

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.526 of 2011

ORDER:

This revision case is filed by the petitioners under Section 397 and 401 Cr.P.C. assailing the orders dated 25.02.2011 in S.C.No.230 of 2006 on the file of the Court of V Additional Sessions Judge(Fast Track) West Godavari, Eluru, wherein whereby the petition filed by the petitioners under Section 227 Cr.P.C. was dismissed.

2. Learned counsel for the petitioners strenuously submitted that the names of the petitioners are not shown in the FIR and the same was not considered by the trial Court. He further submitted that the petitioners were falsely implicated in this case due to political rivalry. He further submitted that if the order of the Court below is allowed to stand, it would amount to miscarriage of justice.

3. Learned Additional Public Prosecutor representing the State submitted that the material available on record is *prima facie* sufficient to proceed further against the petitioners.

4. Now, the point that arises for consideration in this revision case 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?

5. In order to appreciate the contentions of the learned counsel for the petitioners, this Court is placing reliance on the following decision:

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. Let me consider the facts of the case on hand in the light of the above decision. The case of the prosecution is that on 26.08.2004 at about 6.30 p.m. all the accused formed into an unlawful assembly, armed with deadly weapons and caused injuries to L.W.1. It is the further case of the prosecution that the petitioners along with other accused killed one Venkateswara Rao. After completion of investigation, the Investigating Officer laid charge sheet against the petitioners and others for the offences under Sections 143, 148, 307, 302 read with 149 IPC.

7. A perusal of the record reveals that the petitioners, who are accused Nos.18, 19, 20, 21 and 29 are facing trial in S.C.No.230 of 2006 on the file of the V Additional Sessions Judge(Fast Track) West Godavari, Eluru, for the offences punishable under Sections 143, 148, 307, 302 read with 149 IPC.

¹ AIR 1987 SC 733

8. The predominant contention of the learned counsel for the petitioners is that the names of the petitioners are not shown as accused in the FIR. It is needless to say that the FIR is not an encyclopedia to mention all the details. It is a known fact that during the course of investigation, the Investigating Officer would collect the evidence. If the investigation reveals the complicity of some of the persons, whose names are not find place in the FIR, can be included. At the time of framing of charge, the Court cannot dwell into the merits of the main case. The Court has to consider whether the material collected by the Investigating agency is *prima facie* sufficient to proceed further against the petitioners or not. The trial Court in para – 8 made the following observations:

“It is a fact born by the record that the petitioners/accused have participated in the commission of offence and also they are members of the unlawful assembly who participated in rioting, murdering the deceased and caused grievous injuries to L.W.1 with common intention of murdering deceased and L.W.1 also. The material collected by the prosecuting agency *prima facie* shows that due to injuries caused by the accused group deceased succumbed to injuries for which accused are also liable for punishment for their participation in the rioting, committing murder of the deceased and attempt to murder L.W.1. The participation and acts of petitioners/accused attract ingredients of Sections 143, 145, 307, 302 IPC read with 149 IPC.”

9. A perusal of the record *prima facie* reveals that the petitioners are members of unlawful assembly. A perusal of the record reveals that L.W.1 sustained injuries. This is not the stage

to decide whether the petitioners were falsely implicated due to village politics. If the Court expresses any opinion touching the merits of the main case while framing charge, the same may cause prejudice to one of the parties to the proceedings. A perusal of the record *prima facie* reveals the role played by the petitioners in the commission of the offence. The material placed before the Court is *prima facie* sufficient to proceed further against the petitioners. The trial Court after satisfying itself that there is a *prima facie* case against the petitioners dismissed the petition. I am fully endorsing with the observation made by the Court below. There is no illegality or irregularity in the orders of the Court below, which warrants interference of this Court.

10. Having regard to the facts and circumstances of the case and also in view of the principle enunciated in the case cited supra, I am of the considered view that it is not a fit case to allow the petition.

11. Accordingly, Criminal Revision Case is dismissed. As a sequel, the miscellaneous petitions, pending if any in this revision, shall stand closed.

T.SUNIL CHOWDARY, J.

26th October, 2017

Rns