

THE HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.2007 of 2014

ORDER:

Heard the learned counsel for the petitioner as well as the 2nd respondent.

The present Criminal Revision Case is filed against the orders in CrI.M.P.No.2407 of 2014 in C.C.No.1510 of 2013 dated 9.7.2014 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.

The facts in brief are that the 2nd respondent herein filed complaint against the petitioner for the offence under Sections 406 and 420 of I.P.C. At the time of framing of the charges, the petitioner herein filed CrI.M.P.No.2407 of 2014 under Section 239 of Cr.P.C. to discharge him for the above said offence on the ground that no prima facie case is made out. Learned Public Prosecutor filed counter and opposed the same. Learned Magistrate, after appreciating the facts on record, dismissed the said criminal petition by orders dated 9.7.2014. Aggrieved by the same, the present Criminal Revision Case is filed.

Learned counsel appearing for the petitioner would contend that the order passed by the learned Magistrate, is contrary to law and facts on record. He also contended that the 2nd respondent

filed a complaint, with false allegations and the complaint as filed is premature in nature. Even if the contents of the complaint are taken in entirety, it will not disclose any cause of action more particularly that the petitioner has committed offence for the charges levelled against him. He also contended that the complaint itself is not maintainable since dispute is purely civil in nature. Learned counsel emphasized on the aspect that the Court below, while dismissing the petition, has not assigned any reasons.

Per contra, learned counsel appearing for the 2nd respondent would contend that in the light of the terms of compromise petition filed before the Lok Adalat at L.B.Nagar, in O.S.No.1639 of 2005, the petitioner categorically admitted that he will deliver the possession of the shop shown in red colour to the plaintiff after the building is reconstructed. The petitioner assured the 2nd respondent that the shop allotted to him will not be sold and leased out to any third party. Apart from mentioning that if the petitioner violates terms of the memorandum, the 2nd respondent is entitled to have necessary legal steps. In the light of the specific conditions incorporated in the compromise petition filed before the Lok Adalat, the contention of the learned counsel for the petitioner that there is dispute with regard to identification and allotment of the shop to the 2nd respondent cannot be countenanced.

Having heard both the counsel and from the perusal of the material on record, it is revealed that originally the 2nd respondent herein filed a suit in O.S.No.1639 of 2005 against the petitioner for injunction. During the pendency of the said suit, compromise was

effected between the parties whereby and where under, the same was closed before the Lok Adalat on certain terms and conditions. The relevant terms and conditions are that the shop shown in red colour in the plaint annexed to the memorandum, after completion of the construction, it will be delivered to the 2nd respondent. The petitioner also assured that the allotted shop will not be sold and leased out to any third party and if the petitioner violates the terms of the memorandum of compromise, the 2nd respondent is at liberty to take legal steps. During the course of hearing, it is brought to the notice of this Court that the 2nd respondent has already filed an execution petition since the petitioner violated the terms and conditions of the said memorandum of compromise filed before the Lok Adalat, in not delivering the identified shop to the 2nd respondent and at the same time leasing the same to the third party. From the perusal of the impugned order, learned trial Court, observed that after careful scrutiny of the complaint and statements of witnesses under section 161 Cr.P.C., found *prima facie* case against the petitioner for coming to a conclusion that the offence against which the petitioner is charged is satisfied though the learned Magistrate, has not given any specific reasoning for dismissal of the petition. In the light of the observations made above, this court is of the opinion that there is no irregularity or illegality in the orders passed by the Court below. In fact, at the stage of framing of a charge under Sections 227 or 239 Cr.P.C., what all required to be seen by the Court below is whether any *prima facie* material is placed before the Court to frame a charge and proceed further. In the case on hand, the terms and conditions

of the memorandum of compromise, more particularly, undertaking given by the petitioner, would certainly at this stage make out a *prima facie* case for framing a charge. Therefore, there are no merits in the Criminal Revision Case.

Accordingly, the Criminal Revision Case is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.KESHA RAO

Date: 07/09/2018

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