

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL REVISION CASE No.1682 of 2014

ORDER:

Aggrieved by the order, dated 23.06.2014, in CrI.M.P.No.1446 of 2013 in C.C.No.369 of 2008, passed by the learned Additional Judicial Magistrate of First Class, Miryalaguda, dismissing the petition filed under Section 239 Cr.P.C by the petitioners/Accused Nos.2 & 4, the instant criminal revision case is filed.

The facts in brief which lead to file the present criminal revision case are that as per prosecution, Accused Nos.1 to 4 are brothers, Accused No.6 is their father and Accused No.5 is the wife of Accused No.1. Accused No.1 is the owner of M/s.Vasundhara Traders, Miryalaguda and he was running a rice mill under the name and style "Kanakadurga Rice Mill" at Miryalaguda. He purchased paddy from the farmers and other businessmen including LWs 1 to 6. He purchased paddy worth Rs.14,00,00/- from the *de facto* complainant; paddy worth Rs.2,60,000/- from LW 2; worth Rs.3,25,000/- from LW 3; worth Rs.1,50,000/- from LW 4; worth Rs.6,00,000/- from LW 5 and worth Rs.1,00,000/- from LW 6. He did not pay the amount and closed the business with the active support and collusion of Accused Nos.2 to 6 and escaped from Miryalaguda town. On the complaint lodged by the *de facto* complainant, the Miryalaguda Town Police registered a case in Cr.No.28/2007 under Section 420 IPC, and after investigation filed charge sheet against Accused Nos.1 to 6.

The petitioners/Accused Nos.2 & 4 filed CrI.M.P.No.1446 of 2013 seeking to quash the criminal proceedings against them on the main

contention that they are in no way concerned with the business of M/s.Vasundhara Traders and Kanakadurga Rice Mill. As per the certificate issued by the Commercial Tax Officer relating to M/s.Vasundhara Traders, the said business is sole proprietary concern, run by Accused No.1, which was closed on 30.04.2007. Since it was a sole proprietary concern, the petitioners and other accused had nothing to do with the business of Accused No.1, and therefore, the question of their supporting or colluding with Accused No.1 in the matter of procurement of paddy from LWs 1 to 6 or non-payment of the amount, and the closure of Kanakadurga Rice Mill does not arise.

Nextly, it is contended that petitioner/Accused No.2 though the own brother of Accused No.1, however, he went in adoption during his childhood days to his younger paternal uncle, viz., Gouru Mattaiah of Chalmareddygudem, and he was brought up by his adoptive father. Hence, petitioner/Accused No.2 has nothing to do with the properties or business of Accused No.1 in any manner. He was unnecessarily implicated in the instant case. In fact, petitioner/Accused No.2 was running a small Kirana shop at Main Bazar, Miryalaguda during years 2005 to 2007, and thereafter, he worked as a Clerk (Gumasta) in Laxmi Sai Enterprises, Miryalaguda till November, 2012, and presently, he is working as Rice Bran Agent at Miryalaguda. He has absolutely nothing to do with the business of Accused No.1.

So far as petitioner/Accused No.4 is concerned, it is contended that he has been working as Manager in Miryalaguda Rice Industries Private Limited, Sagar Road, Miryalaguda since October, 2005. Therefore, he has nothing to do with the business of Accused No.1. Above all, Accused

Nos.1 to 4 and Accused No.6 partitioned long back in the year 1998 and started living separately with their respective families. As there were no substantial properties for partition, no formal agreement was reduced into writing. All the sons of Accused No.6 are private Gumastas and they were living separately.

