

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE No.51 of 2018

ORDER :

This Criminal Revision Case is arising out of the order dated 14.12.2017 in CrI.MP.No.1092 of 2017 in C.C.No.1031 of 2015 passed by the learned XV Metropolitan Magistrate at Medchal, Medchal District.

Heard learned counsel for the petitioners/A.1 and A.3 and the learned counsel for respondent No.2/defacto complainant. Perused the material on record.

The petitioners are Accused Nos.1 and 3 in C.C.No.1031 of 2015 registered on the complaint of respondent No.2 for the offences punishable under Sections 447, 427 and 506 of IPC. The petitioners have filed CrI.MP.No.1092 of 2017 under Section 239 of Cr.P.C., to discharge them for the offences under Sections 447, 427 and 506 of IPC. The trial Court dismissed the petition declining the two contentions raised by the petitioners, namely the first contention being A.2 was in Australia by the alleged date of incident and vide order dated 21.07.2017 in CrI.MP.No.6144 of 2017 in CrI.P.No.6034 of 2017, this Court stayed the proceedings against A.2. The second contention was that the petitioners were unable to move freely and hence the complaint was lodged with a malafide intention. The trial Court has negatived both the

contentions and declined to discharge the petitioners on these grounds.

Learned counsel for the petitioners has submitted the same arguments in this revision also. It is contended that the case filed by the defacto complainant is false and A.2 was in Australia at the time of the alleged incident. It is contended that A.1 and A.3 are senior citizens (old aged persons) and did not participate in the commission of offence and due to civil disputes, a false case was foisted against the accused and, therefore, sought for discharge of the petitioners.

On the other hand, learned counsel for respondent No.2/defacto complainant relied upon a decision in SHEORAJ SINGH AHLAWAT & ORS. Vs. STATE OF U.P. & ANR.¹ and submitted that the Hon'ble Supreme Court has formulated certain principles for consideration of the petitions filed for discharge. The Hon'ble Supreme Court placing reliance on its own decision in UNION OF INDIA Vs. PRAFULLA KUMAR SAMAL AND ANOTHER², where in para-17 of the judgment, the Apex Court observed that keeping in view of the allegations made against the accused basing on the facts true or false, at the preliminary stage, which cannot be determined at the time of framing of charge. Any such determination can take place only at the conclusion of trial. But, however, the Apex Court exempted A.1 and A.2 for personal appearance

¹ Crl.A.No.1803 of 2012, arising out of SLP(Crl.) No.4649 of 2010, dt.09.11.2012

² (1979) 3 SCC 4

before the trial Court. The ratio laid down in the above judgment was relied upon in UNION OF INDIA Vs. PRAFULLA KUMAR SAMAL AND ANOTHER.

In the instant case, the petitioners have tried to prove their case placing reliance on the interim order dated 21.07.2017 passed by this Court in Crl.P.No.6034 of 2017, which is still pending. The observations in Crl.P.No.6034 of 2017 are made at interlocutory stage and the criminal petition is still pending for adjudication. Therefore, the observations in the interim order cannot be taken into consideration for passing a final order of discharge.

The final order of discharge has to be passed basing on the substantive material placed before the Court to come to a conclusion that A.1 and A.3 have not involved in the commission of the offences alleged against them. The observations in the interim orders passed by this Court do not give any right to the petitioners to seek for an inference that A.2 was not present in India by the date of incident and so, A.1 and A.3 have not participated in the commission of offence.

The other submission of the learned counsel for the petitioners that A.1 is aged about 63 years and suffering with ailments and so he cannot participate in the commission of

offence is a question of fact that can be proved by adducing evidence in this case.

In SHEORAJ SINGH's case (supra), the Hon'ble Apex Court has formulated certain principles considering the previous precedents. They are as follows:

“(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:

(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.

(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 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.

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

Learned counsel for the petitioners has submitted that the above judgment is applicable more to the case of the petitioners than that of respondent No.2.

In fact, the question of participation of A.1 to A.3 in the commission of offence can be proved only by adducing proper evidence before the trial Court. Except based on the findings in the interim order passed by this Court in a quash petition, which is still pending, the final order of discharge cannot be passed, at this stage, by coming to a conclusion that A.1 and A.3 could not have participated in the commission of offence along with A.2. On the other hand, mere filing of a Medical Certificate stating that petitioner No.1 is old aged and suffering with ailments, would not lend any support to his contention that there was no possibility for him to participate in the commission of offence. These are all questions of facts to be proved before the trial Court only after framing of charges. At this stage of framing of charges, it cannot be determined without cogent evidence on record that there was absolutely no possibility for the accused to participate in the commission of offence.

In view of the foregoing reasons, this is not a fit case for discharge of the petitioners/A.1 and A.3 and, therefore, there is no illegality or infirmity in the order passed by the trial Court refusing to discharge them.

In the result, the Criminal Revision Case is dismissed. But, however, the presence of the petitioners/A.1 and A.3 is dispensed with before the trial Court, except on the occasions where their presence is required during trial.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

23.11.2018
Msr



HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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