

HON' BLE SRI JUSTICE T.SUNIL CHOWDARY

Criminal Revision Case No.13 of 2017

JUDGMENT:

This Criminal Revision Case is filed by the petitioner/ A.2 under Sections 397 and 401 Cr.P.C. challenging the order, dated 2.11.2016 passed in CrI.M.P.No.670 of 2016 in C.C.No.49 of 2015 on the file of the Judicial Magistrate of I Class, Alur.

2. The learned counsel for the petitioner submitted that no money was entrusted to the petitioner and the same was not considered by the trial court. He further submitted that the order passed by the trial court is not legally sustainable. *Per contra*, the learned Additional Public Prosecutor submitted that the material available on record *prima-facie* sufficient to proceed further against the petitioner and the present revision lacks merits.

3. The petitioner herein is A2 in C.C. No.49 of 2015 on the file of the Court of Judicial Magistrate of First Class, Alur. He filed the petition under Section 239 Cr.P.C. before the trial court for discharge. After affording reasonable opportunity to both sides, the trial court arrived that there is *prima-facie* case to proceed further and dismissed the said petition. Hence, the revision.

4. A perusal of the record reveals that the petitioner herein along with A.1, is facing trial in CC No.49 of 2015 for the offence punishable under Section 408 read with 34 of IPC. As per the allegations made in the charge sheet, the cheques for an amount of Rs.5,26,929/- were entrusted to A.1. It is further case of the prosecution that the petitioner herein along with A.1 withdrew the amount and misappropriated the same.

5. 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.”

6. 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 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. As per the principle enunciated in the cases cited supra, if the material placed before the Court is not sufficient to frame the charges, the trial Court can discharge the accused. At the time of framing of charges, the trial Court has to consider whether there is any *prima facie* material against the accused to proceed further or not. If the Court satisfies that there is a *prima facie* material, then it is not a fit case for discharging the accused.

8. In the instant case, it is not in dispute that the cheques worth Rs.5,26,929/- were entrusted to the accused. A perusal of the record *prima-facie* reveals that the petitioner herein along with A.1 submitted the pay slips and withdrew the amount. Thus, the material placed before this Court *prima facie* reveals that the petitioner without any authority or

¹ AIR 1987 SC 733

² (1997) 1 SCC 90

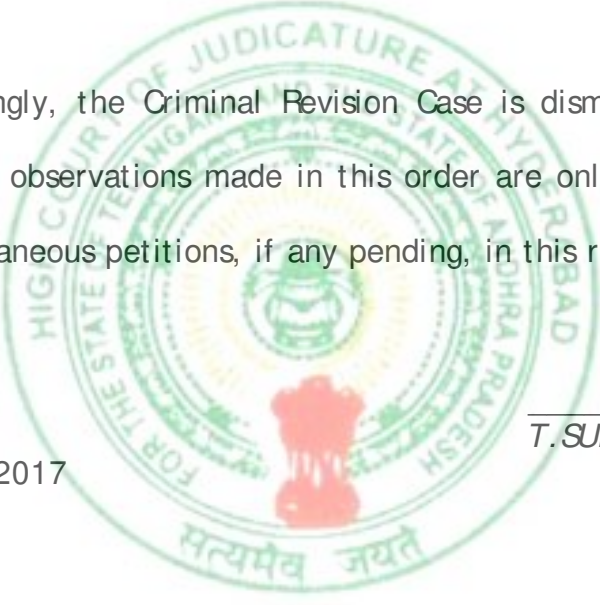
whatsoever withdrew the money, which belongs to the NREGS Scheme.

This fact itself is sufficient to proceed further against the petitioner.

9. 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 there is a *prima facie* material against the petitioner to proceed further. 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 are no grounds to interfere with the order of the trial Court.

10. Accordingly, the Criminal Revision Case is dismissed. It is made clear that any observations made in this order are only confined to this order. Miscellaneous petitions, if any pending, in this revision shall stand closed.

Dated: 04.01.2017
BSS

T. SUNIL CHOWDARY, J

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Date: 04.01.2017

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