

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THURSDAY THE FIFTH DAY OF SEPTEMBER
TWO THOUSAND AND SEVENTEEN

P R E S E N T
HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE PETITION NO. 2403 OF 2017

Between:

Thakur Hanman Singh & Anr. ... Petitioners/A-1 & A-2

V/s.

The State of Telangana,
Through Station House Officer,
Peddapalli Police Station,
Karimnagar District,
Represented by the Public Prosecutor,
High Court of Judicature for the State of
Telangana & Andhra Pradesh,
Hyderabad. ... Respondent



Counsel for the Petitioners: Sri K.Venumadhav

Counsel for the Respondent: Public Prosecutor

The court made the following: [order follows]

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHYCRIMINAL REVISION CASE NO. 2403 OF 2017ORDER :

This Criminal Petition is filed by the petitioner under section 397 and 401 of Cr.P.C., questioning the propriety and legality of the order passed by the Assistant Sessions Judge, Peddapalli, Karimnagar district, in CrI.MP.No. 416 of 204 in S.C.No. 468 of 2014, dismissing the application filed under section 239 of Cr.P.C., for the discharge of the petitioners/A-1 and A-2 for the offences punishable under section 448 and 354 read with section 34 of I.P.C.

2. The defacto-complainant lodged a complaint with the police alleging that she purchased land to an extent of 242 sq.yards in survey No.527, bearing plot No. 38 under registered sale deed Nos.4693/2011, 4694/2011 and constructed a compound wall and a shed therein. On 05/3/2013 at about 05:00 p.m. Thakur Hanman Singh [A-1] and Thakur Balaji Singh [A-2] along with others trespassed into her shed, abused in filthy language, outraged her modesty and behaved in objectionable manner. When the incident was being continued, the same was

videographed by her daughter and Thakur Hanman Singh [A-1] abused in filthy language and requested the Police to register a case and investigate into. The said complaint was duly registered as Crime No.68/2013, for the offences punishable under section 448 and 354 of I.P.C. and issued F.I.R. After completion of investigation, the Police filed charge sheet against the petitioners [A-1 and A-2] for the offences punishable under section 448 and 354 of IPC.

3. During the investigation, the Police collected certificate from Gram Panchayath, Peddapalli, dated 12/06/2013, certifying that the land is in occupation of the sister of the defacto-complainant, who constructed the shed and it is in her possession and that she also filed O.S.No. 7 of 2012 and obtained interim order in I.A.No. 35 of 2012 restraining the defendant therein from interfering with her possession and enjoyment.

4. Taking advantage of this document, the present revision is filed contending that the petitioners did not trespass into the land and did not commit the offences punishable under section 448, 354 read with

section 34 of I.P.C., and requested the Court to discharge the petitioners for the offences punishable under section 448, 354 read with section 34 of IPC.

5. During the course of hearing, Sri K. Venumadhav, learned counsel appearing for the revision petitioners reiterated the above contention. However, learned counsel contended that when the Gram Panchayat itself certified about the possession of the property by Thakur Jamuna sister of the revision petitioners and she filed the suit and obtained interim injunction, the question of trespass into the property by the revision petitioners, which is allegedly in possession of the defacto-complainant does not arise and requested the court to discharge the revision petitioners by exercising the powers under section 239 Cr.P.C.

6. The present revision is filed under section 397 and 401 of Cr.P.C. The jurisdiction of this Court under section 397 and 401 of Cr.P.C. is limited and the High Court may exercise its powers only when

there is manifest perversity in the order and the findings recorded by the court below.

7. The scope of revision under Section 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 lack of 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 judiciously, 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.

8. Section 239 of Cr.P.C. deals with discharge of the accused and in any application filed 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 and record his reasons for so doing.

9. 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 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 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.

10. 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/s. STATE OF KERALA** ¹”.

11. The Investigation Officer recorded the statements of the witnesses shown in the charge sheet and collected a certificate from the Office of the Commissioner, Nagar Panchayath, Peddapalli, vide Lr.No.G-1/NP/PS/2013, dated 12/06/2013, which is the basis for discharge of the revision petitioners. It is the certificate issued by the Commissioner, Nagar Panchayath, Peddapalli, Karimnagar district. It is not known as to why came to know about the filing of the suit when the Commissioner is not a party to the suit in O.S.No. 7 of 2012 on the file of Junior Civil Judge, Peddapalli and the Commissioner also certified that the house bearing No. 1-1-92/4/2 is entered in the municipal records in the name of Sri Gariganti Rajaiah son of Rayamallu. He purchased the same through registered document No. 4554/2011, dated 12/9/2011. Thereafter, a part of the land was alienated to Smt.Kama Laxmi wife of Lachaiah, through registered document No. 4694/2011, dated 02/11/2011. The remaining part of the land was alienated to Smt.

¹ AIR 2010 SC 663

Chakram Saroja wife of Pochaiah, through registered document No. 4693/2011, dated 02/11/2011 but in that land Thakur Jamuna daughter of Narayana Singh is in occupation of the property as on the date of alleged complaint. But such certificate cannot be accepted as evidence unless house-tax demand extract is produced before the court and based on such certificate it is difficult to discharge the revision petitioners. Even if such document is considered along with other material, the statements recorded under section 161 [2] Cr.P.C., are important but not placed by the revision petitioners for perusal of this court. Therefore, based on the certificate issued by the Municipal Commissioner alone it is difficult for this Court to exercise the powers to discharge the revision petitioners.

Since the Court is required to verify the entire documents produced along with final report and on such verification the trial court if comes to conclusion that the prosecution is groundless or there is no prima facie material to constitute any offence against the revision petitioners, the trial court may discharge the accused. But the trial court recorded a finding that there is prima facie material against the revision petitioners.

Even the other documents filed along with final report under section 173 Cr.P.C., are not placed on record to reverse the findings recorded by the Court below. Therefore, based on the material placed on record, it is difficult for this Court to set aside the order passed by the court below to discharge the revision petitioners.

12. On close analysis of entire material placed on record, I find no ground to discharge these revision petitioners, interfering with the order, dated 28/07/2017 passed in Crl.MP.No. 416 of 2014 in SC.No. 468 of 2014 by the Assistant Sessions Judge, Peddapalli, Karimnagar district for the offences referred *supra* and consequently, the revision case is devoid of merits and is liable to be dismissed.

13. In the result, the revision case is dismissed at the admission stage.

14. As a sequel, miscellaneous petitions if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY.

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY



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