

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.648 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code') filed by the petitioners/ A3, A6 to A8 is directed against the orders, dated 20.05.2016, of the learned Judicial Magistrate of First Class, Dhone, Kurnool District, passed in C.F.R.No.2766 of 2016 in P.R.C.No.64 of 2016 arising from the case in Crime No.11 of 2013 of Bethamcherla Police Station, registered for the offences punishable under Sections 302, 120-B IPC read with Section 34 of the Indian Penal Code, 1860.

2. I have heard the submissions of *Ms. Shantisree Eipe*, learned counsel appearing for the petitioners/ accused (hereinafter, 'the petitioners') and of *Sri C.Sai Vishnu*, learned counsel appearing for the 2nd respondent-informant/ complainant. I have also heard the submissions of the learned Public Prosecutor representing the 1st respondent-State of AP. I have perused the material record.

3. The facts necessary for consideration may be stated, in brief, as follows:

Basing on the report/ first information furnished by LW1-Shaik Kotakonda Hussainbee, who is the mother of the deceased, the above crime was registered, on 14.01.2013, at 06.00 hours, for the above stated offences. The Investigating Officer having investigated into the crime initially filed a charge sheet/ final report, on 06.12.2014, before the learned Judicial Magistrate of First Class, Dhone. In the said final report, the Investigating Officer opined that under a conspiracy A1, A2, A4 & A5, A11 to A14 attacked and stabbed the deceased indiscriminately with knives and as a result, the deceased succumbed to the injuries and that the investigation further disclosed that A3, A6, A7, A8,

A9 & A10 neither participated in the offence nor abetted the commission of the offence and that, therefore, they are no way connected with the crime. He obtained permission from the Superintendent of Police, Kurnool, not to charge the said accused, i.e., A3, A6, A7, A8, A9 and A10, and laid a charge sheet/final report only against A1, A2, A4, A5, A11, A12, A13 and A14. However, while disposing of the protest petition filed by LW1/ first informant, the learned Magistrate recorded a finding that there is *prima facie* case against A3, A6, A7, A8, A9 and A10 also for the offences punishable under Sections 302 and 120-B IPC and allowed the protest petition by virtue of the orders impugned in this revision.

3.1 Before proceeding further, it is apt to note that after the above said orders of the learned Magistrate, the Investigating Officer filed a fresh charge sheet against all the accused, on 31.10.2016, by referring to the above said orders of the learned Magistrate. Aggrieved of the orders of the learned Magistrate, the petitioners are before this Court.

4. The case of the petitioners and the submissions made on their behalf, in brief, are as follows:

After thorough investigation, the Investigating Officer initially filed a final report opining that the present petitioners/A3, 6, 7 and 8 neither participated in the offence nor abetted the commission of the offence and that they are in no way connected with the offence and, therefore, he sought permission of his superior officer and filed a charge sheet against the remaining accused only. Therefore, the investigation carefully done revealed that these petitioners are innocent and that they have not committed any offences much less the offences alleged in the present crime. However, the learned Magistrate having taken on file the protest petition of the informant (LW1) erroneously allowed the same by ignoring the result of the detailed

investigation done by the Investigating Officer and by merely relying upon the self-serving statements of the informant/LW1, who is the mother of the deceased, and of the LWs 2 and 3, who are related to the deceased and LW1. There is no material showing the complicity of the petitioners in the crime and even as per the opinion of the Investigating Officer, who conducted detailed investigation, there are no grounds to charge the present petitioners/ accused. Thus, without any material showing a semblance of case much less a *prima facie* case or strong case, the learned Magistrate erroneously passed the impugned order. Eleven witnesses were examined and on consideration of the entire gamut of investigation, the Investigating Officer came to a considered opinion that these petitioners are in no way concerned with the crime. Even if the statements of LWs 1 to 3 are considered, they only make it manifest that the deceased used to give complaints against the illegal mining operations going on in the village to the Superintendent of Police and District Collector. But the said statements do not state anything incriminating against the present petitioners/ accused. The filing of the 2nd charge sheet is unknown to law. Hence, the order impugned may be set aside by directing the learned Magistrate to take up the committal proceedings against A1, A2, A4, A5 and A11 to A14 as per the contentions and opinion of the Investigating Officer in the charge sheet initially filed on 06.12.2014 and by allowing the revision petition and setting aside the orders impugned in the revision. When there is no iota of evidence or material to proceed against the present petitioners/ accused, subjecting them to criminal proceedings and criminal prosecution would be an abuse of process of law. Unless the relief sought for is granted, the petitioners suffer serious and irreparable loss.

