THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE Nos.966 & 967 of 2016

COMMON ORDER:

These two criminal revision cases arise out of two separate orders, dated 08.10.2015, passed respectively in Crl.MP.No.171 of 2014 in CC.No.319 of 2010 and Crl.MP.No.172 of 2014 in C.C.No.365 of 2010 on the file of the Court of the learned Judicial Magistrate of First Class, Special Mobile Court, Sangareddy.

2. In the afore-said two Calendar Cases the petitioner herein is Accused no.2. The genesis for the case of the informant in one crime & that of the complainant in the other crime is one. Further, the facts stated in the charge sheets of the two cases are one, the same being related to one transaction. The case of the petitioner/2nd accused in support of his requests in both the present revisions is, therefore, one and the same. As the genesis is one and the facts and contentions are identical and as the issues that arise for consideration are alike and are inter related, both the revision cases are heard together and are being disposed of by this common order.

3. I have heard the submissions of *Sri T. Nagarjuna Reddy,* learned counsel representing *Sri Palle Sri Harinath,* learned counsel appearing for the petitioner-A2 in both the revisions; of *Sri Venkat Raghu Ramulu*, learned counsel representing *Sri Nambi Krishna*, learned counsel for the 2nd respondent in both the revisions; and of the learned Public Prosecutor (TG) representing the State. I have perused the material record.

4. The parties shall hereinafter be referred to as the petitioner-A2, informant/Sham Kumar and complainant/Sudhir Reddy for convenience and clarity.

5. The case of the petitioner-A2 in support of his request for discharge, in brief, is as follows:

The petitioner is the 2nd accused in both the aforementioned Calendar Cases. On filing of the charge sheets after conducting investigations, the learned Magistrate had taken the two Calendar cases on file. The content of the report lodged with the police by the first informant and the content of the complaint of the complainant referred by the learned Magistrate to the police, the contents of the two FIRs registered by the police and the final reports filed in both the cases *prima facie* show no allegations much less substantial allegations against this petitioner-A2 and despite absence of evidence much less required standard of evidence, the trial Court is proceeding with the trial of the said cases spending its valuable time on false and vexatious prosecutions. The petitioner-A2 is a Government employee and worked at the relevant time in the Survey and Land Records Office at Sangareddy. He is the sole bread earner of his family consisting of his father, wife and two minor children. He is no way concerned with the alleged crime and its elements. The allegations with regard to fabrication of documents and cheating alleged in the report and the complaint are false. The informant and the complainant are not known to this petitioner-A2 at any time. No allegations are made in the report and the complaint against this petitioner-A2. No material much less incriminating material was collected and no money was recovered from this petitioner-A2 during the course of investigation. There is nothing on record to connect him with the other accused or any other person. He is arraigned as an accused while filing the final reports only on assumptions and for the reasons best known to the investigating authority. However, there is no material against this petitioner-A2. A plain perusal of the material record leads to a conclusion that no case is made out against this petitioner-A2. In the absence of any case much less a *prima facie* case and a strong *prima facie* case the prosecution of this petitioner-A2 would lead to miscarriage of justice and deprivation of rights of this petitioner guaranteed under the Constitution of India. Hence, he may be discharged from the cases.

6. The case of Sham Kumar/Informant is this:

He is the absolute owner, pattadar and exclusive possessor of agricultural land admeasuring Ac.6.18 guntas situate in Sy.No.769 of Rudraram village. On 02.07.2009, while he was passing through the road to Sangareddy, he saw one person taking some measurements on the aforesaid land. On enquiry he told that he is P. Sudheer Reddy and that he entered into some agreement of sale with A3 through A1 for the purchase of the aforesaid land. Thereafter, on verification with the Sub-Registrar's office, Sangareddy, he came to know about the documents alleged to have been executed by one person claiming/styling himself to be Sham Kumar, without his knowledge and behind his back. Immediately he obtained the certified copies of the said documents and found that one person styling himself as Sham Kumar has executed those documents in favour of A3-Mahender Reddy and that in turn A3 executed registered sale deed, on 30.06.2009, in favour of his own self in order to grab the land of the informant illegally to have wrongful gain. Therefore, he lodged a report with the Station House officer, Patancheru.

