HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.2227 of 2015

ORDER:

Heard the learned counsel for the petitioner as well as the learned Public Prosecutor appearing for the respondent State.

The present revision case is filed challenging the orders passed in Crl.M.P.No.2366 of 2015 in C.C.No.446 of 2015 (corresponding new number is C.C.No.298 of 2016) dated 21.09.2015 on the file of the II AJCJ-cum-XIX Metropolitan Magistrate, Cyberabad, Kukatpally at Miyapur, dismissing the petition filed under Section 239 Cr.P.C., to discharge the petitioner for the offence under Section 109 IPC.

The facts in brief are that on 04.05.2012 the complainant lodged a complaint stating that on 04.05.2012 at 04.45 p.m while she was returning from her office, two persons came on a black coloured pulsar motor cycle in opposite direction and snatched her gold chain weighing around 35 grams from her neck and fled away.

Basing on the said complaint, LW.9, Inspector of Police, registered a case vide Crime No.354 of 2012 for the offence under Sections 356 and 379 IPC. After investigation, a charge sheet was laid against A1 to A3 for the offence under Sections 356 and 379 IPC, A4 for the offence under Section 411 IPC and A5 i.e., the petitioner for the offence under Section 109 IPC. On 16.08.2014, the police of Narsingi Police

Station arrested A2 along with others in another crime. During the interrogation, the arrested person have confessed about commission of offence in the said crime and 13 more snatching cases of various police stations in Cyberabad along with one Shiva, who died in an encounter. LW.11 recorded the confessional statement of A2 and others in the presence of LWs.4 to 6 and recovered the stolen property relating to Crime No.316 of 2014 and other properties. As per the confessional statements of the accused, they have recovered the stolen property in various crimes. During the course of investigation, A2 stated that for the last few years he was an associate of Shiva and committed several snatchings along with him, who had good relations and acquaintance with A4 i.e., Manager of Shriram City Union Finance at Champapet Branch and informed him about the commission of snatchings and pledging the stolen gold items in the said finance company and the receipts were kept in his house. It is mentioned in the charge sheet that A4 in violation of the norms set out for advancing of gold loans, colluded with A1 and accepted the gold items for pledge for the company without obtaining I.D. proof and created free access and liberty to him. As such, A4 has violated the norms framed by RBI and accepted pledge. As far as the petitioner, who is arrayed as A5, is concerned, only allegation made against him is that he also committed abetment and wantonly showed negligence of his duty to give suggestions to A4. Except this one sentence, nothing is mentioned against the petitioner in the charge sheet.

The learned Magistrate, after taking cognizance of the offence against the accused, numbered the case as C.C.No.446 of 2015 (corresponding new number is C.C.No.298 of 2016). During the pendency of the C.C., the petitioner filed Crl.M.P.No.2366 of 2015 under Section 239 Cr.P.C., to discharge him for the offence under Section 109 IPC. The learned Magistrate, after hearing, was pleased to dismiss the petition by orders dated 21.09.2015. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioner would contend that the petitioner was appointed as Consultant (Vigilance) in Shriram City Union Finance Limited. He was in-charge of about 40 branches all over the city. The petitioner was sitting in the head office and controlling the vigilance activities over all branches. The prosecution has not placed any evidence on record to show that A4 while receiving the gold ornaments for pledging had neither contacted the petitioner nor sought any advice with regard to pledge of the same. During the course of hearing, it is also submitted that the petitioner has been implicated on the statements of LWs.7 and 7, who are the subsequent Branch Managers at the relevant point of time when the statements were recorded. In the statements what all that is stated against the petitioner is that he intentionally not advised A4 and not given proper instructions resulting in pledging of the gold ornaments/chains. However, in the said statement, the said witness being the Manager of Champapet branch is silent as to what is the procedure that has to be followed when the gold has been pledged, more particularly, when the petitioner is sitting in the head office. In the case on hand, no material has been placed on record to show that the petitioner has been informed about the pledging of the stolen property. In the absence of the same, the petitioner cannot be fastened with any criminal law.

Per contra, the learned Public Prosecutor appearing for the respondent State though supported the impugned order, fairly conceded that except the above said statement nothing has been mentioned against the petitioner. He also submitted that the truth or otherwise of the said statement will be elicited only during the course of trial.

Having heard both the counsel and from the perusal of the material on record, it is revealed that the petitioner is working as a Vigilance Consultant in Shriram City Union Finance Limited since 2011. In his appointment letter dated 20.05.2011, it is mentioned that he was appointed as Consultant (Vigilance) on the terms and conditions mentioned therein. Some of the important conditions are that as a consultant his services shall be available to all the Shriram Group companies and he will be responsible for safe keeping and return in good condition of the properties/documents, which are in his custody and his place of posting will be at Administrative Office, Hyderabad. However, his appointment order is silent with regard to seeking opinion of the petitioner at the time of pledging articles by the Managers of different branches. Further, in the statements, LWs.7 and 8 have also not pressed to any rule or norm based on which the petitioner is obligated to give opinion or look into the articles which are being pledged personally and on the advice of the petitioner alone the articles have to be pledged.

A perusal of the charge sheet also would indicate that the petitioner has wantonly failed to give instructions to A4, which resulted in pledging of the stolen gold articles. This one statement is not sufficient to attract the ingredients of Section 109 IPC. In this context, it is relevant to extract Section 107 IPC, which reads as under:

> "**107. Abetment of a thing**.—A person abets the doing of a thing, who—
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> First — Instigates any person to do that thing; or
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> Secondly —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
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> Thirdly — Intentionally aids, by any act or illegal omission, the doing of that thing.
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> *Explanation* 1—A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.
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> *Explanation* 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

As per the above said provision, a person, who is charged for the offence should be in the knowledge of an act for which he instigates any person to do a thing or engages with one or more other person/persons in any conspiracy for doing that thing and intentionally aids, by any act or illegal omission, the doing of that thing. In the case on hand, though it is stated that the petitioner has wantonly failed to give any proper instructions, the primary ingredient that the petitioner is in the knowledge of the stolen property is being pledged i.e., unless the first limb of the provision is satisfied, it cannot be said that the petitioner has committed an offence under Section 107 IPC. Therefore, this Court is of the opinion that no *prima facie* case is made out against the petitioner for the offence under Section 109 IPC.

During the course of hearing, it is also brought to the notice of this Court that the case has been split up and it was continued against A1 to A3. However, during the course of trial, A1 died and A2 has been acquitted for the offence under Section 356 and 379 IPC. In these circumstances, any further continuation of proceedings against the petitioner would amounts to abuse of process of the Court for the reason that even if the petitioner is tried, it may not lead to conviction.

Hence, the criminal revision case is allowed, setting aside the orders passed in Crl.M.P.No.2366 of 2015 dated 21.09.2015 on the file of the II AJCJ-cum-XIX Metropolitan

Magistrate, Cyberabad, Kukatpally at Miyapur and consequently the petitioner is discharged for the offence under Section 109 IPC in C.C.No.446 of 2015 (corresponding new number is C.C.No.298 of 2016).

Miscellaneous petitions, if any, stand closed.

P. KESHAVA RAO, J

Date: 08.10.2018.
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