

HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.1037 of 2018

ORDER

Heard the learned counsel for the petitioners as well as the learned Public Prosecutor for the first respondent-State.

In spite of service of notice on the counsel for the second respondent in the Court below, none appeared.

The present criminal revision case is filed questioning the orders dated 06.02.2018 passed in CrI.R.P.No.78 of 2016 on the file of the Court of the XIII Addl. District and Sessions Judge (FIC), Vijayawada setting aside the orders dated 15.09.2016 passed in CrI.M.P.No.680 of 2016 in C.C.No. 507 of 2011 on the file of the III Addl.Chief Metropolitan Magistrate, Vijayawada.

The facts of the case in brief are that the second respondent, lodged a complaint for misappropriation of provident fund amounts. Pursuant to the said complaint, a crime was registered vide FIR No.17 of 2008 for the offences under Sections 406, 408, 420 of IPC of Krishna Lanka, Police Station. After investigation, a charge sheet was filed. The Court below, after taking cognizance of the offences, against the accused, numbered the case as C.C.No.507 of 2011. In the said C.C., the complainant was examined as PW-1. At that stage, the first respondent filed a petition under Section 319 Cr.P.C. vide CrI.M.P.No.680 of 2016 to add/implead the petitioners as accused by issuing summons. The learned III Addl. Metropolitan Magistrate, after hearing the matter, was pleased to dismiss the petition on 15.09.2016 by observing that no material has been placed including the oral evidence of PW-1 about the involvement

of the petitioners and as such there are no grounds to proceed further against the petitioners and implead them as accused. Aggrieved by the orders, the second respondent filed Criminal Revision Petition No.78 of 2016 on the file of the Court of XIII Additional District and Sessions Judge (FTC), Vijayawada. The learned Sessions Judge, after hearing, was pleased to allow the revision petition, setting aside the orders dated 15.09.2016 in CrI.M.P.No.680 of 2016 and impleaded the petitioners as accused in C.C.No. 507 of 2011 by orders dated 6.2.2018. Aggrieved by the said orders, the present criminal revision case is filed.

The learned counsel appearing for the petitioners, submitted that the revisional Court failed to see that originally Jai Bheema Seva Sangh is having licence dated 9.10.2004 with the A.P.S.R.T.C., Vijayawada for the purpose of maintenance of sweeping and cleaning of Pandit Nehru Bus Station, Vijayawada on no payment on either side basis for a period of two years. The said licensee agreed to undertake the sanitation and cleaning works at its own costs without claiming any amount from the Corporation. Therefore, there is no liability for the Corporation for payment of the wages to the workers of the said licensee. In fact, the licensee was permitted to collect Re.1/- per head for the users of the toilets in the Pandit Nehru Bus Station, Vijayawada and except that amount, there is no agreement between the Corporation and the said licensee. In fact, as per the deed of licence, the payment of minimum wages, provident fund, EDLIF, ESI etc. are with the licensee alone. The learned counsel also brought to the notice of this Court referring to the deed of licence and submitted that the Corporation

has nothing to do with the contributions under the provident fund Act.

Having heard the learned counsel for the petitioners and a perusal of the material on record, it is revealed that Jai Bheema Seva Sangh i.e. the licensee under deed of licence dt.9.10.2004, is entrusted with sweeping and cleaning of the Bus Station, Vijayawada i.e. maintenance of toilets, maintenance of drainage, watering of plants and other related activities on no payment either side basis. In fact, the licensee was permitted to collect Re.1/- per head from the users of the toilets in the bus station. A perusal of the clauses in the deed of licence, it is crystal clear that the second respondent has no privity of contract with the A.P.S.R.T.C. In fact, the petitioners being the officers of the Corporation have absolutely nothing to do with the second respondent in their personal capacity since they are representing the Corporation in different cadres. The Clause 33 of the Deed of Licence dt.9.10.2004 contemplates that the licensee shall ensure deduction of P.F. contribution from the wages of persons engaged by him together with the matching contribution of the employer i.e. licensee along with the administrative and inspection charges at the rates prescribed by the government from time to time and remit to the Secretary, A.P.S.R.T.C., P.F. (Trust), Hyderabad. The above said clause, clearly indicates that the employer i.e. the licensee has to collect the P.F. contributions from the persons engaged by him and together with the matching contribution from his side, remit to the Secretary, A.P.S.R.T.C. P.F. (Trust). Therefore, there is no rule that the petitioners either to collect the P.F. contributions from the persons

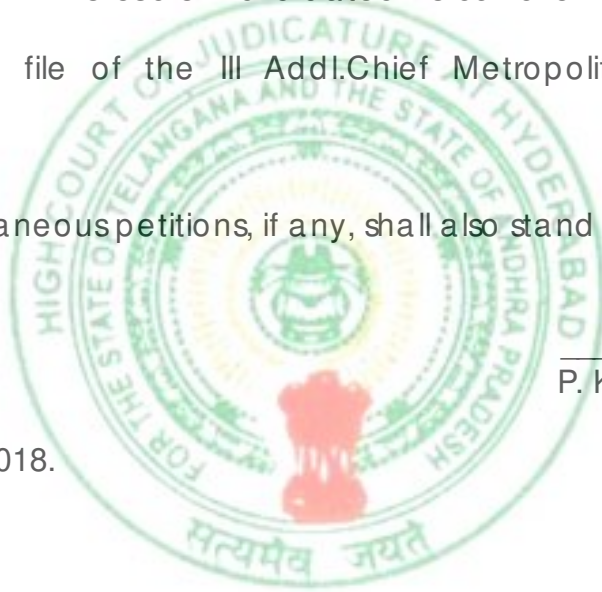
engaged by the licensee or under the clauses of the deed of licence. They have no role at all to collect and deposit the same with the Secretary, A.P.S.R.T.C., P.F. (Trust), Hyderabad. That being so, there cannot be any justification for impleading the petitioners as accused in the above said case.

Under these circumstances, the criminal revision case is allowed setting aside the orders dated 06.02.2018 passed in CrI.R.P.No.78 of 2016 on the file of the Court of the XIII Addl. District and Sessions Judge (FTC), Vijayawada in setting aside the order passed in CrI.M.PNo.680 of 2016 dated 15.09.2016 in C.C.No. 507 of 2011 on the file of the III Addl.Chief Metropolitan Magistrate, Vijayawada.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHAVA RAO, J

Date: 19.07.2018.
CCM



HON'BLE SRI JUSTICE P. KESHA VA RAO



CRIMINAL REVISION CASE No.1037 of 2018

Date:19.07.2018

ccm