7. The case of Sudhir Reddy/complainant, in brief, is this:

One P. Satyender, introduced Yakub-A6 & Khadir-A7, who are real estate agents. They in turn introduced Shashi Kumar-A1, an Advocate. During their meeting all the said persons represented that Sham Kumar, a client of A1, who in-fact is Puli Vijay-A4, is having a GPA in respect of the land in an extent of Ac.6.18 guntas in Sy.No.769 of Rudraram village. On that the complainant intended to purchase a portion of the above said land. Then A4 and A3 were also called. All the accused persons met the complainant at his place. A4 was introduced as Sham Kumar, GPA holder *vide* registered document no.2644/09, dated 19.03.2009, and A3 was introduced as original owner. Original documents namely GPA, pattadar pass book and sale deed were produced by them and photostat copies of the same were given to Sudhir Reddy/complainant. Basing on the said documents, Sudhir Reddy/complainant entered into an agreement of sale, dated 20.05.2009, and paid an amount of Rs.40,00,000/- on A4 undertaking to repay the amount in the event of disputes in respect of the said land. A1 to A3 and A5 also reiterated the said statement of A4. The original documents were promised to be handed over at the time of registration. At the instance of the accused, Sudhir Reddy/complainant again paid Rs.45,00,000/-, on 24.06.2009, and at that time, an agreement of sale, dated 24.06.2009, was entered into pursuant to the earlier agreement of sale. Paper notification by way of public notice was given in local Telugu editions of Eenadu and Andhra Jyothi daily newspapers, dated 29.05.2009. A Board was erected on the premises and Sudhir Reddy/complainant started levelling of the ground. He received a phone call, on 02.07.2009, from the above said real Sham Kumar/informant in the other case stating that the land was his land and that he has not entered into any agreement of sale-cum-GPA with anyone nor sold the property to anyone. Then Sudhir Reddy/complainant disclosed to the said Sham Kumar/informant that he purchased the land from A4 & A5 who are introduced by A1 to A3. He also showed his documents to Sham Kumar/informant. On coming to know the whole episode, Sham Kumar lodged a report and on that the case in crime No.304 of 2009 of was registered by Patancheru Police Station. On enquiries, Sudhir Reddy/complainant came to know that A1 to A5 entered into a criminal conspiracy to cheat him and caused wrongful loss to him to a tune of Rs.1,71,99,000/- which is the total cost of the land and made him (complainant) to part with an amount of Rs.85,00,000/- in two spells, on 20.05.2009 and 24.06.2009, and that A1 with the help of A2 to A5 created false and forged documents namely photocopy of pattadar pass book issued by MRO, Patancheru, title deed issued by the RDO, the photocopy of sale deed, dated 08.04.1981, photocopy of registered GPA, dated 19.03.2009, and committed fraudulent acts. In the said transactions A4 impersonated Sham Kumar and all the accused projected A4, P. Vijay, as Sham Kumar. Therefore, he filed a private complaint.

8. The case of the prosecution as per the investigation done in the two cases and as per the material borne out by the record, in brief, is this:

