

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE No. 2202 of 2016

ORDER:

1. The revision is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973, challenging the order dated 30.06.2016 in CrI.M.P.No. 149 of 2016 in C.C. No.4 of 2008 on the file of the I Additional Special Judge for C.B.I. Cases, Visakhapatnam, whereunder the petition filed by the petitioner/A.2 under Section 239 Cr.P.C. for discharge, was dismissed.

2. Heard the learned counsel for the petitioner/A.2 and the learned Special Public Prosecutor for CBI Cases appearing for respondent/State. Perused the record.

3. The petitioner herein is A.2 in C.C. No.4 of 2008 before the Special Court. The subject Calendar Case was registered against the petitioner/A.2 and other accused for the offences punishable under Sections 420, 471 read with 120B IPC and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988. Earlier, the petitioner/A.2 filed an application in CrI.M.P. No.37 of 2012 before the Special Court for discharge, but the same was dismissed vide order dated 26.11.2012. This is the second discharge application.

4. Learned counsel for the petitioner/A.2 would contend that the order passed by the learned Special Judge is illegal, improper and incorrect; that the learned Special Judge erred in dismissing the application filed for discharge; that the prosecuting agency obtained sanction to prosecute the petitioner/A.2 by the Deputy General

Manager, General Insurance Company Limited, Chennai, but he is not the competent authority for dismissing an employee from service as per the General Insurance (Conduct, Discipline and Appeal) Rules, 1975, and that the said Rules were not published in Gazette and hence, the sanction accorded has no sanctity in the eye of law, and the prosecution against the petitioner/A.2 is not maintainable with the aforesaid sanction, and ultimately, prayed to set aside the impugned order and discharge the petitioner/A.2.

5. On the other hand, K.Surender, learned Special Public Prosecutor for CBI Cases appearing for respondent-State contended that this revision is filed aggrieved by dismissal of second discharge application filed by the petitioner/A.2; that whether the Deputy General Manager has competence to accord sanction for prosecution is required to be determined in the course of trial; that there is substantial material against the petitioner/A.2 to proceed with the trial of the case, and ultimately, prayed to dismiss the revision.

6. In view of the submissions made by both the sides, the point that arises for consideration is whether the impugned order is liable to be set aside and the petitioner is entitled for discharge in the subject Calendar Case ?

7. There cannot be any dispute that revisional jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is a truncated one. Unless the findings are illegal or improper or incorrect, normally, this Court will not interfere with the same in exercise of its revisional jurisdiction. It is apt to refer to a decision in *Amit Kapoor*

*v. Ramesh Chander & another*¹, wherein it is held thus:
(paras 27.3, 27.6, 27.9, 27.12 and 27.16)

“Having discussed the scope and jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now, it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be :

XXX

3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

XXX

6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

XXX

9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

XXX

12) In exercise of its jurisdiction under [Section 228](#) and/or under [Section 482](#), the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his

¹ (2012) 9 Supreme Court Cases 460

acquittal. The Court has to consider the record and documents annexed with by the prosecution.

xxx

16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under [Section 482](#) of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance to the requirements of the offence.”

8. As per the material placed on record, the petitioner/A.2 filed an application in CrI.M.P. No.37 of 2012 in the subject Calendar Case for discharge. The same was dismissed vide order dated 26.11.2012. Contention of the learned counsel for the petitioner/A.2 is that there is no proper sanction in the instant case; the Deputy General Manager, General Insurance Company Limited, Chennai is not the authority to accord sanction to prosecute the petitioner/A.2; the Rules empowering him are not published in the Gazette; that this aspect was not agitated in the earlier discharge application. He relied on a decision of the Apex court in *State of Karnataka, C.B.I., ACB, Bangalore v. K.T.Uttapam*, wherein when a question had fallen for consideration whether the Deputy General Manager of the Insurance Company is competent to accord sanction for prosecution against the petitioner therein, it was conclusively held that the Board of Directors are the competent authority to grant sanction for prosecution against the Administrative Officer. Further it is held by the Hon'ble Apex court in its judgment dated 03.11.2015 in Criminal Appeal Nos. 1872 of 2014 and 1873 of 2014 that the General Insurance (Conduct,

Discipline and Appeal) Rules, 1975 were not gazetted at any point of time. The said Rules are not applicable to the employees of the said Insurance Company and the sanction is required to be granted by the Board of Directors under the provisions of the Company Law. It is contended that this aspect was not dealt with in the earlier application for discharge filed by the petitioner vide Crl.M.P. No.37 of 2012. It is pertinent to state that the petitioner/A.2 did not bother to file a copy of the order in Crl.M.P. No.37 of 2012, dated 26.11.2012. Copy of the impugned order reveals that the first discharge application was dismissed on merits. It is submitted by the learned Special Public Prosecutor that neither the Notification dated 31.12.1973 nor 21.9.1976 was placed before the Hon'ble Supreme Court.

9. Under the circumstances of the case, the petitioner/A.2 ought to have taken all the defences available in the earlier petition for discharge. As per the record, the Court below, after hearing both sides, held that there was *prima facie* case against the petitioner/A.2. Once it is held that there is a *prima facie* case against the petitioner/A.2 while dismissing discharge application, it is not appropriate to invoke jurisdiction of this Court under Section 482 Cr.P.C. to allow the application as prayed for. Whether the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 were published in Gazette or not is required to be adjudicated in the course of trial. The petitioner/A.2 cannot file one application after application for discharge. The second application for discharge is not maintainable.

10. In the result, the Criminal Revision Case is dismissed.

Miscellaneous Petitions pending, if any, in the revision shall stand closed.

Dr.SA, J.

28.12.2018
DRK



THE HON'BLE DR JUSTICE SHAMEEM AKTHER



28.12.2018

DRK