

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.2160 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 & 401 of Cr.P.C challenging the order dated 19.06.2016 in CrI.M.P.No.112 of 2011 in C.C.No.127 of 2009 passed by the XIV Additional Chief Metropolitan Magistrate, Hyderabad, dismissing the application filed under Section 239 Cr.P.C declining to discharge A-1 to A-4 for various offences.

The petitioners/A-1 to A-4 in C.C.No.127 of 2009 filed the petition on the ground that the first petitioner/A-1 is no more a Manager and he is continuing as a Director. In support of his contention, he produced a document in Form 32 filed under Sections 303(2), 264(2) of the Companies Act, 1956, to prove that he is no more a Managing Director of the Company, while the second petitioner/A-4 is a company represented by A-1. As the Trial Court found *prima facie* material to proceed against both the petitioners, declined to discharge the petitioners, as the question whether the first petitioner is continuing as Managing Director and representing the company in the same capacity as Managing Director of the Company after submission of Form 32 is a question of fact to be decided during trial, but not at this stage.

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 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 I.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.

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 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.

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 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.

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

¹ AIR 2010 SC 663

case, the basis for claiming discharge of the petitioners is Form 32 submitted by the petitioners to the Registrar of Companies under Section 303(2) of the Companies Act. But the documents produced by the accused cannot be gone into to conclude that the prosecution is groundless at this stage and the Court is required to consider the report of the police and other documents produced in compliance of Section 173 Cr.P.C, but not any other document. If, that is the case, a document produced by the petitioners in Form No.32 cannot be looked into to arrive at a conclusion that the prosecution is groundless at this stage.

While deciding a petition filed under Section 238 and 239 of Cr.P.C. the Court has to look into the entire material on record including the evidence oral and documentary, taken together must justify framing of a charge for an offence as held by the Apex Court in “**R.S.Nayak v. A.R.Antulay**”².

Therefore, to proceed against these petitioners for framing charges, for any of the offences, the documents produced by the peittioenrs cannot be looked into for limited purpose of deciding an application under Section 239 Cr.P.C. If, that is excluded from consideration, there is absolutely nothing to uphold the contention of the petitioners that the first petitioner/A-1 was not the Managing Director as on the date of alleged offence representing the company as a Managing Director. Therefore, the dismissal of the application filed by the petitioners before the Trial Court under Section 239 Cr.P.C without considering the document i.e Form No.32 submitted to the Registrar of Companies under Section

² AIR 1986 SC 2045

303(2) of Companies Act is legal and in accordance with law. Therefore, I found no ground to interfere with the order dated 19.06.2016 in CrI.M.P.no.112 of 2011 in C.C.No.127 of 2009 passed by the XIV Additional Chief Metropolitan Magistrate, Hyderabad, by exercising power under Section 397 & 401 Cr.P.C. Consequently, the Criminal Revision Case is liable to be dismissed.

In the result, the Criminal Revision Case is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

Date:08.08.2017

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JUSTICE M. SATYANARAYANA MURTHY