The petitioner-A2 worked as Deputy Surveyor in Survey & Land Records Office, Sangareddy, at the relevant time. He misused his power and official position; and, with the photostat copy pertaining to the landed property of Shamkumar/informant viz., Ac.6.18 guntas situate in Sy.no.769 of Rudraram Village, Patancheru, Medak District, which was available in the office records, he created a original of the said document. He is the main/principal culprit as per the evidence collected during the course of investigation. The confessional statements of the other accused and the seizure panchanamas reflected that this petitioner-A2 was having possession of the copy of the sale deed bearing no.1097/1981 of Sham Kumar/informant and he created a fictitious document by forging the signatures and thumb impressions of Damarcharla Narayana and Narsimhulu, who originally sold the aforesaid land to Sham Kumar/informant. Such fabrication was done with the available photocopy of the document in the office records. He informed R. Mahender Reddy-A3 and other accused that if they help him for selling the above property to 3rd party they can earn sufficient amount and get their share in the said amount. As per his advice all the accused colluded together and executed a registered agreement of sale-cum-GPA *vide* document bearing no.2644/09, dated 19.03.2009, in favour of A3-Mahender Reddy by forging and impersonating the signatures of Sham Kumar/informant and his details. Later, A3 in turn executed in favour of his own self a sale deed bearing no.5206/09, dated 30.06.2009, and further executed two rectification deeds bearing document nos.5389/09 & 5390/09 and thereby cheated the Sham Kumar/informant and subsequent purchaser in order to grab the property of Sham Kumar/informant. During the course of investigation it was revealed that Rs.85 lakhs was collected from Sudhir Reddy/complainant, and that A1 disbursed the said amounts as follows: Rs.5,50,000/- to A3 & A5; Rs.6 lakhs to A1, Rs.50,000/- to A4; Rs.5,75,000/- to A6; Rs.5,75,000/- to A7 and Rs.42,30,000/- to A2 as their respective shares. Further, on the confessional statement of A3, one cell phone and original sale deed bearing document no.5206/09 was seized under the cover of panchanama in the presence of mediators and he led the police party and mediators to the houses of the remaining accused. On A3 leading the police party and mediators to Sadasivapet, the police apprehended A1, A4 to A7 and recorded their confessional statements in the presence of mediators and seized cell phone, document bearing no.2644/09, one ID card and one white paper having details of disbursement of amount with the hand writing of A1, from A1, and, rectification deed bearing no.5389/09 from A4; and, rectification deed bearing no.5390/09; and, one cell phone each from A5, A6 and A7 under a cover panchanama in the presence of mediators. The accused confessed that the shared amounts were spent away by them; and, A5, A6 and 7 also made similar confessions that they spent some amount and that the remaining amount of Rs.1 lakh each was kept in their respective houses. A5 led the police party and mediators to his house; and, Rs.1 lakh and three promissory notes were seized from the possession of A5 at his house; and Rs.1 lakh each was seized from the possessions of A6 & A7 at their houses. The petitioner-A2 knowingly created, forged and fabricated documents for wrongful gain for his own self and of the other accused and for causing wrongful loss to others. He being a Government employee/public servant having colluded with the other accused intentionally misused his position and obtained copy of the land document from office record and created the document for further use as stated above. Had he not created such fabricated document from the office record and had he not taken the help of the other accused for selling the properties by creating further unfair registered documents, the offence would not have taken place and the necessity of arraigning him as an accused in these crimes would not have arisen. Since the entire transactions took place only because of him he was rightly arraigned as an accused in these cases by the investigating officer. When there is a *prima facie* case against all the accused and when the trial has not yet commenced and evidence is yet to be adduced, the petitioner-A2 cannot seek his discharge from the cases. Hence, the petitions are liable to be dismissed.

9. On merits and by the orders impugned in these revisions, the trial Court dismissed the petitions of the petitioner-A2 *inter alia* observing that there is a *prima facie* case and that there are no valid grounds for considering the request of the petitioner-A2 for his discharge. Aggrieved thereof, the petitioner-A2 is before this Court.

10. At the hearing, learned counsel for both the sides advanced arguments in line with the respective contentions of the parties.

11. Learned counsel for the petitioner-A2 would further submit as follows: 'The orders impugned are unsustainable under facts and in law. The learned Magistrate rejected the applications without properly appreciating the facts and the legal position in correct perspective. Even if the entire material is taken on its face value, except the confessions of co-accused there is no other material to connect this petitioner-A2 with the alleged offences. Therefore, the petitioner-A2 is entitled to be discharged. Hence, the learned Magistrate ought to have discharged the petitioner by allowing the petitions instead of dismissing the same.'

12. Per contra, the learned Public Prosecutor and the learned counsel for the informant/Shamkumar and the complainant/Sudhir Reddy while supporting

the orders of the Court below reiterated that the petitioner-A2 is a Government servant and that he had access to the photocopy of the copy of the document of Sham Kumar/informant which is available in the office records and that with the aid of the said document he forged and fabricated the documents and informed about the same to A3 and the other accused and all of them conspired together and created further documents and thus cheated Sham Kumar/informant and also Sudhir Reddy/complainant and received huge sum of money from Sudhir Reddy/complainant and made wrongful gain for themselves and caused wrongful loss to the said informant and the complainant and that but for the initial acts of the petitioner-A2 and his subsequent participation in the crime, the commission of the offences alleged would not have been possible.

