THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.451 of 2016

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, (for short, 'the CrPC') by the petitioner/A4 is directed against the orders, dated 29.10.2015, of the learned Principal Judge for trial of SPE & ACB cases-cum-IV Additional Chief Judge, City Civil Courts, Hyderabad, passed in Crl.MP.No.412 of 2013 in CC.No.23 of 2010.

1.1 By the said orders, the petition filed by the petitioner-A4, under Section 239 CrPC, seeking his discharge from the case is dismissed.

2. I have heard the submissions of *Sri Bankatlal Mandhani*, learned counsel for the petitioner/A4 and of *Sri C. Pratap Reddy,* learned Public Prosecutor (TG) representing the respondent-State. I have carefully perused the material record.

3. To begin with, it is necessary to refer to the cases of the parties.

3.1 The case of the petitioner-A4 (hereinafter, 'the petitioner'), broadly, is this: - "He is the 4th accused in the above case taken on file for the offences punishable under Sections 408, 468, 471 & 120(B) of IPC and Section 13(1)(d) clauses II and III of the Prevention of Corruption Act, 1988, (hereinafter, 'Act 48 of 1988). It is alleged by the prosecution that the petitioner is guilty of the offences punishable under Section 120(B) of IPC and Section 13(1)(d) clauses II and III of Act 48 of 1988. The petitioner worked as Superintendent Engineer (Housing Engineer) of Circle II of Andhra Pradesh Housing Board (APHB) till his transfer from the said Circle. In the charge sheet, it is alleged as under: - 'The petitioner worked as Chief Engineer, APHB, Hyderabad from 1995 to 1999 and retired from service. He has knowledge that the open place at the entrance of the colony is intended for park in HUDA lay out. However, he allowed permission to be given by the Municipal Corporation of Hyderabad (MCH) without raising any objection inspite of letters, dated 07.10.1996 & 17.12.1996 written by MCH and failed to give replies stating the correct facts. Further, he addressed a letter, dated 14.10.1996, stating that possession of open place earmarked for park was handed over to the Society by referring to a letter, dated 04.01.1991, written by his subordinate by name (late) Qadir. However, the truth is that the site was not handed over in view of the letter, dated 08.02.1991, written by the petitioner-A4.' Hence, the above allegations in the charge sheet are self contradictory. The facts of the case disclose that the petitioner is no way and in no manner involved in the matter and he did not commit any acts or omissions constituting the alleged offences. The said facts are evident from the letters referred to in the charge sheet. The charges levelled against the petitioner are groundless and there is no *prima facie* case, much less a semblance of case, made out against the petitioner. The material on which the prosecution relies, even if accepted and is looked into and considered, such material does not even remotely connect the petitioner with the alleged crime nor does such material give rise to a suspicion as to the guilt of the petitioner-A4. On the other hand, the material would show that the petitioner was innocent and was implicated in the case without any basis or grounds. Thus, there is no evidence or material of any nature placed on record to connect the petitioner with the crime alleged and there is no case, much less a *prima facie* case, for proceeding to frame charges and try the petitioner. Since the charges levelled are groundless, the petitioner-A4 is entitled to be discharged."

4. Per contra, the case of the prosecution broadly is this: - 'The petitioner right from the beginning was a member of the conspiracy. He assisted and aided in commission of the offences as stated in the charge sheet. He was involved along with the other accused in the commission of the offences alleged and all the accused including the petitioner herein defrauded the

Government by allowing to sell the land earmarked for park illegally and by fraudulent means. The acts and omissions of the accused resulted in obtaining permission illegally for construction and further facilitated construction of multi-storied commercial complex in that place ear marked for park. There are sufficient grounds and material to proceed for formulating charges against the petitioner-A4 and trying him. Therefore, his contentions that he is falsely implicated in the case are false and baseless. He is directly connected with the crime.'

