HON'BLE SRI JUSTICE P. KESHAVA RAO

<u>CRIMINAL REVISION CASE No. 178 of 2017</u>

<u>ORDER:</u>

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

2. The present Criminal Revision Case is filed questioning the orders passed in Crl.M.P.No.7501 of 2015 in C.C.No.439 of 2014 dated 4.1.2017 on the file of the Court of Judicial Magistrate of First Class, Salur, dismissing the petition filed under Section 239 of Cr.P.C. seeking discharge of the petitioner for the offences charged against him.

3. The facts in brief are that the petitioner is the accused No.5 in CC.No.439 of 2014 for the offence under Sections 120-B, 467, 468, 471 and Section 506 (2) IPC read with Section 34 IPC on the file of the Court of Judicial Magistrate of First Class, Salur. A1 to A3 and A6 are residents of Salur town. A2 is one of the sons of late Sri L.N.Sanyasiraju, former Zamindar of Salur. A4 and A5 are Stamp Vendors of Sitanagaram and Madhurawada respectively. The two other sons of late Sri L.N.Sanyasiraju i.e., Vinod Chandra Sanyasiraju and Viswambara Chandra Sanyasiraju are no more. The complainant/LW1 is the wife of late Viswambara Chandra Sanyasiraju and LW2 is the wife of Vinod Chandra Sanyasiraju.

Both of them filed a suit for partition of the family properties in O.S.No.30 of 2008 on the file of the Court of Additional District Judge (Fast Track Court) Vizianagaram at Parvathipuram. A2 along with A3 who manages the affairs regarding the properties, along with the co-sharers, conspired to fabricate and create forged documents in favour of A2 in order to defeat the interests of LWs 1 and 2. In pursuance thereof, A1 to A3 and A6 purchased old stamp papers carrying No.AB 861325 from A4 and another Stamp paper bearing No.Y802251. The first stamp paper carries the date of sale as 6.2.2006 and the second stamp paper carries the date as 5.2.2008. The records of the Treasuries department, Visakhapatnam, show that the non-judicial stamp paper bearing No.Y802251 was never supplied to A5 or anybody else. But in collusion with A1 to A3 and A6, A5 sold it on the name of A2 on 5.2.2008. A5 did not divulge as to how she secured the stamp paper. In fact, both the stamp papers sprang out under dubious circumstances. Basing on the above said two non-judicial stamp papers, A1 to A3 and A6 manipulated and created a forged document as if Smt. Rajendramani Devi executed a lease agreement dated 10.2.2006 in favour of another and etc., Basing on the said two forged documents, the accused filed O.S.No.25 of 2012 on the file of the Court of Senior Civil Judge, Bobbili in the name of

A1 as plaintiff. In those circumstances, the complaint lodged resulted in filing of charge sheet for the offence under Sections 120-B, 467, 468, 471 and 506 (2) read with Section 34 IPC. The Court below, after taking cognizance of the offences against the accused including the petitioner herein, numbered the case as C.C.No.439 of 2014. During the pendency of the said Calendar Case, the petitioner filed Crl.M.P.No.7501 of 2015 under Section 239 Cr.P.C. seeking discharge for the above said offence in the above said case. The learned Magistrate, after hearing, was pleased to dismiss the petition by orders dated 4.1.2017. Aggrieved by the same, the present Criminal Revision Case is filed.

4. Learned counsel appearing for the petitioner would contend that the learned Magistrate ought to have appreciated that the license of the petitioner expired on 31.12.2007 itself and the same was never renewed due to her ill-health. However, one G.Srinivasu Govinda Rao, forged her signatures and managed in the District Registrar's office, Visakhapatnam and renewed the license from 5.1.2008 without her permission and sold the non-judicial stamp papers in her name and in that connection, the petitioner lodged a complaint vide Cr.No.23 of 2015 for the offence under Sections 419, 420 and 465 IPC against the said person. Therefore, the question of the

petitioner issuing the subject non-judicial stamp paper does not arise at all. In fact, the treasury authorities have also admitted and confirmed that the said non-judicial stamp paper was not issued to the petitioner and it is not signed by her. LW6 who is the official of the Treasuries department, Visakhapatnam, categorically stated that the non-judicial stamp paper bearing No.Y802251 was never supplied to the petitioner and that her signature was forged. Therefore, prosecution cannot be launched against the petitioner for the alleged offences. The Assistant Treasury Officer, Sri V.V. Joga Rao, who is the in-charge of Sub-Treasury Office, Visakhapatnam, and who is the Stamps issuing officer, has stated before the Police that the stamp paper in question was not sold to the petitioner and the same has been mentioned in the charge sheet against the petitioner and if that be so, the continuation of the proceedings against the petitioner would amount to abuse of process of Court. In fact, a civil suit is already filed in O.S.No.25 of 2012 wherein the issue relating to the document in question is pending consideration between the parties and the same will be adjudicated therein. In those circumstances, the counsel requests this Court to allow the Criminal Revision Case discharging the petitioner for the alleged offences.