13. Before proceeding further, it is necessary to refer to the decisions relied upon by both the sides.

13.1 Learned counsel for the petitioner relied upon the following decisions:

1. Central Bureau of Investigation v. K. Narayana Rao[1] is relied upon in support of the proposition that if the evidence which the prosecution proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

2. B.S. Neelakanta v. State of A.P.[2] is also relied upon in support of the same proposition, which is stated supra. In this cited case, this Court referred to the following proposition of law stated in CBI v. K. Narayana Rao (supra):

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

On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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 disclose the existence of all the ingredients constituting the alleged offence. 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.

(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."

3. Vanamala Jagadeswaraiah and another v. Deputy Commissioner (Legal) customs and Central Excise, Hyderabad[3] is relied upon in support of the proposition that when the material on record does not disclose that any other piece of evidence has been collected during investigation except the confessional statements of the co-accused and as a confession against a co accused is only of limited use, that is, the same can be taken into consideration as

[3] 2000(4) ALD 656

against the co-accused and that the confession made by one accused is not substantive evidence against the co-accused and that it has only a corroborative value and that when the confessional statement of the co-accused is the only piece of evidence which the prosecution seems to rely upon and the material on record does not disclose any other piece of evidence which can be considered as a substantive in nature or any piece of evidence which can even be used for corroboration of the confessional statement of the co accused, then the result is that there is no substantive evidence incriminating the accused which is available with the prosecution and that, therefore, the petitioner-A2 is entitled to be discharged.

4. State of Orissa v. Debendra Nath Padhi[4] is relied upon in support of the proposition that at Sections 227 and 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 and that 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.

5. Haricharan Kurmi v. State of Bihar[5] is relied upon in support of the proposition that in dealing with a case against an accused person, the court cannot start with the confession of co-accused person and it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the

[4] (2005) 1 SCC 568
[5] AIR 1964 SC 1184

quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence and that is the effect of the provisions contained in S.30 and that the statements contained in the confessions of the co-accused persons stand on a different footing; in cases where such confession are relied upon by the prosecution against an accused person, the court cannot begin with the examination of the said statements; the stage to consider the said confessional statements arises only after the other evidence is considered and found to be satisfactory.

There is no dispute with the settled legal propositions of law.

13.2 Learned Public Prosecutor and the learned counsel for the 2nd respondent relied upon the following decisions:

1. Golla Sathaiah @ Kunit Sathaiah v. State of A.P[6] wherein the request of the present petitioner-A2 to quash the proceedings in C.C.No.369 of 2009 was dismissed on the ground that though the name of the accused is not reflected in the first information/FIR/complaint, if the investigation reveals his involvement in the offence, the case against such accused person need not be quashed.

2. Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and others[7]. In this cited case, the Supreme Court referred to the decision in State of Bihar v. Ramesh Singh [AIR 1977 SC 2018], wherein it was held as follows: 'The truth, veracity and effect of the evidence which

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[6] Order dated 23.12.2009 in Crl.P.No.7666 of 2009
[7] AIR 1980 SC 52

the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged; may justify the framing of charge against the accused in respect of the commission of the offence.'

3. Sheoraj Singh Ahlawat and others v. State of Uttar Pradesh and another[8] is relied upon in support of the following proposition: - 'While farming charges, court is required to evaluate materials and documents on record to decide whether facts emerging therefrom taken at their face value would disclose existence of ingredients constituting the alleged offence. At this stage, the court is not required to go deep into the probative value of materials on record. It needs to evaluate whether there is a ground for presuming that accused had committed offence. But it should not evaluate sufficiency of evidence to convict accused. Even if there is a grave suspicion against the accused and it is not properly explained or court feels that accused might have committed offence, then framing of charges against the accused is justified. It is only for conviction of accused that materials must indicate that accused had committed offence but for framing of charges if material indicate that accused might

[8] (2013) 11 SCC 476

have committed offence, then framing of charge is proper. Materials brought on by prosecution must be believed to be true and their probative value cannot be decided at this stage.'