5. I have given detailed and thoughtful consideration to the facts and submissions. I have carefully gone through the entire material record particularly the charge sheet, the copies of the F.I.Rs in Crime No.280 of 1999 of Begumpet Police Station (with enclosed private complaint) & in Crime No.30 of 2001 of CID Police Station, Hyderabad, copies of letters, dated 08.02.1991, 07.10.1996, 17.12.1996 & 05.09.2015 and copies of case diary part II in Crime No.20 of 2001, which are part of the material papers filed in the criminal revision case.

6. Before proceeding further, it is to be noted that as per the contents of the charge sheet, K. Raghuram Reddy (A1) and W.Harinath (A2) are the Secretary and Chairman of the Indian Aircraft Technicians Association (IATA) respectively. V. Satyanarayana (A3) is the retired Chief City Planner, Municipal Corporation of Hyderabad (MCH). Surender Bahadur (A4), the petitioner herein, is the retired CE of Andhra Pradesh Housing Board (APHB). M. Madhusudan Rao (A5) is the retired Secretary of APHB. R. Satya Kumar (A6) and M.F.Peter (A7) are the purchasers of the park place in Indian Air Lines Colony, Secunderabad.

7. Further, the crux of the alleged case as is evident from the material record is this: 'LW1, P. Venkateswara Rao, who is by then working as Inspector in the Indian Airlines and who is also a member of Indian Aircraft Technicians

Association, Begumpet, Hyderabad, filed a petition, against A1 and A2, before the Additional Director General of Police, CID, in the year 2001. He stated that they sold away the park place measuring about 600 Square yards located at the entrance of the colony after passing a resolution in the General Body Meeting of the Society and that the said sale was affected by execution of sale deeds for plots of 300 Square yards each in favour of A6 & A7 for a consideration of Rs.1.80 lakhs each against the market value of Rs.18.00 lakhs for each plot. They further obtained permission from the MCH for construction of commercial complex in the said place by executing an affidavit. On inspection of the site, the authorities of HUDA addressed a letter to MCH. At that time, the commercial complex was under construction. Inspite of receiving a letter, dated 07.07.1997, from HUDA, the authorities of MCH failed to stop the illegal construction or demolish the illegal construction by cancelling the permission that was granted. After execution of sale deed, A1 submitted an application, on 24.08.1996, to the Commissioner, MCH by remitting an amount of Rs.49,737/- as building fee for construction of commercial complex on behalf of A6 & A7 and submitted a forged lay out. He also filed an affidavit before the MCH and obtained conditional permission. A3, who worked as Chief City Planner in MCH conspired with A1 & A2 and abused and misused his powers for granting building permission as per the application filed by A1 and addressed two letters on 17.10.1996 and 07.12.1996; however, without waiting for any reply and in conspiracy with A1, he obtained an affidavit, dated 26.12.1996, and granted permission illegally. A3 has not taken into consideration the enquiry report of Iqbal Ahmed, City Planner, who inspected the spot and recommended for refusal of permission for the construction of the commercial complex; and, A3 further failed to take action on the letter, dated 07.07.1997, of HUDA authorities, which was written after due inspection of the spot, wherein it was pointed out that a commercial complex is being constructed in the park place. A4 worked as Chief Engineer in APHB, Hyderabad, from 1995 to

1999 and retired from service. He also has knowledge that it is an open place at the entrance of the colony and is meant for park in the HUDA lay out. He allowed permission to be given by the MCH having failed to give proper replies with correct facts; he addressed a letter, dated 14.10.1996, stating that possession of open place set up for park was handed over to the society by referring to a letter, dated 04.01.1991, written by his subordinate (late) Qadir though the truth is that the site was not handed over in view of the letter, dated 08.02.1991 written by him-A4. A5 worked as Deputy Collector in APHB as Secretary from 1995 to 1998 and retired from service. He also conspired with A1 & A2 and prepared a false note stating that it is not a park place though he was having knowledge that it was left for park place as per the original lay out plan, which is available with APHB office. A6 & A7 in conspiracy with A1 & A2 purchased the park place measuring 600 Square Yards under two sale deeds for 300 Square Yards each though they are not the members of the society and further got rectification sale deeds, S1 & S2, after two years.'

