THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1200 OF 2016

JUDGMENT:

1 This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C challenging the order, dated 21.11.2015, passed in Crl.M.P.No.353 of 2015 in C.C.No.17 of 2013 on the file of the Court of the Principal Special Judge for SPE and ACB Cases – cum – IV Additional Chief Judge, City Civil Courts, Hyderabad.

2 The contention of the learned counsel for the petitioner is four fold, viz., **1)** The Court below failed to consider that the petitioner prepared the note file at the instance of accused No.1, **2)** the prosecution has not shown the Junior Assistant who also signed the note file as one of the accused, **3)** the Court below failed to appreciate that the petitioner prepared the vouchers in pursuance of the directions of the Managing Committee; and **4)** even if the allegations made in the charge sheet *ex facie* taken to be true and correct, no case is made out much less the offence alleged to have been committed by the petitioner and hence it is a fit case to discharge the petitioner.

3 ***Per contra***, the learned Public Prosecutor submitted that the petitioner prepared the note file without following the procedure for the reasons best known to her. The petitioner prepared the note file knowing fully well that some of the

beneficiaries are not eligible to avail loan. He further submitted that the petitioner prepared the vouchers knowing fully well that some of the beneficiaries are none other than the kith and kin of the other accused. He further submitted that the allegations made against the petitioner in the charge sheet are sufficient to proceed further and there is no illegality or irregularity in the impugned order which warrants interference of this Court.

4 Before adverting to the facts of the case, it is apt to refer the case law on which the learned counsel for the petitioner places reliance.

Union of India vs. Prafulla Kumar Samal and Another[1] wherein the Hon'ble apex Court at para No.10, held as under:

> 10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :
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> (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:
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> (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.
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> (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 largo 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.
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> (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouth-piece 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

[1] (1979) 3 SCC 4

into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Dilwar Balu Kurane vs. State of Maharashtra[2] wherein the Hon'ble apex Court at para No.12, held as under:

> 12. Now the next question is whether a prima facie case has been made out against the appellant. 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 .

Yogesh @ Sachin Jagdish Joshi vs. State of Maharashtra[3] wherein the Hon'ble apex Court at para No.23, held as under:

> 23. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement.

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

6 The petitioner worked as Administrative Officer from April 2006 to 02.6.2006 in A.P. Women Cooperative Finance

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[2] (2002) 2 SCC 135

[3] (2008) 10 SCC 394 = 2008 (8) SCJ 662

Corporation, Hyderabad (hereinafter referred to as 'the Corporation'). The accused No.12 M. Ramesh worked as Senior Assistant at the relevant point of time. The petitioner who is arrayed as A.5 is facing trial in C.C.No.17 of 2013 on the file of the Court of the Principal Special Judge for SPE and ACB cases, Hyderabad for the offences punishable under Sections 120-B, 403, 408, 409, 418 and 420 of IPC and Section 13 (1) (c) (d) of Prevention of Corruption Act, 1988 and Section 79 (1) (f) & 79A (a) (c) of A.P. Co-Operative Societies Act, 1964. While the things stood thus, the petitioner filed petition under Section 239 Cr.P.C. for discharge and the same was dismissed by the trail Court. Hence the Criminal Revision Case.

7 A perusal of the record reveals that the petitioner was promoted as Administrative Officer of the Corporation in the month of April 2006. The loaning scheme was inaugurated on 28.5.2006. The petitioner was on duty from 28.5.2006 to 31.5.2006. The petitioner applied leave on 01.6.2006 and was transferred from the post of Administrative Officer on 03.6.2006, whereas the charge sheet was filed alleging that other accused committed several irregularities during the year 2006 to 2008. The core issue involved in this case, so far as the petitioner – A.5 is concerned, whether prima facie, any irregularity was committed from April 2006 to 31.5.2006.

8 One of the allegations made in the charge sheet is that the accused No.1 has given illegal promotion to the petitioner in the month of April 2006. Whether the accused No.1 has given promotion to the petitioner as Administrative Officer in violation of rules and regulations cannot be considered at this stage in view of pendency of the main case.

9 The learned counsel for the petitioner mainly placed reliance on the minutes of the Managing Committee of the Corporation held on 15.5.2006 at 10.00 AM to convince this Court that the petitioner is an innocent person and the allegations made against the petitioner are groundless to frame the charge.

10 Item No.5 of the Minutes deals with approving of the modalities to be worked out for sanction of loans to the individuals / Groups. The relevant portion of Item No.5 reads as under:

> It is proposed to extend the financial assistance to the identified women entrepreneurs and also trainees who have completed the skill development / vocational training programmes in the DMSVKS for sanction of direct loans up to a maximum limit of Rs.50,000/- depending upon the project proposed @ 6 ½ % interest for setting up of micro-enterprises from the Corporation funds in all districts.

