THE HON'BLE SRI JUSTICE P.KESHAVA RAO

CRIMINAL REVISION CASE No.2550 OF 2017

ORDER:

This Criminal Revision Case is filed questioning the orders passed in Crl.M.P.No.249 of 2017 in C.C.No.1638 of 2014 dated 01.06.2017 on the file of Court of the V Additional Judicial Magistrate of First Class, Nellore, in dismissing the petition filed under Section 239 of Cr.P.C. seeking discharge from the charges levelled against the petitioner.

Heard the learned counsel for the petitioner. Though notice is served on the respondent No.2 on 06.03.2018 as evidenced from the track report filed through memo vide USR No.12353/2018, he has not chosen to appear either in person or through any counsel.

The facts, in brief, are that originally, the respondent No.2 herein lodged a complaint alleging that he is working as a software engineer on contract basis for the last five years in the office of Electricity Superintendent Engineer, Nellore. He got an account in Andhra Pragati Bank vide A/c. No.13871 (12001-13871). On 13.03.2010, when he has verified his account, he noticed that a sum of Rs.1,35,500/- is missing. Immediately, he complained to the manager of the bank. On that, the said manager shown a letter said to have been submitted by one Y.Srinivasulu Reddy with account No.11381 asking to transfer the said amount from the account of the respondent No.2 to his account. A perusal of the said letter shows that he has given the said letter asking transfer of the said amount to his father Srinivasulu Reddy. Since the respondent No.2 has not issued the said letter and his father's name is Y.V.Krishna Reddy, he sensed some mischief and gave the complaint. Pursuant to the said complaint, a Crime was registered vide F.I.R.No.175 of 2012 for the offences under Sections 409, 467, 468, 471 r/w 120B IPC. After investigation, a charge sheet was filed against the petitioner herein as A.1 and another for the above said offences. The learned V Additional Judicial Magistrate of First Class, Nellore has taken cognizance of the above said offences and numbered the case as C.C.No.1638 of 2014. Pending the said C.C., the petitioner herein filed Crl.M.P.No.249 of 2017 under Section 239 Cr.P.C. seeking discharge from the charges levelled against him. The learned Public Prosecutor opposed the said petition. After hearing, the said petition was dismissed by orders dated 01.06.2017. Aggrieved by the same, the present Criminal Revision Case is filed.

The learned counsel appearing for the petitioner would contend that the petitioner is an innocent of the charges levelled against him. He has no dishonest intention to cheat the respondent No.2. In fact, the money was transferred only on the letter given by the respondent No.2 and the said letter was accepted on the basis of the customer relationship. In fact, the petitioner had got acquaintance with the respondent No.2 on account of previous relationship with regard to the gold loans. The said amount was not misappropriated and at best, it could be only a civil wrong and the respondent No.2 is entitled for compensation. The matter does not have any criminality in nature. Therefore, the petitioner should be discharged from the charges levelled against him.

Having heard the learned counsel for the petitioner and a perusal of the material on record, it is evident that the petitioner in collusion with A.2 out of conspiracy, knowing pretty well that respondent No.2 is not the son of A.1 and being the manager, made official endorsement on the forged letter dated 05.10.2008 as "please transfer". On seeing the said endorsement, L.W.2, who was working as a counter clerk, transferred the amount of Rs.1,35,000/- into the account of A.1. This single fact is sufficient to make out a *prima facie* case against the petitioner. That apart, as per the banking procedure, the amounts cannot be transferred on the basis of letters. Even the forensic report obtained with regard to the signatures and handwritings, it is found that the letter dated 05.10.2008 is forged and is not that of the respondent No.2. In these circumstances, this Court feels that it is not an appropriate case where the petitioner can be discharged. The facts, on its face, clearly establish a *prima facie* case for the commission of the above said offence. As such, when once a *prima facie* case is made out, the question of discharging the petitioner from the charges does not arise. Therefore, there are no merits in the Criminal Revision Case.

Accordingly, the Criminal Revision Case is dismissed. However, the learned counsel for the petitioner requested to dispense with the presence of the petitioner during the course of trial as the petitioner is working at Kurnool. Taking the said submission into consideration, the presence of the petitioner is dispensed with in C.C.No.1638 of 2014 on the file of V Additional Judicial Magistrate of First Class, Nellore except on the occasions where his presence is insisted by the said Magistrate.

Pending miscellaneous petitions, if any, shall also stand closed.

P.KESHAVA RAO,**J**

28-06-2018.
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