

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.258 of 2017

ORDER :

The revision petitioner is the accused and unsuccessful petitioner in CrI.MP.No.36 of 2016 on the file of the learned Special Judge for Trial of Offences under SCs and STs (POA) Act – cum – V Additional Sessions Judge, Nellore, which was an application filed under Section 227 Cr.P.C. seeking discharge, impugning cognizance taken by the Special Judge from the committal proceedings of the learned Magistrate concerned, for the offence punishable under Section 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') vide dismissal order dated 20.01.2017.

2. The contentions of the learned counsel for the revision petitioner/ accused in the grounds of revision vis-à-vis oral submissions are that the investigation is perfunctory; that there is no material to take cognizance against the petitioner; that the revenue permanent record clearly shows the land in Survey No.75/ 21 consisting of Ac.1.58 cents with sub-divisions (A) and (B) of Ac.0.56 cents and Ac.1.02 cents, respectively in the names of Y.Munuswamy Reddy and Eswarawaka Balaji and once such is the case from the

Permanent Revenue Record, there is no land in the name of the de facto complainant to claim the alleged purchase in 1996 under registered sale deed dated 04.04.1996, that too, by alleging the vendee got General Power of Attorney from one Ramisetty Venkateswarlu S/o Ramisetty Chenchiah way back on 20.10.1984; that for the alleged possession, there is nothing from the revenue records to show even the alleged vendor of the de facto complainant-cum- General Power of Attorney holder got any right or possession or ownership over the property and the trial Court could have been considered the same; that once the unimpeachable material on record, had the investigating officer properly investigated and brought on record that could be filed by the petitioner in seeking discharge considered properly, there is nothing to say any offence under Section 3(1)(v) of the Act made out, thereby, the discharge petition dismissal is unsustainable and the revision is to be allowed by setting aside the dismissal order and by allowing the discharge petition.

3. Whereas, it is the contention of the learned Public Prosecutor representing the State that there is a *prima facie* accusation, right from the report in registering the crime and also from the police investigation including Part-II Case Diary and the final report; that learned Magistrate has

rightly taken cognizance in committing the case to the Court of Sessions and in turn taken cognizance in allotting the Sessions Case number; that in the course of hearing from the pre-charge enquiry, which is limited only to the prosecution material, there from once there is no material in favour of the petitioner/ accused to appreciate on its face value to seek for discharge, there is nothing to interfere with the dismissal order of the lower Court. Hence, to dismiss the revision, as groundless.

4. Heard and perused the material on record.

5. Though, the scope of the revision is limited, the Court got ample power to sub-serve the ends of justice, where required to invoke by converting the revision into one under Section 482 Cr.P.C. This Court already discussed at length, the scope of law, in *Sun Pharmaceuticals Ltd., Mumbai v. State of Telangana*¹ referring to the earlier expressions of this Court, scanning the law in this regard, in *Tamilnadu Mercantile Bank v. Subbaiah Gas Agency* in Criminal Appeal No.1686 of 2009 decided on 30.01.2015, apart from other expressions. Even the latest three Judge bench expression in *Prabhu Chawla v. State of Rajasthan*² explaining the earlier expression of the Apex Court in

¹ 2016(2) ALT CrI.165

² 2016 (5) CTC 779

Mohit @ Sonu v. State of Uttar Pradesh ((2013) 7 Supreme Court Cases 789) and by approving Dharival Tobacco Products Ltd & Ors. v. State of Maharashtra ((2009) 2SCC 370) and Madhu Limaye v. State of Maharashtra ((1977) 4 SCC 551), that the Court may confer either under Article 227 of the Constitution of India as a revision or invoking either Section 483 or 482 Cr.P.C. in deciding the *lis* depends upon the ambit of the *lis* for the power is inherent to exercise to sub-serve the ends of justice. Once such is the case, leave about the law settled by the three Judge bench expression of the Apex Court in State of Orissa v. Debendra Nath Padhi³ of in a discharge application to be considered is from the prosecution material on its face value by explaining the proposition referring to some more expressions, a two Judge Bench of the Apex Court in Rukmini Narvekar v. Vijaya Satardekar⁴, particularly at para-22 held as follows:

"22. Thus, in our opinion, while it is true that ordinarily defence material cannot be looked into by the Court while framing of the charge in view of D.N.Padhi case, there may be some very rare and exceptional cases where some defence material when shown to the trial Court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the court at the time of framing of the charges or taking cognizance. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted."

³ 2005(1) SCC 568

⁴ 2008(14) SCC 1

From the above, even in deciding a revision, where the material is clear that could be placed by accused to consider rarest of rare cases of the prosecution case is absurd or concocted arises preposterous, the Court can consider the same to discharge the accused. Once, this Court converted by virtue of the provisions referred supra of the revision into an application under Section 482 Cr.P.C., there is no bar in deciding within the scope of Section 482 Cr.P.C., to admit the material placed reliance by the accused for its consideration.

