 of the Evidence Act. The said section is based on the principle of agency. However, to make a piece of evidence admissible under the said section it must be prima facie shown that: (a) there was a conspiracy; (b) if the conspiracy is shown to be in existence in that, eventuality anything said, done or written by any of the persons who are members of the said conspiracy would be admissible against any one of the co-conspirators; (c) the said thing done or written by any of such co-conspirators must be in reference to their common intention in order to be made admissible in evidence; and (d) the said piece of evidence would also be relevant for the said purpose against any other co- conspirator who entered the conspiracy irrespective of the fact whether the said thing was done or written before he entered the conspiracy or after he left it. Further, if this Court is to consider the contentions of the petitioners/A3 & A4, in detail, at this stage, this Court would be clutching at the jurisdiction of the Special Court. It is also apt to note infra, the following observation in the decision in Suresh Chandra Bahri v. State of Bihar with Gurbachan Singh [1995 (Supp) 1 SCC 80].

> 'In other words, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to sub-section (2) of Section 120-A of the IPC, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions in such a situation do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established the act would fall within the trapping of the provisions contained in Section 120-B since from its very nature

> a conspiracy must be conceived and hatched in complete secrecy, because otherwise the whole purpose may be frustrated and it is common experience and goes without saying that only in very rare cases one may come across direct evidence of a criminal conspiracy to commit any crime and in most of the cases it is only the circumstantial evidence which is available from which an inference giving rise to the conclusion of an agreement between two or more persons to commit an offence may be legitimately drawn.'

Therefore, it is premature for this Court to record any finding on the existence of or otherwise of criminal conspiracy and connivance amongst the accused including the petitioners/A3 & A4 who are also said to be a party to such conspiracy and connivance and suffice it to say that the present case is not a fit case to invoke the jurisdiction at this stage and discharge the petitioner-accused herein.

11. On the above analysis and for the reasons assigned supra, this Court finds that the request of the petitioners/A3 & A4 to discharge them from the calendar case does not merit consideration and that the Special Court is justified in dismissing the petition of the petitioners/A3 & A4 and that this revision case is liable for dismissal. However, it is needless to state that this Court did not express any opinion on the merits of the matter and it is always open to the petitioners/A3 & A4 to raise before the trial Court all the defences, which the facts and law permit.

12. In the result, the Criminal Revision Case is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

21.09.2017
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