11 A perusal of the above item clearly indicates that the modalities will be discussed at Item No.50, which deals with sanction of Micro-Finance and Loaning Program.

> It is proposed to launch loaning programme by name 'INDIRAMMA MAHILA UPADI PATHAKAM' for the benefit of individuals for starting business units. A Press release has been issued to all the English, Telugu and Urdu leading

> newspapers in the State on 30.4.2006 duly inviting the applications from the women beneficiaries for preparing WOMEN DATA ARMY, NAVY, RAILWAYS, SAINIK WELFARE AND FOREST DEPARTMENT to send the list of women beneficiaries related to the employees or dependants for the purpose.

12 Even under Item No.50 also, no rules are framed for sanction of loan. In the absence of any specific rule, the State Government Departments or State Government Undertakings have to follow the instructions contemplated under various G.Os issued by the Finance Department. A perusal of the above minutes clearly reveals that the maximum ceiling of loan amount is Rs.50,000/-. Except to the relatives of the other accused, no other beneficiary was given more than Rs.50,000/- loan. It is a known fact that whenever the family members of the Government employee incidentally happens to be one of the beneficiaries, the same has to be reflected in the note file. The note file pertains to 28.5.2006, 29.5.2006, 30.5.2006 and 31.5.2006 bears the signature of the petitioner. A perusal of the note file dated 28.5.2006 clearly indicates that an amount of Rs.5.00 lakhs was sanctioned to Smt. Desai Radha Devi and Rs.3.00 lakhs to Smt. Khudrisha Begum W/o Md. Fazal (A.17) and draft FVC bill was also prepared and approved on 28.5.2006. A perusal of the same further reveals that an amount of Rs.4.00 lakhs was sanctioned under Indira Mahila Upadi Pathakam. Even as per the minutes of the Managing Committee dated 15.5.2006 the maximum loan amount to be sanctioned under Indira Mahila

Upadi Pathakam was Rs.50,000/-. Further, under Item No.16 of note file, an amount of Rs.5.00 lakhs was sanctioned in favour of one G. Sandhya W/o Ravi Kumar Reddy for establishment of fly ash brick industry at Rangareddy. But no particulars in respect of place of business were mentioned in the note file. However, on the same day FVC bill was prepared and approved. Being an Administrative Officer, it is the duty of the petitioner to prepare the note file in consonance with the minutes of the Managing Committee dated 15.5.2006. A perusal of the note file prima facie reveals that the loan amount was sanctioned in gross violation of the rules and regulations. Even assuming but not conceding that the petitioner prepared the note file at the behest of the accused No.1, what prevented her to mention the same in the note file. At least if the petitioner had mentioned in the note file that the maximum limit to be sanctioned is Rs.50,000/-, then there may be some justification in her stand. It is not out of place to extract the relevant portion of the note file (Subject and Reference portions) which read as under:

> Sub: APWCFC-ESTT-Sanction of Loans – Programme – Indira Mahila Upadhi Padhakam – Reg.
>
> Ref: Minutes of the M.C. Meeting held on 15.5.2006.

13 A perusal of the above portions reveals that the loan was sanctioned under IMUP. If that is so, how the petitioner prepared a note file for sanction of loan of Rs.5.00 lakhs,

Rs.4.00 lakhs and Rs.3.00 lakhs respectively even though the maximum ceiling limit is only Rs.50,000/-.

14 Even as per the principle in the cases cited supra, the accused can be discharged if the allegations made in the charge sheet or complaint are groundless.

15 It is a settled principle of law that the legality, proprietary or correctness of an order passed by the trial Court is very foundation to exercise jurisdiction under Section 397 Cr.P.C. This Court can invoke jurisdiction under Section 397 Cr.P.C if the decision under challenge is 1) grossly erroneous, 2) in contravention of a specific provision of law, 3) if the finding is recorded by ignoring the material evidence and 4) if the trial Court exercised its judicial discretion arbitrarily or perversely.

16 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 material placed before the Court is prima facie sufficient to proceed further against the petitioner. The trial Court has considered factual and legal aspects in right perspective and arrived at a conclusion that the petition is liable to be dismissed. By any stretch of imagination, it cannot be presumed that the order passed by the court below is not based on material placed before it. The reasons assigned by the court below while

dismissing the petition are supported by material available on record. There is no illegality or irregularity in the order passed by the trial Court which warrants interference of this Court while exercising revisional jurisdiction under Sections 397 and 401 Cr.P.C. Viewed from angle i.e. either factual or legal, this revision case lacks merits and is liable to be dismissed.

17 Accordingly, this Criminal Revision Case is dismissed as devoid of merit. As a sequel, the miscellaneous petitions, pending in this Revision Case, if any, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 02 January, 2017
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