

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION Nos. 5715, 5724 AND 5842 OF 2018

COMMON ORDER:

Criminal Petition Nos. 5715, 5724 and 5842 of 2018 are filed to quash the orders dated 05-03-2018 passed by XI Additional District and Sessions Judge, Visakhapatnam (for short, 'the Court below'), in Criminal M.P.Nos. 917 of 2016, Criminal M.P.No. 859 of 2017 and Criminal M.P.No. 918 of 2016 in S.C.No. 6 of 2009 respectively, whereby the Court below dismissed the above three miscellaneous petitions.

2. The Court below passed the impugned orders on the ground that the documents were not obtained from legal source. The present petitions are filed under Section 482 of Cr.P.C. to quash the impugned orders. At the hearing, learned counsel for the petitioner-accused has submitted that Court can receive documents though they were secured by illegal means and in support of his contention, learned counsel has placed reliance on catena of judgments of the Apex Court and this Court.

3. There is no quarrel with regard to the law declared by this Court and the Apex Court about admissibility of documents secured by illegal means but the only objection raised by this Court is whether or not the petitioner is entitled to produce any evidence at the stage of framing charges, for which learned counsel has contended that such question has to be decided by the Court below at the stage of hearing of petition under Section 227 of Cr.P.C. since the power of this Court under Section 482 of Cr.P.C. is limited and the same cannot be decided at this stage.

4. According to Section 239 of Cr.P.C., if the Court is of the opinion upon considering the police report and documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate or Sessions Judge thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate or Sessions Judge considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing. 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, it include the hearing of the evidence if needed. 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 Sections 238 and 239 Cr.P.C. is limited, such power has to be exercised only when the Magistrate or Sessions Judge came to conclusion that it is groundless, based on charge sheet and documents filed under Section 173 of Cr.P.C.

5. 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 Vs. State of Kerala***¹. In ***Manakshi Bala Vs. Sudhir Kumar***² and ***Kanti Bhadr Shah and another Vs. The State of West Bengal***³, the Apex Court while deciding an appeal in a petition filed for discharge held that

"Magistrate at the stage of discharge petition filed under Section 239 Cr.P.C., Magistrate has to record his reasons for discharging the accused, but there is no such requirement if he forms an opinion that there is a ground for presuming the accused had committed an offence which he is competent to try. In such situation he is only required to frame a charge in writing against the accused. Even in cases instituted otherwise than on police report, the Magistrate is required to write an order sowing the reasons only if he is to discharge the accused. This is clear from Section 245. As per sub-section (1) of Section 245, if a Magistrate, after taking all the evidence considers that no case against the accused has been made out which if unrebutted would warrant his conviction, he shall discharge the accused. As per sub-section (2) of Section 245, the Magistrate is empowered to discharge the accused at any previous stage of the case if he considers the charge to be groundless. On both sub-sections he is obliged to record his reasons for doing so".

Though the present petition is filed under Section 227 of Cr.P.C. before the Court below, the principle laid down by the Apex Court under Section 239 of Cr.P.C. is applicable since the jurisdiction under Section 239 of Cr.P.C. can be exercised by a magistrate alone and under Section 227 of Cr.P.C., Sessions Judge is entitled to exercise similar power under Section 239 of Cr.P.C.

6. In ***Sheoraj Singh Ahlawat and others Vs. State of Uttar Pradesh and another***⁴, the Apex Court on elaborate consideration of entire law regarding discharge, relying on ***State of M.P. Vs. Mohanlal Soni***⁵ and ***State of Maharashtra and others Vs. Som Nath Thapa and others***⁶, held that

¹ AIR 2010 SC 663

² [1994] INSC 308

³ AIR 2000 SC 522

⁴ AIR 2013 SC 52

⁵ 2000 CrI.L.J. 3504

⁶ 1996 CrI.L.J. 2448

"If on the basis of material on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into the materials brought on record by the prosecution has to be accepted as true at that stage.

7. Earlier to the above judgment, a Full Bench of the Apex Court in ***State of Orissa Vs. Debendra Nath Pandhi***⁷ held as follows:

*"We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage off framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing f charge, the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of **alibi** taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled **proposition** that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the police."*

⁷ 2005 (1) ALT (CrI.) 198 (SC)

8. Similarly, in ***Union of India Vs. Prafulla Kumar Samal and another***⁸, the Apex Court laid the following principles:

- "(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out.
- (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.
- (3) The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
- (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the *broad* probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the *case* and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

9. Based on various principles laid down in the judgments referred *supra*, the Apex Court concluded that when the allegations made against the accused are specific and having concluded that those allegations would constitute *prima facie* offence, Court can proceed to frame charges, otherwise discharge. Learned counsel for the petitioner has placed reliance on the judgment of the Apex Court in ***L.Krishna Reddy Vs. State by Station House Officer and others***⁹ to contend that in a discharge petition, the petitioner is entitled to produce evidence

⁸ (1979) 3 SCC 4

⁹ (2014) 14 SCC 401

and the said judgment is totally supporting the case of the petitioner. However, while the judgment in **L.Krishna Reddy** (9th *supra*) is by a Division Bench of the Apex Court, the judgment in **Debendra Nath** (7th *supra*) is by a Full Bench of the Apex Court and therefore the law declared in **L.Krishna Reddy** (9th *supra*) is not binding precedent.

10. Following the principle laid down **Debendra Nath** (7th *supra*), I find that the petitioner is not entitled to produce any evidence at the stage of framing charges and at best, the petitioner is entitled to advance his arguments based on material or documents produced along with the charge sheet. In all the petitions, the petitioner sought for summoning of documents from different places and different police stations and also requested to receive oral evidence in the petition filed under Section 227 of Cr.P.C. When the petitioner is not entitled to produce any evidence in view of the law declared by the Full Bench of the Apex Court in **Debendra Nath** (7th *supra*), question of granting permission to produce oral evidence or summoning of any document from the police station would not arise. Therefore, the impugned orders passed by the Court below hold good but on different grounds. However, the Court below is requested to pass appropriate orders in the discharge petition, uninfluenced by the observations or findings recorded hereinabove, based on material produced along with the charge sheet by the prosecution alone.

11. The criminal petitions are accordingly dismissed. Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

Date: 26-09-2018.

JSK

M.SATYANARAYANA MURTHY, J.