5. Per contra, the learned Public Prosecutor and the learned counsel representing the 2nd respondent/ informant, having drawn the attention of this Court to the statements of LWs 1 to 3 and the proceedings held pursuant to the

protest petition filed by LW1/ informant, contended that the statements of LWs 1 to 3 reflect the complicity of the present petitioners/ accused also, and that in view of the strong case appearing against the present petitioners/ accused also, the learned Magistrate is justified in passing the impugned orders and in allowing the protest petition and in arraigning the petitioners also as accused in the case. They further submitted that there is no direction in the orders impugned to the Investigating Officer to file a fresh charge sheet or final report and that, however, the Investigating Officer filed a fresh charge sheet pursuant to the orders of the learned Magistrate. Their further submissions are as follows: 'Even assuming for a moment that there are directions to the Investigating Officer to do so, the 2nd charge sheet can always be ignored and eschewed from consideration, and, the learned Magistrate can proceed on the basis of the initial charge sheet as well as the orders passed on the protest petition and the orders taking cognizance of the offences against all the accused. Hence, the PRC registered can be duly disposed of by the learned Magistrate by passing appropriate committal orders as per law and the procedure established by law. The mere mistake in filing a second charge sheet, subsequent to the orders impugned, does not in any way affect the impugned orders, which are otherwise valid and sustainable under facts and in law. Hence, the petition may be dismissed confirming the orders impugned and the learned Magistrate may be directed to proceed with the PRC in accordance with the law and procedure.'

6. I have given earnest consideration to the facts and the submissions. I have carefully gone through the entire material record including the first information/ report lodged with the police by LW1-the mother of the deceased, the statements of LWs 1 to 3 recorded during the course of investigation, the contents of the protest petition in C.F.R.No.2766 of 2016 and the orders passed

by the learned Magistrate, which are impugned in this revision and also the grounds of revision and other material papers on record.

7. The following are the facts that emerge on a careful consideration of the material contents of the report lodged by the first informant/ LW1 and the case facts borne out by the charge sheet & the supporting documents placed on record: 'The husband of LW1 died five years prior to her report. She is blessed with two sons and one daughter. Her second son Mastan Vali, aged 34 years, is a student of B.Tech. After the death of his father, he stopped pursuing B.Tech. Since last two years, he was looking after the village related issues. He has given information to higher authorities about the illegal mining operations taking place in Bethamcherla Mandal. He was successful in stopping the illegal mining operations. The persons, who are involved in illegal mining operations, therefore, became inimical towards him. The said persons also filed a case against him. Therefore, he has taken one room on rent near Sanjeeva Nagar. On 30.01.2013 night at 9.30 AM, she received a call from a Journalist of Madhar Electronic Media and was informed that at 8.30 near Bethamcherla, i.e., on the way to Hanuman Nagar road footpath, her son was stabbed with an intention to kill him and that he was left at that place. Thereafter, the informant's/ LW1's elder son, daughter and her relatives went to the Government Hospital, Bethamcherla. When LW1 saw her son in the hospital, she found that he was lying unconscious with injuries on his body, that is, with injuries on neck, stomach and other parts of the body. He was shifted to Government Hospital, Kurnool, by her relatives. He was declared dead at 10.30 PM on 13.01.2013. Only on account of her son giving complaints to the Superintendent of Police and the District Collector with regard to the illegal mining operations taking place in the village, Y.Paghunath Reddy, Y.Sreenivasa Reddy, D. Srinivas Reddy, G.K.Venkata Swamy, G.Mulla, D.Timma Reddy, Baga Venkata Krishna Reddy, Y.Mohan Reddy, B.Ramachandrudu and

Y. Ediganaipanna and some others conspired and planned to kill her son and that they either killed or got killed her son through their men. In her statement recorded during the course of investigation, while reiterating the contents of her first information lodged with the police, she stated that the above named persons pre-planned to kill her son and killed her son with the help of their men. LWs 2 and 3 corroborated her version. When final report is filed only against A1, A2, A4, A5 and A11 to A14, excluding the petitioners/ accused herein, she filed a protest petition reiterating her case and *inter alia* stating that under the influence of political leaders, the Investigating Officer filed the first final report without examining the relevant material witnesses by falsely stating that the present petitioners/ A3, A6 to A8, neither participated nor abetted the commission of the offence though they are directly connected to the offence. The earliest report itself reflects a *prima facie* case besides motive for the offence and also the names of all the accused including the present petitioners. The averments of the entire case record reflect that there was a conspiracy and that the murder of the deceased is a result of the conspiracy.'

8. Now, it is profitable to refer to the legal position.

Section 239 of the Code postulates as under: -

'When accused shall be discharged: If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.'

Section 227 of the Code reads as under:

'Discharge: - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge

considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.'

Thus, 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 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 Cr.P.C. 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, 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.

8.1 Further, in *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others*¹, 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 therefrom 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."

¹ 1990 Cri L.J. 1869

8.2 In *Union of India v. Prafulla Kumar Samal and another*², the Supreme Court held as follows:

“(1) That 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.

