HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.1267 of 2017

ORDER:

Heard the learned counsel for the petitioner as well as the learned Public Prosecutor appearing for the respondent State.

The present revision case is filed questioning the orders passed in Crl.M.P.No.1244 of 2014 in C.C.No.3 of 2014 dated 23.04.2016 on the file of the Special Judge for SPE and ACB cases-cum-III Additional District and Sessions Judge, Vijayawada, dismissing the petition filed under Sections 239 and 240 Cr.P.C., to discharge the petitioner in the above said C.C.

The facts of the case are that originally Crime No.3/RCO-RJY/2012 dated 15.04.2012 was registered against 5 liquor traders basing on the records seized during the course of searches conducted in Crime No.2 of 2012. The main allegations in the FIR are that out of 555 license holders of A4 shops in East Godavari District, 365 license holders are possessing ration cards under below poverty line and the 1st and 2nd accused submitted forms in the names of the said license holders. The excise officials failed to monitor the functioning of the shops and after conducting investigation filed the charge sheet. In the raids conducted all over the State of A.P. on liquor traders, it is alleged that the 2nd accused acted as a leader of liquor association comprising of 44 wine shops in the name of Malikipuram Liquor Syndicate and the petitioner conspired with the excise officials and others and secured innocent persons and used them as benamies before conducting auction of wine shops and got tenders filed by them, obtained license in the name of 30 benami persons. Even the bank accounts were opened in the names of the benamidars and other license holders and paying the bribe amounts regularly to the concerned officials. The petitioner stood as a guarantor for 16 wine shops. The prosecution mainly relying on the statements recorded under Section 164 Cr.P.C., apart from some documents, charged the petitioner for the offences under Sections 12 and 14 of the Prevention of Corruption Act, 1988 (for short, "the Act"), 109 IPC read with Section 13(1)(d) of the Act and Section 120-B, 34 IPC and Section 41 of the A.P. Excise Act read with Rules 9 and 14(10) of the A.P. Excise (Lease of Right of Selling by Shop and Conditions of License) Rules, 2005 (for short, "the Rules, 2005"). The learned Special Judge, after filing of the charge sheet, taking cognizance of the offence numbered the case as C.C.No.3 of 2014. Aggrieved by the same, the petitioner filed a petition for discharge under Sections 239 and 240 Cr.P.C. After hearing, the said application was dismissed by the Court below by orders dated 23.04.2016. Aggrieved by the said orders, the present revision case is filed.

The learned counsel appearing for the petitioner would contend that the petitioner is a private person. No independent evidence is available to prove that the petitioner has paid amounts to A2 and others. For the purpose of proving the offence under Section 7 of the Act, there should be a demand, but the prosecution failed to establish on record that there was a demand whereby attracting the offence under Section 12 of the Act for abatement. Learned counsel further submitted that Rules 9 and 14(10) of the Rules, 2005, will not apply since the petitioner has not applied for any shop. Therefore, he requested that the offences relating to the Excise Act and the rules framed thereunder may be deleted as far as the petitioner is concerned.

Per contra, the learned Public Prosecutor appearing for the respondent State would contend that the white ration card holders are used as benamidars for the purpose of obtaining A4 licenses and the writing on the 30 applications for grant of license is similar. He also would submit that during the course of investigation the Investigating Officer examined many witnesses including house owners and benamidars, collected information from the revenue officials and bank officers and examined LWs.17 to 59 of Nowkarinama holders, who stated that the license holders are not the real owners and they are the benamidars of the petitioner and bribe amounts have been paid on behalf of the liquor syndicates to the 2nd accused. The investigation further revealed that the petitioner stood as a guarantor for 16 wine shops. The statements of LWs.122 to 133 disclose the fact that the documents furnished by the concerned banks shows the malafides of the petitioner in the above said transactions. Therefore, since a *prima facie* case is made out, the petitioner cannot be discharged.

Having regard to the facts and circumstances of the case and perusal of the material available on record, it is revealed that 365 licenses were obtained in the names of white ration card holders, who are under the below poverty line. The innocent persons are used as benamidars before conducting auctions of wine shops, got the tenders filed by them and obtained license. In fact, the petitioner stood as a guarantor for 16 wine shops and the prosecution is mainly relying on the statements recorded under Section 164 Cr.P.C. apart from other documents. The main allegation against the petitioner is that he abetted and aided in the commission of offences by the other accused by paying monthly bribes. The prosecution during the course of investigation has seized all the records, collected bank statements, recorded the statements of bank mangers, collected the property particulars from the Tahsildar with regard to financial status of the white ration card holders under the below poverty line, which, *prima facie*, shows the nexus between them. In fact, even the call data records also establish the nexus between the petitioner and the 2nd accused. In all, the petitioner maintained 44 shops and paid monthly bribe to the 2nd accused and other excise and police officials.

The provisions of Section 12 of the Act contemplate punishment for abetting any of the offences punishable under Section 7 or 11 of the Act. Section 14 of the Act also contemplates punishment for the accused who regularly and habitually commit offences under Sections 8, 9 or 12 of the Act. A mere perusal of the charge sheet and the material on record *prima facie* reveal that the petitioner conspired with the 2nd accused and got 40 shops in benami names and formed a syndicate violating the excise laws for running the belt shops. Even the material collected during the investigation *prima facie* establishes the property particulars of the benamidars, the bank accounts, applications of licenses in which similar writing is available, the call data and the registers of the syndicate leading to conspiracy between the petitioner and the other accused.

For the purpose of framing a charge under Section 227 or 239 Cr.P.C. what all that is required is if upon considering the police report and the documents enclosed thereto that there is sufficient material for proceeding against the accused, a charge can be framed. At the stage of framing charge, the Court has to see only *prima facie* case to proceed further against the accused but not whether the material available on record would lead to conviction of the accused, more so, marshalling the material on record. Thus, on the conspectus of the above facts, this Court finds that there are no merits in the criminal revision case and the same is liable to be dismissed.

As far as the argument of the learned counsel for the petitioner that since the petitioner has not filed any application for obtaining A4 license for any of the shops, he is not liable to be punished for the offences under the Excise Act and the rules framed therein is concerned, it cannot be countenanced in the light of the above discussion. The basic allegation against the petitioner is that he formed a liquor syndicate and procured benamidars for obtaining license in the name of white ration card holders, who are under the below poverty line, and the writing in the applications are also appears to be similar. Opening of the bank accounts in the names of the benamidars and depositing of amounts into the said accounts also needs to be examined. Therefore, though the petitioner has not submitted any application, but in the light of the above, at this stage, this Court cannot go into the ingredients of the offences under the Excise Act for which the petitioner is charged. Viewed from any angle, it cannot be said that no *prima facie* case is made out against the petitioner even for the offences under the Excise Act and the rules framed therein.

In the result, the criminal revision case is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHAVA RAO, J

Date: 24.07.2018.
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