With the above contentions, the petitioners/Accused Nos.2 & 4 pleaded for discharge. However, the trial court observed that according to the prosecution, Accused Nos.1 to 6 are the family members and they were running business in the name of M/s.Vasundhara Traders at Miryalaguda, having registered the business in the name of Accused No.1, and further, as per the confession of the main accused, i.e., Accused Nos.1 and 6, the petitioners and other accused were also partners in the said business. The trial court also observed that though the petitioners contended that M/s.Vasundhara Traders was closed on 30.04.2007, however, the offence was committed prior to 03.02.2007 and the complaint was lodged on 03.02.2007. Therefore, the procurement of paddy from LWs 1 to 6 and non-payment of the amount to them were all done prior to the closure of M/s.Vasundhara Traders and hence, there was a *prima facie* case against the petitioners. The trial court further observed that the contention of the petitioners that they have nothing to do with the business of Accused No.1 can only be gone into in detail during the trial. The trial court further observed that the amount of cheating involved in the instant case is nearly Rs.30 lakhs, and having regard to the gravity of the offence and the *prima facie* material on record showing that all the accused colluded together and cheated LWs 1 to 6, the discharge

application cannot be allowed. The trial court accordingly dismissed the petition.

Heard the arguments of the learned counsel for the petitioners and the learned Additional Public Prosecutor for the State of Telangana.

The learned counsel for the petitioners reiterated the contentions made before the trial court.

A perusal of the statements of LWs 1 to 6, which are filed along with the material papers, would show that according to LWs 1 to 6, Accused No.1 purchased paddy from them worth different amounts, on the promise that the amount would be paid in due course and having taken away the paddy, sold the rice at Hyderabad and some other places and thereafter with the connivance of the other accused, locked the Kanakadurga Rice Mill and fled away with other accused. This is the gist of the statements of LWs 1 to 6.

Having regard to the nature of the complaint and the statements of LWs 1 to 6, the police, after investigation, filed the charge sheet against Accused Nos.1 to 6. As can be seen from the record, there is no doubt that there is *prima facie* material on record against Accused No.1, who allegedly purchased paddy worth Rs.30 lakhs from LWs 1 to 6 on the promise of paying the amount after selling the rice, but did not pay the amount. It is not a case of mere failure to perform the contract because the allegations in the complaint as well as the charge sheet and the statements of the witnesses recorded under Section 161 Cr.P.C would show that Accused No.1 in collusion with other accused closed the rice mill and absconded. In the normal course, a person who failed to perform the contract, may either seek some time or wait for civil action to be taken

by the other side. In this case, the allegation is that Accused No.1 in collusion with other accused abruptly closed the Kanakadurga Rice Mill and fled away from their residence. Thus, as the matter stands, there is strong *prima facie* material for the offence punishable under Section 420 IPC, because the intention of Accused No.1 right from the inception is to evade payment of the value of the paddy procured by him not only from the *de facto* complainant, but also from LWs 2 to 6.

When coming to the other accused, particularly, Accused Nos.2 and 4, it is the case of the prosecution that Accused No.1 has, in connivance with the other accused, evaded payment of the due amount and abruptly closed the rice mill and fled away along with them. This allegation, if ultimately proved to be true, certainly it would raise doubt about the conduct of the other accused also with regard to their complicity in the offence. Whether the other accused have anything to do with the business of M/s.Vasundhara Traders and Kanakadurga Rice Mill is a question of fact which, as rightly observed by the trial court, can be determined only after full fledged trial. The contention of the petitioners that M/s.Vasundhara Traders is a sole proprietary concern, registered in the name of Accused No.1 and it was closed on 30.04.2007 will not help them, because the offence was allegedly occurred much prior to the closure of M/s.Vasundhara Traders. Though partnership firm was registered in the name of Accused No.1, their connivance as alleged in the complaint and the charge sheet has to be decided during the trial. So, the finding of the trial court in deciding the discharge application cannot be found fault. The petitioners have to face the trial and vindicate their defence.

In the result, the Criminal Revision Case is dismissed. However, the trial court is directed to conduct the trial and dispose of C.C.No.369 of 2008 on merits, as expeditiously as possible, without being influenced by any of the observations of this court made in this order.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 06.11.2018
Dsr

