

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2144 of 2017

ORDER:-

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.', for brevity), is filed by the petitioner/accused, questioning the propriety and legality of the docket order, dated 21.06.2017, passed in CrI.M.P.No.676 of 2012 in C.C.No.406 of 2011, by the I Additional Judicial Magistrate of First Class, Proddatur, dismissing the petition filed under Section 239 read with Section 468 of Cr.P.C., for discharge of the petitioner.

2. The petitioner herein is the accused in C.C.No.406 of 2011, who filed a petition for his discharge before the Court below, raising several contentions, more particularly on the ground that there is no *prima facie* material to proceed against the petitioner and that the prosecution is groundless, but the trial Court, by a cryptic order running into eight lines and without assigning any reasons, dismissed the petition. Aggrieved by the same, the present Criminal Revision Case is filed.

3. The present petition is filed under Section 397 and 401 of Cr.P.C. Jurisdiction of this Court under Section 397 and 401 of Cr.P.C. is limited and the High Court may exercise such power only when the Court finds that there is 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 exercises 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.

4. Section 239 of Cr.P.C. deals with discharge of the accused, while deciding an application under Section 239 Cr.P.C., if the Court is of the opinion upon considering the police report and documents sent with it under Section 173 Cr.P.C., 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 recording his reasons for so doing.

5. 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 on 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 comes to a conclusion that it is groundless, based on charge sheet and documents filed under Section 173 of Cr.P.C.

6. 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

7. Therefore, in view of the limited scope of power of this Court, this Court has to examine whether the trial Court did commit any manifest error in arriving at such conclusion.

8. In the present case, the trial Court, totally ignoring the principles laid down by the Apex Court in P.Vijayan's case referred *supra*, passed a cryptic order without assigning any reasons dismissed the petition. Therefore, the impugned order is liable to be set aside.

9. In the result, this Criminal Revision Case is allowed and the impugned order is set aside. CrI.M.P.No.676 of 2012 is remitted to the Court below with a direction to pass appropriate orders in the said application in accordance with the procedure established by law, after affording reasonable opportunity to the petitioner's counsel and the Assistant Public Prosecutor, preferably within a period of three (03) months from today.

Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

M. Satyanarayana Murthy, J

11th October, 2017
Bvv