THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.712 of 2016

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ("the Code" for brevity) is filed by the petitioner/A3 assailing the order, dated 18.12.2015, of the learned Special Judge for SPE and ACB Cases-cum-II Additional District & Sessions Judge, Nellore, passed in Crl.M.P.No.14 of 2015 in C.C.No.5 of 2014 insofar as it related to the refusal of the request of the present petitioner/A3 for his discharge from the above case.

2. I have heard the submissions of *Sri T.Sreedhar,* learned counsel for the petitioner/A3, and of *Sri Udaya Bhaskara Rao*, learned Standing Counsel–cum-Special Public Prosecutor for ACB representing the respondent/complainant. I have perused the material record.

3. The facts of the prosecution case, which are necessary to be stated as a prelude to this order, in brief, are as follows:-

On credible information, a surprise check conducted in Karimnagar Town, on 13.12.2011, by intercepting a Tata Vista vehicle belonging to the officials of Prohibition and Excise Department and an amount of Rs.3,62,640/- was recovered and seized under a cover of panchanama by the ACB officials in the presence of mediators. As the amount was suspected to be the amount collected towards bribe for favouring the owners of the wine shops, a case in Crime No.15/RCO-KNR/2011 was registered, on 14.12.2011, under Section 13(1)(a)(d) of Prevention of Corruption Act, 1988, and under Section 34 & 120-B of IPC and under Sections 41(1)(a) and Section 102 of Cr.P.C., against the prohibition and Excise Officials. During the course of investigation, it came to light that the money was collected illegally from some owners of Wine shops of Karimnagar District, who formed themselves as a syndicate for favouring the wine shop licencees, who are in the syndicate, for not taking any action mandated under the AP Excise Act, for the commission of violations of Excise laws, Rules and license conditions etcetera such as sale of liquor over and above the maximum retail price, selling of cheap liquor, operation of illegal belt shops, sale of liquor beyond the stipulated business hours, sale of loose liquor for consumption at the shops without licences or permissions etcetera. The investigation disclosed that wine shop syndicate leaders have developed illegal nexus with the officials of Excise, Police and others. In order to make illegal profits in liquor business and win over the law enforcing agencies like Excise & Police officials and others so that they would overlook various omissions and commissions, violations of licence conditions etcetera, committed by the wine shop owners/members of the syndicate. During the course of investigation, searches were conducted, on 16.12.2011, on the house of one M.Lakshmi Rajyam, Ramashastri Streeet, Vasavi Nagar, Addanki and nine registers and data were seized in the presence of mediators under the cover of mediators report. The same contained the details of sales and expenditures, DDs drawn in favour of APBCL Limited by the syndicate office, monthly mamools paid to the Government officials by the syndicate and other entries of the business for the period from 01.07.2010 to 15.12.2011 of the syndicate. The said records disclosed that nine wine shops in Addanki town formed themselves into an informal association/syndicate and that A1 was the leader of the syndicate and that A2 was the accountant of the said syndicate. The records seized also disclosed the payments made to Government officials and others by the said syndicate as mamools and that Rs.21,23,936/- was paid as mamools to the excise officials and Rs.3,53,500/- was paid as mamools to the Police officials. On that a case in Crime No.4/RCO-NPK/2012 was registered against A1 and others for the offences under Sections 7, 8, 12, 13(2) r/w 13(1)(a)(d) of PC Act, 1988 and Section 120B, 34, 109 of IPC and was investigated into and a charge sheet was filed for the aforesaid offences against the said accused including the petitioner herein. The cognizance of the offences was taken and a calendar case in C.C.No.5 of 2014 was taken on file by the learned Special Judge for SPE & ACB Cases, Nellore.

4. Petitioner/A3 and two others filed the above said petition viz., Crl.M.P.No.14 of 2015 for their discharge. As already noted supra, on merits and by the order impugned in this Criminal Revision Case, the Court below dismissed the petition of the petitioner/3rd accused. Therefore, the petitioner-A3 filed this revision case.