8. It is profitable to now refer to the legal position. Section 239 Cr.P.C reads as under: - "When accused shall be discharged: If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing." Section 227 Cr.P.C reads as under: - 'Discharge: - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.' Thus, a charge can be framed against an accused in a case where the prosecution has placed on record sufficient evidence to show a *prima facie* case against him under a particular

provision of law. In case the prosecution fails in its primary duty to show a *prima facie* case to proceed against the accused i.e., when the Court comes to the conclusion that there is no sufficient ground to proceed against the accused, he shall be discharged forthwith under Section 227 Cr.P.C. It is a well settled principle of Criminal Jurisprudence that a Court would not require the prosecution to prove its case beyond any shadow of doubt at the time of framing of the charge as it is required to do so only at the time of conclusion of its case in order to bring home the guilt of the accused. At the stage of framing of charge, the prosecution is under an obligation to place only that much material against the accused which may be sufficient enough in the circumstances of a given case to draw a presumption that the accused has committed an offence. Further, in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others [1990 Cri L.J. 1869], the Supreme Court held as follows: "From the above discussion it seems well settled that at the Section 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients Constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case." In Union of India v. Prafulla Kumar Samal and another [1979CriLJ154], the Supreme Court held as follows: "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. 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. 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 large 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. In exercising his jurisdiction under Section 227 the Judge which under the present Code is a senior and experienced 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, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

9. Now that the legal position obtaining and the crux of the case of the prosecution are stated, it is to be examined as to whether there are any grounds to charge the petitioner-A4 and proceed against him. His specific case is that he is in no way concerned with the crime and that the contents of the FIR, the charge sheet, evidence collected and the other incidental circumstances even if taken as true and at their face value, there are no grounds to proceed against him and the charges are groundless. It is to be noted that the petitioner worked as Superintendent Engineer (Housing Engineer), Circle II of APHB, Hyderabad. As such, he addressed a letter, dated 08.02.1991. Even as per the prosecution, the said letter, dated 08.02.1991, written by the petitioner-A4 shows that the site was not handed over. Therefore, it is necessary to first refer to the said letter enclosed at Sl.No.33 of Memo of Evidence and referred to as Doc.No.33 when it was filed along with the charge sheet. A perusal of the said letter shows that it was addressed by the petitioner-A4 as Housing Engineer of Circle II to the Secretary, APHB Housing Scheme for Indian Airlines Employees Managing Committee, Begumpet,

Hyderabad, [marking a copy to Regional Housing Engineer, (Central) i.e., Executive Engineer]. The contents of the said letter verbatim are as follows:

> "With reference to your letter cited, I regret to inform that the A.P. Housing Board is not in a position to comply with your request for handing over the open spaces to your Managing Committee for developing on commercial Complex as this residential area."

Therefore, the said letter discloses that the petitioner-A4 stated that APHB is not in a position to comply with the request of the Secretary, that is, A1 for handing over the open space to the Managing committee for developing commercial complex. Therefore, the averments in the charge sheet that the said letter was written by A4 stating that the site was not handed over, is undisputed. This letter makes a reference to the letter, dated 04-02-1991. The letter, dated 04.02.1991, which is Doc.no.18 enclosed to the charge sheet and which was referred to by LW13 Sri S.K. Tajuddin, T.A to Chief Engineer, APHB, on a perusal discloses that it was written by M.A.Qadeer, Regional Housing Engineer (Central) to the District Housing Engineer-I, APHB, Hyderabad. The said letter does not bear the signature of the author of the letter and the petitioner-A4 is in no way concerned with the said letter. Even otherwise, the contents of the said letter are said to be as follows:

> "The attention of the Dist.Housing Engineer-I is drawn to the reference 1st cited and he is instructed to hand over the possession of the plots S.1 and S.2 allocated for construction of shops as plots in above said colony as it is in present condition to Secretary, APHB Housing Scheme for I.A employees Association since it was decided not to take up further construction in view of technical difficulties."