4. State of Bihar v. Ramesh Singh[9] is relied in support of the following proposition: - Sections 227 & 228 have to be read in juxtaposition and on such reading it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged nor is any weight to be attached to the probable defence of the accused and that it is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not and that the standard of test and judgment which it to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or 228 of the Code.

5. Amit Kapoor v. Ramesh Chander and another[10] is relied upon on the same proposition that final test of guilt is not to be applied at the time of framing charge.

6. Nupur Talwar v. CBI[11] is relied upon in support of the proposition that the order of the Magistrate like the present one impugned in the revisions shall be sparingly interfered and that the said order shall be taken as correct unless it is

[9] AIR 1977 SC 2018(1)
[10] (2012)9 SCC 460
[11] (2012)2 SCC 188

perverse or based on no material and one passed without assigning reasons and application of mind.

7. Union of India v. Prafulla Kumar Samal and another[12] is relied upon in support of the proposition that 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.

8. Sajjan Kumar v. CBI[13] is relied upon in support of the following proposition: 'At the stage of framing of charge under Section 228 of the Cr.P.C. or while considering the discharge petition filed under Section 227, it is not for the Magistrate or a Judge concerned to analyse all the materials including pros and cons, reliability or acceptability etc. It is at the trial, the Judge concerned has to appreciate their evidentiary value, credibility or otherwise of the statement, veracity of various documents and free to take a decision one way or the other.'

There is no dispute with the settled legal propositions.

14. Reverting to the instant cases, the crux of the two cases is as follows:

Sham Kumar/informant is the owner of Ac.6.18 guntas situate in Sy.No.769 of Rudraram village having purchased it from Damarcharla Narayana and his brother Damarcharla Narsimulu vide sale deed, dated 08.04.1981. Since the date of his purchase, the said land is in his possession. Pattadar pass book was issued to him by the MRO, Patancheru, vide proceedings, dated 16.11.2005. The property is also mutated in his name in the revenue records. On 02.07.2009, while passing through the road to Sangareddy, he saw one

[12] AIR 1979 SC 366
[13] (2010) 9 SCC 368

person taking some measurements of his land. When he questioned that person, he disclosed his identity as P. Sudhir Reddy/complainant and stated that he entered into agreement of sale with Mahender Reddy-A3 through one Sashi Kumar, Advocate-A1, for the purchase of land. Thereafter, Sham Kumar/informant and Sudhir Reddy/complainant made enquiries. On such enquiries the following facts were revealed: -'The petitioner-A2 who is a Government servant and working as Deputy Surveyor in Survey & Land Records Office, Sangareddy, came into possession of the photocopy of the sale deed no.1097/81 and created fictitious original document by forging the signatures and thumb impressions of D. Narayana and D. Narsimulu, who originally sold the land to Sham Kumar/informant. Later, Accused nos.1 to 5 colluded with each other and executed a registered agreement of sale-cum-GPA, dated 19.03.2009, in favour of A3 by forging the signatures and thumb impressions of Sham Kumar/informant. In turn, A3 executed a registered sale deed in his own favour by virtue of the created agreement of sale and later executed two rectification deeds bearing Nos.5389/09 & 5390/09 and cheated Sham Kumar/informant to grab the land. Accused nos. 6 & 7 are real estate agents. They also know about the entire episode and supported the accused. Accused nos.8 & 9 also very well know about the entire transactions and supported the accused and put their signatures as witnesses on the fictitious documents. Later, all the accused approached P. Sudhir Reddy/complainant to sell the above land. The said Sudhir Reddy/complainant believed the accused and the documents produced by them and entered into an agreement of sale with A3 for an amount of Rs.1,71,99,000/- and paid an amount of Rs.85 lakhs in two spells, on 20.05.2009 and 24.06.2009, to the accused pursuant to the agreements and the accused also cheated him. And, the accused shared the booty amongst all of them.' For the said offences, the cases in Cr.Nos.304 of 2009 and 369 of 2009 of Patacheru PS were registered and the aforementioned Calendar Cases were taken on file.