5. The case of the petitioner/A3, in brief, is as follows:

"The petitioner/A3 is not the leader of the alleged liquor syndicate and there is no such alleged syndicate. The 2nd accused is not the Accountant of the alleged Syndicate. The respondent registered the case without any basis in an omnibus manner basing on the alleged case registered in Karimnagar, in Crime No.15/RCO-KNR/2011 on which basis, according to the respondent, the alleged raids were conducted including the alleged raid and searches in this case. The formation of the alleged syndicate by nine owners of the wine shops of Addanki town is only a hypothetical assumption of the respondent. Such assumption was made because of the pressure of the department to register cases in the similar manner as was done in Karimnagar. The case was registered for statistical purpose and to show the existence of the ACB Department. There is no *prima facie* material to prove the allegation of the formation of the alleged syndicate and to proceed against the petitioner/A3 for the alleged offences as averred in the charge sheet. All the alleged documents said to have been seized from the alleged syndicate are not having any nexus with the alleged case and they are brought into existence to implicate the petitioner in this case. In the charge sheet it is alleged that the specimen writings of A2-second petitioner were obtained to compare the same with the writings in the allegedly seized records. But, there is no mention in the charge sheet as to whether the same were sent to any expert for scientific examination and obtaining a report to prove the above aspect. The petitioner/A3 submits that this case as per the charge sheet the alleged irregularities took place during the from 01.07.2010 to 15.12.2011 and it was alleged that the syndicate was in active connivance with A3. But, the petitioner/A3 worked in the area of Addanki from 23.12.2009 to 21.02.2011. Therefore, the above period from 23.12.2009 to 01.07.2010 and the period from 02.02.2011 to 15.12.2011 is not concerned with the petitioner/A3. The further allegation as per the charge sheet is that the petitioner and other officials in active connivance with the syndicate leaders and other members overlooked various omissions, commissions and violation of various conditions of license by the wine shop owners and syndicate members. The period of service of the petitioner as alleged is from 01.07.2010 to 15.12.2011. However, the actual period is from 01.07.2010 to 21.02.2011, i.e., only a period of 7 months. During this period the petitioner/A3 detected/booked 131 cases against the alleged syndicate wine shops and other shops totalling to 32 shops in 6 Mandals for the irregularities. Further, during the entire period of his service from 23.12.2009 to 21.02.2011 at Addanki the petitioner/A3 detected several cases against the alleged syndicate wine shops and other shops totalling to 32 shops in 6 Mandals for the irregularities. The petitioner/A3 submits that the falsity in the case of the respondent is evident from the various aspects in the statement recorded. In the statement of LW 73-G.Venakta Rao, the then P & E Head Constable, Addanki, recorded under Section 161 CrPC, it is alleged that as per the instructions of the petitioner/A3 he collected mamools from the syndicate leaders in the months of 11/2010, 1/2011, 3/2011 and 10/2011. But the petitioner/A3 was not the P&E Inspector, Addanki from 02.02.2011. So collecting mamools as per his instructions does not arise. The respondent is relying on the alleged confessional statement of A2 to prove the allegation with regard to giving of mamools by A1 and A2 to A3 and others and he did not make such confession. No such confession was made. The allegations made on such alleged confessional statements are untenable in the eye of law. This petitioner and others were charged by the respondent on the basis of baseless allegations and a charge sheet was filed without collecting even *prima facie* material and all the averments in the charge sheet are invented and the supporting evidence is fabricated only to implicate all the accused in the crime and the case.

5. Per contra, the case of the respondent/complainant as per the contents of the counter and the submissions made, in brief, is as follows: All the allegations in the petition of the petitioner/A3 are false. The same are denied. The ACB officials conducted searches in the premises of the liquor syndicate on 16.12.2011 i.e., in the premises of M.Lakshmi Rajyam, Vasavi Nagar, Addanki of Prakasam District and seized number of documents during the search and the same reveal that the licensed owners of eleven wine shops formed themselves into association and the first petitioner is having interest in the said syndicate and he was designated as the leader of the same. The second petitioner was employed by the syndicate as a cashier for maintaining the accounts of all transactions relating to the syndicate. All the documents were seized during the searches. The formation of syndicate is with an ill motive and intention to carry on the liquor business in an illegal manner by violating the provisions of the AP Excise Act and Rules such as sale of liquor over and above MRP rates, opening of shops beyond the stipulated hours, operation of belt shops, loose sales at the shops, counters sale of non duty paid liaison and duplicate liquor etcetera. The investigation also revealed that the members will pool their amounts in the syndicate with an intention to arrange payment of illegal money to excise people and other officials. The names of the persons who took the mamools were also contained in the

