

**THE HON'BLE SRI JUSTICE P.KESHA RAO**

**CRIMINAL REVISION CASE No.2332 OF 2017**

**ORDER:**

This Criminal Revision Case is filed questioning the orders passed in CrI.M.P.No.8 of 2017 in S.C. No.105 of 2016 dated 17.07.2017 on the file of the Principal Assistant Sessions Judge, Tirupati, dismissing the petition filed under Section 227 of Cr.P.C. to discharge the petitioner from the charges levelled against him.

Heard the learned counsel for the petitioner, second respondent as well as the Public Prosecutor appearing for the first respondent-State.

The facts, in brief, are that the respondent No.2 herein filed a complaint on 23.02.2015 alleging that at 7.30 a.m. at Sindhu Junction, the driver of car bearing No.AP 04AW 9183 drove in a rash and negligent manner and dashed him from behind causing bleeding and internal injuries to his left leg and abrasions on right leg. He was shifted to Swetha Multi Super Speciality Hospital, Tirupathi and got admitted for treatment. On his complaint, a case in Crime No.53 of 2014 for the offence under Section 337 of I.P.C. was registered. On 27.03.2015 the respondent No.2 again appeared before the police after discharge from the hospital and gave his further statement regarding the occurrence and suspected over the activities of one Venkata Subbaiah-A.1 and Damu-A.2 of Chintalachenu that they might have attempted to kill him as they bore grudge against him in connection with real estate business rivalry since the driver of the offending vehicle is a follower of the said persons. The call data analysis also proved the same.

During the further enquiry, on 20.04.2015, A.1,A.3,A.4 and A.5 were arrested, their statements were recorded in the presence of mediators. During their confession, they admitted about the commission of offence. Therefore, basing on the call data records and confessional statements of the accused, the Section of law was altered from 337 IPC to 120(B), 307 r/w 34 IPC. Thereafter, a charge sheet was laid for the aforesaid offences against A.1 to A.5. After taking cognizance of the said offences and after committal by the V Additional Judicial First Class Magistrate, Tirupati, the case is numbered as S.C.No.105 of 2016 on the file of Principal Assistant Sessions Judge, Tirupati. Pending the S.C., the petitioner herein filed a petition in CrI.M.P.No.8 of 2017 under Section 227 of Cr.P.C. to discharge him from the charges levelled against him. The prosecution filed a counter and contested the same. The Court below after hearing, was pleased to dismiss the said petition by order dated 17.07.2017. Aggrieved by the same, the present Criminal Revision Case is filed.

The learned counsel appearing for the petitioner would contend that none of the witnesses deposed about the role of the petitioner in the alleged commission of the offence and nothing was seized from him. There is no *prima facie* material against the petitioner to frame charges under Section 307 r/w 120B IPC. The material placed on record is not sufficient to frame the charges against the petitioner herein for the alleged offences. Further the material already placed on record by the prosecution does not establish the conspiracy by the petitioner with the other accused. The learned counsel also brought to the notice of this Court that the petitioner herein met with an accident on 23.02.2015 at

Tiruchanur and he was admitted as an inpatient at Vijaya Hospital, Chennai for treatment. He was in the hospital for a month. He was discharged from the said hospital on 25.03.2015 after undergoing two surgeries. Therefore, there was no occasion for the petitioner to participate in the offence alleged to have taken place on 23.02.2015 at 7.30 a.m. In fact, he has filed the statements of list of witnesses as material papers to substantiate his contention and a perusal of the same would indicate that none of the witnesses have deposed against him. Therefore, he argued that the trial Court committed an error in dismissing the petition on untenable grounds.

*Per contra*, the counsel appearing for the respondent No.2 submitted that on 23.02.2015, the accident has taken place and a crime was registered vide F.I.R.No.53 of 2015 under Section 337 of I.P.C., which was subsequently, altered to 120(B), 307 r/w 34 IPC. The learned counsel emphasised on the aspect that on 15.03.2015, the respondent No.2 received a call from the petitioner for a meeting with A.1, A.2 and A.3 and therefore, the petitioner is a party to the conspiracy.

Having heard both the counsel and a perusal of the material on record, the question that crops up for consideration is, 'whether the petitioner is a party to the alleged conspiracy and whether he has participated in the offence that has taken place on 23.02.2015'.

The statement of respondent No.2 recorded by the police on 28.03.2015 establishes that on 15.3.2015 A.1, A.2 called the petitioner and requested him to come to the office of A.4. When

he went there, A.1 to A.5 were present. A.1 informed the respondent No.2 that if an amount of Rs.40.00 lakhs is paid, they will settle the land dispute. On that the respondent No.2 informed that he will think over and inform them and saying so, he left the place. Except this allegation, there is absolutely no other allegation as far as the petitioner is concerned. As far as the participation of the petitioner in the alleged offence is concerned, the respondent No.2 himself in his statement has stated that since he has not obliged to their request of paying the amount, A.1, A.3, A.4 and A.5 conspired together to kill him. Therefore, he requested to take action against them. The name of the petitioner herein is not mentioned. This fact clinchingly establishes that no specific allegation is made against the petitioner. That apart, on the date of the incident, the petitioner herein was in the hospital as inpatient and he underwent two surgeries. In these circumstances, it cannot be said that the petitioner is a party to the alleged conspiracy hatched to kill the respondent No.2, more particularly, he had any role in the accident that was caused to the respondent No.2 on 23.02.2015. In these circumstances, this Court is of the opinion that no *prima facie* case is made out against the petitioner.

As far as framing of charge at the stage of Section 227 Cr.P.C. is concerned, what all that is required is, that, upon consideration of the final report of the case and the documents submitted therewith, if the judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused. In the case on hand, a perusal of the charge sheet as well as the statements of witnesses recorded,

would not disclose any *prima facie* case against the petitioner to proceed further by framing a charge. Therefore, the charges framed against the petitioner are liable to be set aside.

Accordingly, the Criminal Revision Case is allowed setting aside the orders dated 17.7.2017 and CrI.M.P.No.8 of 2017 in S.C.No.105 of 2016 on the file of Principal Assistant Sessions Judge, Tirupati shall stand allowed. The petitioner is discharged for the offences levelled against him.

Pending miscellaneous petitions, if any, shall also stand closed.

12<sup>th</sup> JULY 2018.  
Tsr



**P.KESHAVA RAO,J**