Admittedly, the petitioner-A4 was transferred to Circle I of APHB, on 21.01.1993, as Superintendent Engineer, Circle I. Therefore, from that day he has no connection with the nature of work of Circle II including the present housing scheme. In the charge sheet, there is an averment that he allowed permission to be given by MCH without objecting and without giving proper replies, with correct facts, to the letters, dated 07.10.1996 & 17.12.1996, written by MCH. But the fact of the matter is that he is already transferred to

Circle I by the date of the said letters. Letter, dated 07.10.1996, which is part of the material record discloses that it was addressed by the Commissioner, MCH to the Regional Housing Engineer, Central, APHB but not to the petitioner-A4 who was a Housing Engineer (Superintendent Engineer). Similarly, letter dated 17.12.1996, was addressed by the Chief City Planner, MCH to the Chairman, APHB, but not to the petitioner-A4. Therefore, both the letters are not addressed to the petitioner-A4 in his official capacity and he is, therefore, no way concerned with the said letters. Though it is alleged that the petitioner-A4 also addressed a letter, dated 14.10.1996, stating that possession of the open place set up for park was handed over to the society, no such letter is collected during the course of investigation and no such letter is filed with the charge sheet. The said letter is not filed before this Court as well. It is not in dispute that there was no reference to the name of the petitioner-A4 by any one of the list witnesses in their statements made during the course of investigation. Thus, there is no basis for the averment in the charge sheet that petitioner-A4 allowed permission to be given by APHB without objecting to it and without giving proper replies with correct facts to letters dated 07.10.1996 & 17.12.1996 as the said letters are not at all addressed to him and he was transferred to Circle-I on 21.01.1993 as Superintending Engineer of the said Circle whereas the present subject matter relates to Circle II and as he worked as Superintending Engineer of Circle-II only till 14.06.1991 and he did not allow the handing over of open space to any one as is evident from the letter, dated 08.02.1991, wherein it is stated that the request of A1 for handing over the open space to the Managing Committee for developing a commercial complex cannot be complied with. LW8, S. Madhava Rao, in-charge Chief Engineer in-fact stated certain names of persons involved in the scam. However, they were not arraigned as accused. Thus, a bare and plain perusal of the material makes it manifest that there is no *prima facie* case or strong case or sufficient ground for arriving at a conclusion that there is sufficient material produced for framing a charge and proceed against petitioner-A4.

10. Be it noted that the trial Court, having simply observed that the prosecution did not invoke the doctrine of vicarious liability insofar as the petitioner-A4 and that he conspired with A1 & A2 and allowed MCH to accord permission to A1 to construct building in the site earmarked for park in the approved lay out, dismissed the petition of the petitioner even though there is no material to support the said observations. The trial Court erroneously observed that the Court need not assess the evidence on which the prosecution wants to rely, without considering the fact that as per the settled legal position it is empowered to sift and weigh the evidence while examining as to whether a *prima facie* case or strong case exists against the petitioner-A4 for proceeding against him for framing charges.

11. Keeping in view the scope of interference and the ambit of jurisdiction, this Court only focused on the material to form an opinion whether there is a strong suspicion that the accused has committed an offence which if put to trial could prove his guilt in view of the precedential guidance in the decision in State of Rajasthan v. Fatehkaran Mehdu [2017 (1) ALD (Crl) 842 (SC)]. A careful consideration, to the extent permissible, of the entire material on record makes it obvious that there is no material or semblance of evidence *prima facie* to frame a charge and proceed against the petitioner-A4. Viewed thus, this Court finds that there is merit in the revision case and that the petitioner-A4 is entitled to be discharged.

12. Accordingly, the Criminal Revision Case is allowed and the order, dated 29.10.2015, of the learned Principal Judge for trial of SPE & ACB Cases-cum-IV Additional Chief Judge, City Civil Courts, Hyderabad, is set aside. As a sequel, the said petition is allowed and the petitioner-A4 is discharged. His bail bonds, if any, shall stand cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

03.07.2017
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