account books. The entries in the book will clearly reveal that the public servants like AO 3 and other officials have received mamools from July, 2010 to December, 2011. The scrutiny report was prepared by the ACB officials. It proves the excise officials were received Rs.21,23, 936/- towards mamools and bribe. On securing the records by the investigating agency, the misdeeds committed by the accused officers came to light. The investigation and the documentary evidence available established that AO1 is acting as a liquor syndicate and AO2 is working as an accountant in the liquor syndicate of AO1 and that AO2 has got knowledge that he is acting at the behest of AO1 and that he manipulated the account books and also mentioned the fact of providing mamools and bribes to the excise officials including AO3. The department has secured the ownership details pertaining to the nine wine shops which has become a syndicate. The specimen signatures were obtained from the second petitioner and they were sent to FSL, Hyderabad for the purpose of comparison. The FSL authorities returned the same with a request to obtain latest specimen signatures of AO2 for comparison. The petitioner No.3, who worked as Inspector of Police, Prohibition & Excise, Addanki, had collected mamools from the syndicate and misused his official power and accommodated the syndicate to transact their businesses according to their whims and fancies. The booking of cases against the wine shop owners while working as CI by AO 3 does not preclude him from misusing his powers and abusing his official position. The statement by a witness under Section 161 Cr.P.C. is not a substantiate evidence and he will be examined as a witness for the prosecution, if necessary. The truth or otherwise of the prosecution case has to be appreciated after giving opportunity to both side to lead evidence. At the time of framing charges, the Court has to only look into the material produced by the prosecution to just know as to whether a *prima facie case* is made out or not, but the evidence produced need not be examined in a meticulous manner. The prosecution has got ample evidence to establish that the petitioner herein/accused no.3 misused his official position. The petitioner received bribes from the liquor syndicate and also advanced finances to the liquor syndicate, as is evident from the made-up file and registers seized by the investigating agency. After proper investigation only, the charge-sheet was laid. The petitioner has chosen a short method to escape from criminal liability by filing the present petition to discharge. The grounds mentioned in the petition are untenable and there are no merits in the petition. The petition is liable to be dismissed.

6. At the hearing, the learned counsel for the petitioner/accused no.3, while denying his complicity of the petitioner/A3 and the allegations against the said accused in entirety, would submit as follows:-

The allegations in the charge sheet and the entire material on record even if taken on their face value do not disclose the existence of the ingredients constituting the offences alleged and that the allegations in entirety do not disclose even a prima facie case for framing charges; and, that the proposed charges alleged are groundless. The petitioner is erroneously charge sheeted for the alleged offences. The order of the Court below is unsustainable. The Special Court failed to appreciate the facts correctly and the legal position obtaining in proper perspective. The Court below failed to take note that even the consideration of the entire material before it does not disclose a prima facie case against the petitioner/A3. The Court below ought to have seen that there is no evidence prima facie showing the complicity of the petitioner/A3 and even after the case is accepted on its face value, there is no possibility of establishing the guilt of the petitioner/A3 for the alleged offences. There is no basis to proceed against the petitioner/A3. The Court below misread the facts and misinterpreted the legal aspects. The Court below was not correct in drawing presumptions. The reasoning in the order of the Court below is erroneous. No precise particulars like the bribes given, the details with dates of the bribes given and the amounts of bribes given are conspicuously absent in the prosecution evidence and material produced before the Court. There is only a vague and dubious reference of payment of alleged mamools to the Excise Officials and Police Officers etcetera, and on such baseless allegations, the petitioner is falsely implicated in the crime.

7. The learned Public Prosecutor while supporting the orders of the Court below reiterated the case of the prosecution which is stated supra. His submissions are already adverted to while stating the case of the respondent herein.

8. Before proceeding further, it is profitable to refer to the undisputed legal position obtaining. 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 penal 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 CrPC. 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 or at the time of considering the request made by the accused for quashing the proceedings, 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. Further, in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others [1990 Cri L.J. 1869], 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 there from 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." In Union of India v. Prafulla Kumar Samal and another [1979CriLJ154], the Supreme Court held as follows: "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. 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. 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. In exercising his jurisdiction under Section 227 the Judge which under the present Code is a senior and experienced Judge 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. The learned counsel for the petitioner relied upon the following undisputed propositions in the following decisions: (i) Dilawar Balu Kurane vs. State of Maharashtra[1] the Supreme Court held as follows: "In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weight the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; 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; by and large 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 justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial [See Union of India v. Prafulla Kumar Samal and Anr.1979CriLJ154]." In Central Bureau of Investigation v. K. Narayana Rao[2] it was held as follows: "if the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defendant evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial." B.S. Neelakanta v. State of A.P.[3] is also relied upon in support of the same proposition, which is stated supra. In this cited case, this Court referred to the proposition of law stated

[1] (2002) 2 SCC 135
[2] (2012) 9 SCC 512
[3] 2014(1) ALD (Crl) 611 (AP)

in CBI v. K. Narayana Rao (supra). In State and Ors. vs. Bhupinder Singh Bisht and Ors.[4], the High Court of Delhi on consideration of the authorities about the scope of Section 227 and 228 of the Code, observed that the following principles emerge: (i) The Judge while considering the question of framing the charges Under Section 227 of the Code of Criminal Procedure 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. The test to determine prima facie case would depend upon the facts of each case. (ii) 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. (iii) The 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 etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. (iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. (vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as

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[4] 220(2015)DLT266

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. (vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