(2) 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.

(3) 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.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 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.”

9. Keeping in view the scope of interference and the ambit of jurisdiction and also the precedential guidance in the decision in *State of Rajasthan v. Fatehkaran Mehdu*³, this Court only focused on the material available on record to form an opinion whether there is a *prima facie* case or a strong suspicion that the petitioners/ accused have committed the offences, which if

² (1979) 3 Supreme Court Cases 4

³ 2017 (1) ALD (Crl.) 842 (SC)

put to trial could prove their guilt. A careful consideration, to the extent permissible, of the entire material on record makes it obvious that there is sufficient material and a *prima facie* case and a strong suspicion to eventually take on file a PRC against the petitioners/ accused also and proceed against them with along other accused as per law and procedure. Viewed thus, this Court finds that there is no merit in the revision case filed by the petitioners/ accused and that the learned Magistrate is justified in passing the orders impugned in the revision and the revision is devoid of merit.

9.1 Before parting it is necessary to also deal with the contention that a second charge sheet was filed by the Investigating Officer pursuant to the orders of the learned Magistrate allowing the protest petition filed by the LW1- the mother of the deceased and that filing of the second charge sheet is unknown to law and that the learned Magistrate cannot direct the police to submit a second charge sheet, because the submission of the report depends entirely upon the opinion formed by the police and not on the opinion of the Magistrate. It trite to note that if the Magistrate disagrees with the opinion of the police officer mentioned in the final report/ charge sheet, he can take cognizance of the offence/ s as per the provision under Section 190(1)(a) of (c) of the Code; but, however, he cannot compel the police to form a particular opinion on the investigation done and submit a report according to such an opinion. Hence, the learned counsel for the petitioner/ accused contends that, therefore, the 2nd charge sheet filed by the police is contrary to the legal position laid down in *M.C.Mehta v. Union of India*⁴; and, that the act of filing of the 2nd charge sheet pursuant to the impugned orders of the learned Magistrate is illegal. It is to be noted that the Investigating Officer ought not to have filed the 2nd charge sheet, though pursuant to the orders of the learned Magistrate, which are impugned in this revision, it is necessary to proceed

⁴ W.P (Civil) 13381 of 1984, dated 27.11.2006 (Supreme Court)

against all the accused including petitioners/ accused herein who are omitted from the array of accused in the final report/ charge sheet. Indeed there is no necessity under facts and in law for filing second charge sheet and it is always open to the learned Magistrate to take cognizance of the offence/ s against all the accused concerned against whom there is sufficient material to proceed against, despite the opinion, if any, expressed by the Investigating Officer in the final report/ charge sheet. Therefore, in the considered view of this Court, mere filing of the 2nd charge sheet, though erroneous, does not affect the orders and the powers of the Magistrate and the said act does not undermine the impugned orders, which were earlier passed by the learned Magistrate, expressing an opinion that there is a *prima facie* case against the present petitioners/ accused also. At best, the second charge sheet can be eschewed from consideration and the learned Magistrate can as well consider the first final report/ charge sheet and other material on record including the order passed in the protest petition and can register a PRC and pass committal orders as envisaged under Section 209 of the Code. It is to be noted that when the case is investigated on a police report and when the accused are brought before the Magistrate and when it appears to the Magistrate that the offence/ s is/ are triable exclusively by the Court of Session, he shall commit the case to the Court of Session.

9.2 Coming to the contention that the order impugned is a cryptic order bereft of reasons, it is necessary to refer to the impugned order, which verbatim reads as follows:

“Perused protest petition, sworn statement, report given by the de facto complainant and 161 Cr.P.C statements of LW1 to LW3. There is prima facie case against A3, A6, A7, A8, A9 and A10 also for the offences u/S 302, 120(B) IPC. Accordingly, protest petition is allowed.”

The aforesaid order, which is impugned in this revision, is not a detailed/speaking order. The learned Magistrate ought to have passed a better order in the facts and circumstances of the case. However, the above said order reflects that the learned Magistrate perused the protest petition, sworn statements, report given by the informant-LW1, who is the mother of the deceased and 161 Cr.P.C statements of LWs 1 to 13 before arriving at an opinion that there is a *prima facie* case against the present petitioners/ accused also and before allowing the protest petition filed by the said informant-LW1. In view of the peculiar facts of the case, on a careful examination of the entire record and on giving thoughtful consideration to the facts and submissions, this Court is satisfied that merely on the ground that the impugned order is not a detailed speaking order it need not be set aside and the said order can be sustained for all the reasons aforestated.

10. Viewed thus, this Court finds that there is no merit in the revision and that the revision is liable to be dismissed.

11. Accordingly, the Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

23rd August, 2017
RAR

M. SEETHARAMA MURTI, J