15. From the material on record including the charge sheets and the evidence collected in support of the averments in the charge sheets disclose that the petitioner-A2 who is a Government servant came into possession of photocopy of the registered sale deed in respect of the landed property of Sham Kumar/informant and with the help of the said document created fictitious and forged document forging the signatures and thumb impressions of D.Narayana and Narsimhulu who originally sold the land to Sham Kumar/informant and later the subsequent acts were committed, which are stated in the prosecution case. Thus, according to the prosecution case the whole transaction constituting the events with elements of crime was set into motion by the acts of the petitioner-A2; and, but for his initial acts and conspiracy and his participation in the crimes, the sequential acts stated in the crimes would not have taken place. No doubt, during the course of investigation, no material like documents or money was seized from the possession of the petitioner-A2. However, according to the prosecution case, during the course of investigation, A1, A3, A4, A5, A6, A7 made confessions and that from the possessions of the accused except A2 some incriminating material or cash or object was seized as already adverted to supra. The confessional statement and the mediators report, dated 26.08.2009, drafted at flat no.9, Raghavendra Colony, Sadasivapet, discloses that on the confession of 1st accused and during his interrogation in the presence of mediators, he produced documents and also a paper wherein the details of cash of Rs.40 lakhs, which was first received, and the details of the cash of Rs.45 lakhs which was later received from Sudhir Reddy/complainant, and the details of the distribution of the said amounts amongst the accused and the others were mentioned. The said document was also seized on production of the same by A1 in the presence of mediators. The said slip, according to the prosecution, discloses that the petitioner-A2 received Rs.30,000/- from out of the money paid in the first instance and Rs.4 lakhs from out of the money paid on the second occasion. No

doubt the petitioner-A2 contends that this document is also not seized from his possession. However, this document which according to the prosecution case was seized from the possession of A1 discloses that the money received from Sudhir Reddy/complainant was shared amongst the accused including the petitioner-A2. On a plain consideration of the entire material on record, this Court is not inclined to accept the contention of the petitioner-A2 that entire material even if it is taken on its face value does not disclose a *prima facie* case or strong suspicion for framing a charge and proceeding against the petitioner-A2. In the well considered view of this Court, in view of the other material brought on record, the contention that except the confession of the co-accused there is no other incriminating material against the petitioner-A2 even according to the prosecution case, cannot be *prima facie* accepted at this stage. In these cases there is no requirement of considering, in detail, the evidence that was collected and weigh it in a sensitive balance at this stage as such an exercise has to be undertaken by the learned Magistrate after full fledged trial. The contention of the petitioner-A2 that there are only confessional statements of co-accused and that in the absence of any other evidence, the question of consideration of confessional statement does not arise and that, therefore, as the only evidence is the confessional statements of the co-accused, the petitioner is entitled to be discharged also cannot be accepted as the consideration of confessional statements would arise only on examination of the other evidence that may be brought on record in the first instance. Therefore, unless the necessary evidence is brought on record after full fledged trial, merely on the assumption that prosecution would not be able to prove the guilt even if the petitioner-A2 is to be put to trial, the petitioner-A2 cannot be discharged. As per settled law, there is no need at this stage to form an opinion that petitioner-A2 is certainly guilty of the offence alleged against him.

16. This Court thus examined the issue involved keeping in view the limited scope of interference and the restricted ambit of jurisdiction and also the precedential guidance in the aforestated decisions and the decision in State of Rajasthan v. Fatehkaran Mehdu[14]. On consideration of the broad probabilities of the case & the total effect of evidence and in the absence of any valid grounds for acceptance of the requests of the petitioner-A2 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 charges against the petitioner-A2 has to be made only after oral and documentary evidence is adduced in a full-fledged trials in both the cases.

17. On the above analysis and for all the reasons assigned, this Court finds that the orders passed by the learned Magistrate are sustainable under facts and in law and that the revision cases are devoid of merit and are liable to be dismissed. 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 accused herein to raise before the Trial Court all the contentions and defences, which the facts and the law permit.

18. In the result, both the Criminal Revision Cases are dismissed.

Miscellaneous petitions pending, if any, in these revisions, shall stand closed.

M.SEETHARAMA MURTI, J

15.09.2017
Vjl

[14] 2017 (1) ALD (Crl) 842 (SC)