10. I have carefully gone through the material record. The case of the prosecution is already stated in paragraph no.3 of this order. The case of the prosecution as is evident from the material brought on record, when examined in the light of the legal position adverted to supra, makes out a *prima facie* case as well as a sufficient case for proceeding against the petitioner/A3. The allegations in the charge sheet and the entire material on record when taken on their face value do disclose the existence of the ingredients constituting the offences alleged, in the considered view of this Court. Hence, the contention of the petitioner/A3 that the allegations in entirety do not disclose even a *prima facie* case for framing charges and that the proposed charges alleged are groundless, is a contention which needs no countenance. Further, there is no need at this stage to form an opinion that petitioner/A3 is certainly guilty of the offences alleged against him. This Court examined the issue involved, keeping in view the limited scope of interference and the restricted ambit of jurisdiction and also the afore-sated settled legal position and guidance in the decision in State of Rajasthan v. Fatehkaran Mehdu[5]. On consideration of the broad probabilities of the case, the total effect of evidence including the documents produced before the Court and in the absence of any basic infirmities in the case warranting acceptance of the request of the petitioner/A3 and also in view of the limited scope of jurisdiction, which vests with the Court, it is noticeable that this is a case where a final adjudication of the proposed charges against the

[5] 2017 (1) ALD (Crl) 842 (SC)

petitioner/A3 has to be made only after oral and documentary evidence is adduced in a full-fledged trial.

11. Before parting it is apt to note that the learned counsel for petitioner relied upon the decision in L.K. Advani vs. Central Bureau of Investigation[6]. In the said decision, the High Court of Delhi observed that the entries in the books of account by themselves are not sufficient enough to fasten the liability on the head of a person against whom they are produced and that they are not a substantive piece of evidence and that the said entries in the books of account can be used only by way of corroboration to other pieces of evidence which is led by a party. Placing reliance on the above observations it is contended by the learned counsel for the petitioner/A3 that based on entries in made up file or a register or an account book of a third party no liability can be fastened against the petitioners/accused herein and hence, the alleged entries in the books of account and registers by themselves are of no avail to the prosecution. In reply, the learned special Public Prosecutor contended that in the case on hand the seized books of accounts or registers are regularly maintained and that the that the entries therein are regularly made in the course of businesses of the group of shops/syndicate shops and that books of accounts are not the only pieces of evidences and that there are other evidences collected during searches and seizures conducted, besides evidences like seizures of made up file, registers and cash, and confessional statements of the accused and statements of the witnesses examined during the course of investigation besides information secured from other departments etcetera and that, therefore, the observation in the decision do not advance the case of the petitioner/accused. Be it noted that Section 10 of the Evidence Act reads as under:- "Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of

[6] 66(1997)DLT618

such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it." Be it also noted that Section 10 of the Evidence Act is an exception to the rule of hearsay as is Section 21 of the Evidence Act. The said section is based on the principle of agency. However, to make a piece of evidence admissible under the said section it must be prima facie shown that: (a) there was a conspiracy; (b) if the conspiracy is shown to be in existence in that, eventuality anything said, done or written by any of the persons who are members of the said conspiracy would be admissible against any one of the co-conspirators; (c) the said thing done or written by any of such co-conspirators must be in reference to their common intention in order to be made admissible in evidence; and (d) the said piece of evidence would also be relevant for the said purpose against any other co- conspirator who entered the conspiracy irrespective of the fact whether the said thing was done or written before he entered the conspiracy or after he left it. Further, if this Court is to consider the contentions of the petitioner/A3, in detail, at this stage, this Court would be clutching at the jurisdiction of the Special Court. It is also apt to note infra, the following passage from the decision in Suresh Chandra Bahri v. State of Bihar with Gurbachan Singh [1995 (Supp) 1 SCC 80].

> 'In other words, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to sub-section (2) of Section 120-A of the IPC, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions in such a situation do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfilment of the object of

> conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established the act would fall within the trapping of the provisions contained in Section 120-B since from its very nature a conspiracy must be conceived and hatched in complete secrecy, because otherwise the whole purpose may be frustrated and it is common experience and goes without saying that only in very rare cases one may come across direct evidence of a criminal conspiracy to commit any crime and in most of the cases it is only the circumstantial evidence which is available from which an inference giving rise to the conclusion of an agreement between two or more persons to commit an offence may be legitimately drawn.'

Therefore, it is premature for this Court to record any finding on the existence of or otherwise of criminal conspiracy and connivance amongst the accused including the petitioner/A3 who is also said to be a party to such conspiracy and connivance and suffice it to say that the present case is not a fit case to invoke the jurisdiction at this stage and discharge the petitioner-accused herein.

12. On the above analysis and for the reasons assigned supra, this Court finds that the request of the petitioner/A3 to discharge him from the calendar case does not merit consideration and that the Special Court is justified in dismissing the petition of the petitioner/A3 and that this revision case is liable for dismissal. However, it is needless to state that this Court did not express any opinion on the merits of the matter and it is always open to the petitioner/A3 to raise before the trial Court all the defences, which the facts and law permit.

13. In the result, the Criminal Revision Case is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

21.09.2017
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