5. Learned Public prosecutor appearing for the respondent State submitted that the investigation established the conspiracy of the petitioner even though LW6 has stated that the said stamp paper was never supplied to the petitioner. During the course of the enquiry if sufficient evidence comes on record, necessary steps will be taken for deleting the name of the petitioner from the array of accused. At this stage, the petitioner cannot be discharged as the trial has not even commenced.

6. Having heard both the counsel and from the perusal of the material on record, including the charge sheet, it is revealed that the petitioner has been arrayed as accused No.5 on the premise that she has sold the non-judicial stamp paper bearing No.Y802251 and on the same, a forged and fabricated document has been prepared by A1 to A3 in collusion with A6. However, the specific case of the petitioner is that though she was licensed vendor for selling the non-judicial stamp papers, her license expired on 31.12.2007 itself and the same was never renewed because of her ill-health. However, one G.Srinivasu Govinda Rao, forged her signatures and managed in the District Registrar's Office, Visakhapatnam and renewed her license from 5.1.2008 without her consent and permission and sold the non-judicial stamp papers by forging her

signatures. In that context, she filed a complaint against the said person and the same is registered as Cr.No.23 of 2015 for the offence under Sections 419, 420, 465 IPC. In the said crime, the accused was arrested by the Police and the said case is pending consideration. That apart, the Assistant Treasury Officer Sri V.V.Joga Rao who is in-charge Treasury Officer, Visakhapatnam and issuing officer, has stated before the Police that the subject non-judicial stamp paper, was not sold to the petitioner and the said fact is also mentioned in the charge sheet. However, in the charge sheet it is mentioned that without the hand writing analyses report, it cannot be established that the writings on stamp papers on 5.2.2008 are made by A5/petitioner as vendor. If sufficient evidence comes during the trial, steps will be taken against her under Section 319 Cr.P.C. as to take her as a witness depending upon the evidence. Hence, her name is shown in the relevant column in charge sheet. But her name is shown as an accused as per the decision of the Hon'ble High Court in Crl.RC.No.960 of 2012 dated 27.8.2012.

7. From the perusal of the charge sheet, more particularly, the statement of the Assistant Treasury Officer, Sri V.V. Joga Rao, it is established that the subject stamp paper was not issued to the petitioner. That apart, it is the specific case of

the petitioner that one person by name Gude Srinivasu Govinda Rao forged her signatures and renewed her license with effect from 5.1.2008 without her consent and was selling the non-judicial stamp papers in her name. In connection with the said offence, the petitioner filed a complaint resulting in registration of Cr.No.23 of 2015 for the offence under Sections 419, 420 and 465 IPC. In the light of the same, it cannot be said that there is any prima facie case against the petitioner for commission of the offence as stated above. Further, the statement of prosecution in the charge sheet that if sufficient evidence comes during the course of trial, steps will be taken against the petitioner under Section 319 Cr.P.C. to take her as a witness, will not stand to legal scrutiny when admittedly, no case is made out against the petitioner. On the other hand, it is always open for the prosecution to implead her as an accused under Section 319 Cr.P.C. when a case is made out after examination of the prosecution witnesses during the course of trial. In these circumstances, the petitioner cannot be asked to face the trial even though prima facie it is established that she is not indulged in commission of any offence much less the offence as alleged against her.

8. Therefore, the Criminal Revision Case is allowed by setting aside the orders passed in Crl.M.P.No.7501 of 2015 in

C.C.No.439 of 2014 dated 4.1.2017 on the file of the Court of Judicial Magistrate of First Class, Salur and the petitioner is discharged for the offences charged against her. It is needless to observe that during the course of trial, if any evidence is established with regard to commission of any of the above said offences against the petitioner, it is open to the prosecution to move an appropriate application to array the petitioner as one of the accused.

Miscellaneous petitions, if any, shall stand closed.

P. KESHAVA RAO, J

Date: 25.7.2018.

KPM