

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE No.2146 OF 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioners/A.1 and A.5, challenging the order, dated 19.06.2017, passed in CrI.M.P.No.305 of 2017 in C.C.No.129 of 2009 by the XIV Additional Chief Metropolitan Magistrate, Hyderabad.

2. Heard the learned counsel for the petitioners/A.1 and A.5, learned Assistant Public Prosecutor representing the 1st respondent-State and perused the record.

3. The petitioners/A.1 and A.5 in C.C.No.129 of 2009 filed the petition on the ground that the first petitioner/A.1 is no more a Managing Director and he is continuing as a Director. In support of his contention, he produced a document in Form No.32 filed under Sections 303(2), 264(2) of the Companies Act, 1956, to prove that he is no more a Managing Director of the Company, while the second petitioner/A.5 is a company represented by A.1. Trial Court found that there is *prima facie* material to proceed against both the petitioners and declined to discharge the petitioners, as the question whether the first petitioner is continuing as Managing Director and representing the company in the same capacity as Managing Director of the Company after submission of Form No.32 is a question of fact to be decided during trial, but not at this stage.

4. The present petition is filed under Sections 397 and 401 of Cr.P.C. Jurisdiction of this Court under Sections 397 and 401 of

Cr.P.C. is limited and the High Court may exercise such power only when the Court found that there is a manifest perversity in the order or the finding recorded by the Court is without any evidence or material. Section 401 of Cr.P.C. confers a kind of parental and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity or procedure, neglect or proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. Whether or not the High Court will exercise its revisional jurisdiction in a given case would depend upon facts and circumstances of each case. The discretion conferred on the High Court by Section 401 of Cr.P.C. has to be exercised judicially, on sound judicial principles and not arbitrarily. Therefore, keeping in mind the scope of revision, I would like to decide the present issue before this Court.

5. Section 239 of Cr.P.C. deals with discharge of the accused. While deciding an application under Section 239 Cr.P.C, if the Court is of the opinion, upon considering the police report and documents sent with 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 recording the reasons for so doing.

6. The documents referred to in Section 207 of Cr.P.C. also must relate to such documents which can be subsequently transferred into evidence at the time of the trial. Hearing of the prosecution and the accused under this section does not mean the hearing of arguments only, but it includes the examination of documents filed in support of prosecution case. The word “groundless” would mean the absence of reasonable ground to expect a conviction. “Groundless” is equivalent to saying that there is no ground for framing the charges, which depends on the facts and circumstances of each case. Therefore, only when the Magistrate or Sessions Judge comes to conclusion that there are no grounds to frame a charge for specific offence, the Court can discharge the accused for such offence. Even the scope of Section 239 Cr.P.C. is limited, such power has to be exercised only when the Magistrate comes to conclusion that it is groundless, based on charge sheet and documents filed under Section 173 of Cr.P.C.

7. Consideration of records and documents at the stage of framing charge is for the limited purpose of ascertaining whether or not there is sufficient ground to proceed against the accused. Whether the material at the hands of the prosecution is sufficient and whether the trial will end in conviction or acquittal are not relevant considerations at the stage of framing of charge as held by the Apex Court in “**P.Vijayan v. State of Kerala**¹”.

8. Therefore, in view of the limited scope of power of this Court, the Court has to examine whether the Trial Court did commit any manifest error in arriving at such conclusion. But, in the present

¹ AIR 2010 SC 663

case, the basis for claiming discharge of the petitioners is Form No.32 submitted by the petitioners to the Registrar of Companies under Section 303(2) of the Companies Act. But the documents produced by the accused cannot be gone into to conclude that the prosecution is groundless at this stage and the Court is required to consider the report of the police and other documents produced in compliance of Section 173 Cr.P.C, but not any other document. If, that is the case, a document produced by the petitioners in Form No.32 cannot be looked into to arrive at a conclusion that the prosecution is groundless at this stage.

9. While deciding a petition filed under Section 239 of Cr.P.C., the Court has to look into the entire material on record, taken together must justify framing of a charge for an offence as held by the Apex Court in “**R.S.Nayak v. A.R.Antulay**”².

10. Therefore, to proceed against the petitioners for framing charges, for any of the offences, the documents produced by the petitioners cannot be looked into for limited purpose of deciding an application under Section 239 Cr.P.C. If that is excluded from consideration, there is absolutely nothing to uphold the contention of the petitioners that the first petitioner/A-1 was not the Managing Director as on the date of alleged offence representing the A.5 company. Therefore, the dismissal of the application filed by the petitioners before the Trial Court under Section 239 Cr.P.C without considering the document i.e., Form No.32 submitted to the Registrar of Companies under Section 303(2) of Companies Act, is legal and in accordance with law. Therefore, no ground is

² AIR 1986 SC 2045

found to interfere with the order dated 19.06.2016 in CrI.M.P.No.305 of 2011 in C.C.No.129 of 2009 passed by the XIV Additional Chief Metropolitan Magistrate, Hyderabad, by exercising power under Sections 397 and 401 Cr.P.C. Consequently, the Criminal Revision Case is liable to be dismissed.

11. In the result, the Criminal Revision Case is dismissed.

The Miscellaneous Petitions, if any, pending shall stand closed.

23rd April, 2018.
ssp

Dr. SHAMEEM AKTHER, J

