

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.78 OF 2011

ORDER:

This Criminal Revision Case is filed by the petitioner-sole accused, under Sections 397 and 401 Cr.P.C., challenging the order, dated 08.12.2010 in CrI.M.P.No.139 of 2010 in S.C.No.148 of 2010 on the file of the VI Additional District and Sessions Judge, (FTC), Narsapur.

2. Learned counsel for the petitioner strenuously submitted that even if the allegations made in the charge sheet are *ex facie* taken to be true and correct, no *prima facie* case is made out against the petitioner and that vital aspect was not considered by the trial Court; therefore, it is a fit case to allow the revision. **Per contra**, learned Additional Public Prosecutor representing the State submitted that the statements of L.Ws. 2 to 7 are *prima facie* sufficient to proceed further against the petitioner; therefore, it is not a fit case to allow the revision.

3. The point that arises for consideration in this revision is: Whether there is any illegality or irregularity in the order of the trial Court, which warrants interference of this Court while exercising the revisional jurisdiction under Sections 397 and 401 Cr.P.C?

4. A perusal of the record reveals that basing on the complaint lodged by one Bokka Ramalakshmi, wife of Bokka Nagoor (hereinafter referred to as 'the deceased'), the Station House Officer, Mogalthur Police Station, registered a case in Cr.No.162 of 2008 for the offences punishable under Sections 302 and 323 IPC. After completion of investigation, the Inspector of Police, Narsapur Circle laid

charge sheet against the accused for the offence punishable under Section 304 IPC.

5. The learned Additional Judl. Magistrate of I Class, Narsapur, after satisfying himself with the material available on record has taken the case on file and numbered it as PRC No.--- of 2008 and committed the same to the Sessions Division, West Godavari District. The learned Prl. District and Sessions Judge, West Godavari District, after perusing the record, has taken the case on file and numbered it as S.C.No.148 of 2010 and made over the same to VI Addl. District and Sessions Judge (FTC), Narsapur, for disposal in accordance with law.

6. While things stood thus, the petitioner-accused filed Crl.M.P.No.139 of 2010 in S.C.No.148 of 2010 under Section 227 for discharge and the same was dismissed, by order, dated 08.12.2010. Hence, this revision.

(i) In **State of Himachal Pradesh v Krishan Lal Pardhan**¹, the apex Court held thus:

“For scrutiny within the limits of Section 239 Cr.P.C., all that is required at the stage of framing of charges is to see whether a *prima facie* case regarding the commission of certain offences is made out. The question whether the charges will eventually stand proved or not can be determined only after the evidence is recorded in this case, which cannot be decided on merits without giving the prosecution an opportunity to adduce evidence against the accused.”

(ii) In **State of J&K v Romesh Chander**², the apex Court held thus:

“It is now settled law that the charge-sheet constitutes *prima facie* evidence constituting the offence for proceeding further in the matter. Necessarily, therefore, the Court has to look into the relevant law and the allegations made in the charge-sheet and then consider whether any offence has been committed to frame charges for trial before discharging the accused. Since the High Court has not done that, we

¹ AIR 1987 SC 733

² (1997) 1 SCC 90

think it proper that the High Court should reconsider the matter and dispose of it in accordance with law. All the contentions raised by the learned counsel on either side are left open. It is open to the counsel to argue the matter in the High Court.”

7. Let me consider the facts of the case on hand, in the light of the above legal principle.

8. The predominant contention of the learned counsel for the petitioner is that L.Ws. 2 to 7 are interested witnesses; therefore, their testimony cannot be taken into consideration while framing charge. He further submitted that the recitals of the post-mortem certificate are not supporting the case of the prosecution.

9. The statements of witnesses *prima facie* reveal that on the date of incident i.e., on 15.07.2008, the accused throttled the neck of the deceased. As per the post-mortem certificate, the deceased died due to cardiac arrest. A perusal of the record *prima facie* reveals that the deceased suffering with heart ailment much prior to the date of incident. The petitioner and the deceased are neighbouring owners. Due to pathway dispute, the petitioner pressed the neck of the deceased. Whether the petitioner is aware of the heart ailment of the deceased or not will come to light during the course of trial.

10. In the instant case, the statements of witnesses more particularly, L.Ws. 2 to 7 *prima facie* reveals the role played by the petitioner in the commission of the alleged offence. The material placed before the Court is *prima facie* sufficient to proceed further against the petitioner under Section 304 IPC. While deciding the discharge petitions, the Court should not express any opinion touching the merits of the main case. The questions, (1) whether L.Ws.2 to 7 are interested witnesses or not? and (2) whether their

testimony is trustworthy for consideration or not? have to be decided during the course of trial only. The trial Court after satisfying itself that there is a *prima facie* material, dismissed the petition.

11. The trial Court considered the material on record in right perspective and dismissed the petition. The trial Court assigned reasons, much less, cogent and valid reasons while dismissing the petition. Therefore, there is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court while exercising the revisional jurisdiction under Sections 397 and 401 Cr.P.C.

13. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the revision lacks merits and bona fides and is liable to be dismissed.

14. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any pending, in this revision shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 07-09-2017.

Hsd