

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2622 of 2016

JUDGMENT :

The revision petitioner-A.5 among ten accused of Crime No.45 of 2012 of Pegadapalli Police Station of the occurrence dated 07.05.2012, registered originally for the offence punishable under Section 302 read with 34 IPC, from the police after investigation having filed the final report showing no accusation against A.6 to A.10 of the F.I.R., but for against A.1 to A.5 and from the cognizance taken by the learned Magistrate pursuant to and accepting the police final report and therefrom committed to the Court of Sessions invoking Section 209 Cr.P.C. and after the Sessions Case taken on file under Section 193 Cr.P.C. from the opening of the case by the Public Prosecutor under Section 226 Cr.P.C., from the discharge pleaded by the revision petitioner/A.5 under Section 227 Cr.P.C., from the charges framed by the learned Sessions Judge under Section 228 Cr.P.C. including by showing there is prima facie accusation against the revisioner/A.5 supra, maintained the revision impugning the said order of the learned Sessions Judge in CrI.M.P.No.10 of 2016 dated 09.05.2016.

2. Heard learned counsel for the revision petitioner-A.5 of the Sessions Case No.445 of 2015, against whom charge framed under Section 120-B read with 109 IPC for the offence punishable under Section 302 read with 34 IPC against the other accused A.1 to A.4, and also the learned Public Prosecutor, representing the State.

3. Perused the material on record including the impugned order of the lower Court.

4. The thrust of the submission of the learned counsel for the revision petitioner/A.5 supra is that there is no iota of material and what the statement of LWs.1 to 11, among which particularly LW.1- wife of the deceased, if at all reads pursuant to the F.I.R. of the privy of the revision petitioner/A.5 also by referring to the previous disputes and animosity between them, cannot be given credence as motive is a double edged weapon, even take it as circumstances and barring it, there is no iota of material including from the so-called confessional statements of A.1 to A.3 by reading the same that there is A.1 collected the cell phone of A.3 and telephoned immediately after the murder of the deceased by A.1 to A.4 of intimation about the killing to A.5 and he responded saying 'congratulations'. This cannot be taken into consideration as a conspiracy from privy or crime prior to the occurrence as a pre-concert to implicate for the grave offence under Section 120-B read with 302 and 34 IPC, but for that there is no abetment even to implicate under Section 109 IPC therefrom. The learned counsel drawn attention of the Court to the so-called relevant portions of the alleged confessional disclosures by A.1 to A.3 also in reference thereto. Contra to it, it is the submission of learned Public Prosecutor that a combine reading of the statement of witnesses, particularly LW.1, showing complicity of the revision petitioner/A.5 also, leave about A.6 to A.10 in the police final report not arrayed as

accused of insufficiency of material, not a ground to concession of A.5 charged by police, with reference to LW.1 statement and the confessions. Thereby, once trial Court framed the charge holding that there are no grounds to discharge, there is no illegality or impropriety or incorrectness to sit in the revision against it.

5. It is not the case of the revision petitioner/A.5 of immediately after receiving cell phone, called to intimate to the police as a duty bound public citizen of the occurrence of a grave crime under Section 302 IPC, which is with reference to clause 39 (v) Cr.P.C. The vicarious liability in a criminal case either under Section 134 IPC or 149 IPC or 120-B IPC or 107 IPC or 114 IPC among Sections 107 to 119 IPC depends upon the factual matrix to the extent the role of the accused to infer or culled out. Framing of a charge is different from proving of a case. For the charge from the prosecution material on appreciation, for which accused has no right even to bring any foreign material as per the settled expression of the Apex Court in **State of Orissa v. Debendra Nath Padhi**¹, as if the statements are true, if there is a prima facie accusation. So far as the offence under Section 120-B IPC concerned, there must be proof of the criminal conspiracy from the previous acts as past occurrence to the post event by themselves does not constitute within the scope of Section 10 of the Evidence Act. However, it is not the end all, if not to say even not the be all, for the reason, a reading of Section 107 I.P.C. it runs in three

¹ (2005) 1 SCC 568

limbs. The criminal conspiracy is the second limb of it and Section 109 I.P.C. to be read with Section 107 I.P.C. is more comprehensive to the scope of Section 120-B IPC as Section 120-B IPC is included only in clause 2 and 3 of Section 109 I.P.C. From that, whether there is any aiding or instigation, if not a conspiracy is also to be looked into, if not to suspend the charge under Section 120-B IPC atleast the charge under Section 109 IPC for the offence under Section 302 read with 34 IPC. Once such is the case, the cell phone conversation shows an intimation immediately after occurrence and saying 'congratulations' though itself is not a basis coupled with the statement of the de facto complainant-LW.1 right from the F.I.R. is also privy to the occurrence. It is hardly difficult for the Court to say the charges framed are illegal or unsustainable or non-application of mind.

6. Having regard to the above, for this Court while sitting in revision, there is nothing to interfere. However, none of the observations of the trial Court and this Court come in the way of conducting trial by allowing the additional material covered by Crl.M.P.No.10 of 2016, much less to prejudice the defence of the accused.

7. Accordingly, the revision is dismissed.

8. Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

19th January 2017
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