6. Once such is the case, the investigating agency even to mention in the rough plan as plot No.169, there is no survey number mentioned as to where it is located. The very report of the defacto complainant in registering the F.I.R. reads that she purchased on 04.04.1996 from Ramisetti Venkateswarlu, opposite to Tada Railway Station area out of Sy.Nos.75/ 1 to 75/ 21, plot No.169 vide document No.1121 of 1996. Her house site was encroached by the accused, Eswarawaka Balaji, S/o Padmanabha Reddy, resident of Chennai and laid boundary and is troubling her (de facto complainant) and twice Mandal Revenue Officer even called him, he could not show any record on his name before the Mandal Revenue Officer and without records, he is troubling

her and as she belongs to S.C community, thereby, to take action against him for the encroachment of her site as per Section 3(1)(iv) of the Act. She mentioned the provision of law but did not mention the sub-division of the land. At the end of the report, she has given the measurement of 33 ankanas 24 St. is the total house site. The copy of the General Power of Attorney of 1984 shows it was executed by one Ramisetty Rama Murthy S/o Venkateswarlu and not even by Ramisetty Venkateswarlu by referring it is his self acquisition and he is in possession and enjoyment by cultivating and unable to manage, he executed the General Power of Attorney in favour of his father, Ramisetty Venkateswarlu S/o Chenchiah. The General Power of Attorney no way mentions even source of title. It is mentioned in the description of the schedule of purchased from Giri Venkata Ramanaiah's wife Devaki on 07.07.1981 some extent and from Gopal Reddy S/o Arani Krishna Reddy of some extent to different survey numbers described as Survey No.75/ 1 Ac.2.15 cents out of full Ac.6.48 cents, Survey No.75/ 1 Full Ac.0.28 cents, Survey No.75/ 2 Full Ac.0.09 cents, Survey No.75/ 3 Full Ac.0.96 or 97 cents, and from one G.Laxman Reddy another extent of Ac.0.19 cents in Survey No.17/ A, Ac.0.24 cents in Survey No.75/ 10, Ac.0.91 cents in Survey No.75/ 13, Ac.0.23 cents out of

Ac.1.58 cents in Survey No.75/ 21 and from one P.Sankar Reddy in Survey No.75/ 17 Ac.0.26 cents Survey No.75/ 19 Ac.0.13 cents Survey No.75/ 11 out of Ac.1.08 cents Ac.0.50 cents. Even taken the General Power of Attorney holder executed the General Power of Attorney in favour of his father for several extents, the criminal case is in relation to Survey No.75/ 21 and what the General Power of Attorney mentions purchased only AC.0.23 cents out of Ac.1.58 cents and there is no description as to in which site of the full extent as per field measurement book the said Ac.0.23 cents lie and whether it is applied for any sub-division etc., particulars. It is pursuant to the General Power of Attorney, even the sale deed executed in claiming the vendor in possession represented by General Power of Attorney holder, the vendee, who is the de facto complainant to rely on sale deed dated 04.04.1996 has to establish for what she claimed purchased of plot No.169 of 266.2/ 3 Sq.yards site, out of the total extent of survey numbers 75/ 1 to 75/ 21, the General Power of Attorney is not even reflects purchase of lands in S.No.75/ 21. Had the investigating officer applied his little mind, he could have been filed any lay out plan for approval of sub-dividing into plots, to say, any plot No.169 is in existence, much less, to reflect as part of Survey No.75/ 21. In the back ground, the accused/ petitioner before

the lower Court in the discharge application filed claimed that he is the owner for Ac.1.02 cents of land in Survey No.75/ 21B that is covered by Khata No.228 and there is entry of him as owner by issuing of pattadar passbook and revenue title deed. 1-B Register also shows his name as owner, and possessor. What is referred supra, from the General Power of Attorney reflects of the General Power of Attorney holder, father of General Power of Attorney executant purchased only Ac.0.23 cents out of Ac.1.58 cents in Sy.No.75/ 21. When such is the case, and Sy.No.75/ 21 itself is sub-divided into A and B in the Field Measurement Book and as per the very revenue records and Sy.No.75/ 21B shows including in the Permanent Revenue Records that belong to the petitioner/accused for Ac.1.02 cents what Sy.No.75/ 21A reflects of Ac.0.56 cents in Khata No.41 shows belongs to Y.Munuswamy Reddy. Once such is the case, neither the vendor nor the alleged vendor's vendor to the de facto complainant got any land, in the absence of showing any document and in revenue record. No Field Measurement Book obtained by the investigating officer and no survey cause even done with reference to any approved lay out to identify and locate the plot number much less to establish possession and entitlement to foist the case against the petitioner, as if the petitioner for the first time

just before the alleged report trespassed into the property of the de facto complainant, that too, being the absent landlord, that too, when the very report itself speaks he already laid a fencing, she did not even mention the date of alleged trespass and dispossession to attract the ingredients of Section 3(1)(v) of the Act. In the background, it is nothing but rarest of rare cases even by sitting in revision, the material even relied on by the accused which is impeccable character showing his innocence and non-involvement of the case, for cloud on the very entitlement of any property in Sy.No.75/21A or B by the de facto complainant or her vendor, much less to show any possession or dispossession, pursuant to the entitlement to register the case, which is nothing but abuse of process, still to ask the accused to face trial. No doubt, the lower Court not chosen to consider additional material. However, once it is brought to the notice of the Court and once the Court got the inherent power, which inheres from the very Constitution, that is also saved by Section 482 Cr.P.C. and that can be exercised from the latest three Judge bench expression of the Apex Court in Prabhu Chawla (supra), it is a fit case to consider the same and set aside the dismissal discharge application by allowing the same, by discharging the accused.

7. Accordingly and in the result, this Criminal Revision Case is allowed setting aside the impugned order dated 20.01.2017 in CrI.MP.No.36 of 2016 in S.C.No.46 of 2015 passed by the learned Special Judge for Trial of Offences under SCs and STs (POA) Act – cum – V Additional Sessions Judge, Nellore. Consequently, CrI.MP.No.36 of 2016 is allowed by discharging the accused and his bail bonds if any, shall stand cancelled.

8. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Date:03-03-2017
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Dr. B. SIVA SANKARA RAO, J



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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