

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7947 of 2017

ORDER :

The petitioner is A2 among two accused in C.C.No.633 of 2011 on the file of IV Metropolitan Magistrate, taken cognizance for the offence punishable under Section 431 IPC, which is outcome of the report of the 3rd respondent, A.E.E. of Irrigation Department, in Crime No.359 of 2011 of Ibrahimbatnam Police Station.

Learned Magistrate taken cognizance for the offence supra was the impugment by filing application under Section 239 Cr.P.C as the offence under Section 431 IPC is a warrant case triable as per police warrant procedure and that petition to discharge in CrI.M.P.No.2030 of 2014 was dismissed by the learned Magistrate by order dated 14.07.2015 and impugning the same, he unsuccessfully maintained revision i.e. CrI.R.P.No.145 of 2015 vide dismissal order dated 19.07.2017 before the learned Additional Sessions Judge, L.B.Nagar confirming the order of the learned IV Metropolitan Magistrate, Ibrahimpatnam and impugning the same the present petition is filed.

The contentions in the grounds vis-à-vis the oral submissions of learned counsel for the petitioner in impugning the very cognizance and also dismissal of the discharge application by the Courts below are that the orders passed are mechanical, without non-application of mind and not even to basic ingredients required for the offence under Section 431 IPC and not even a case of any offence under Section 427 IPC for lesser one attracts and leave it apart there are no any basic particulars, either from the report or even from the police final report as to what offence

committed, when, whether as to time, place and date of offence which are the pre-requisite even to take cognizance muchless to frame a charge as contemplated by Section 212 Cr.P.C. and thereby the order is liable to be set aside. Leave apart all the statements of witnesses show the assumption or presumption of college management might have been closed the water channel in creating a passage for the busses to flow into the college from the road and vice versa that too not even anybody statement of the petitioner as A2 committed any offence of so called mischief and in the absence of impleadment of the college, the question of vicarious liability to the petitioner for the sin of he is the chairman of the college does not arise leave about whether the offence committed and cognizance taken from the report or within the limitation to the date of offence are not for offence under Section 431 IPC no way attracts for there is no navigation channel even from the very report and statements and for any other channel for any other mischief above Rs.50/- even taken, it is not only non cognizable offence, but also punishment maximum two years under Section 468 Cr.P.C. The maximum period of limitation is three years and on all the counts the impugned order is liable to be set aside.

Learned Public Prosecutor opposed the petition saying the Courts below came to the conclusion from the material on record in framing a charge in dismissing the discharge application and if at all any defence available is left open leave about any remedy is to invoke Section 216 Cr.P.C. to frame if Section 431 IPC has no application by altering the charge under Section 427 IPC.

Heard and perused the material on record.

From the statements of the witnesses, it is the college that allegedly laid the road closing the water channel, college was not made as accused muchless any cognizance taken against the college the question of vicarious liability of any Chairman or other person responsible for the affairs of the college does not arise without impleadment of the college under the principal of alter ego as also laid down by the constitution bench of the Apex Court in **Sunil Bharti Mittal v C.B.I**¹ particularly from paras 35 to 41. In fact, Section 431 IPC has no application for no any navigable channel either artificial or natural against which the alleged mischief committed and even coming to Section 427 IPC mischief of Rs.50/- or more it is a non cognizable offence, basically it requires permission of the Magistrate under Section 155 Cr.P.C. to register a crime and to investigate, file final report muchless to take cognizance on that count even otherwise the convert to that the very cognizance for the offence under Section 427 IPC right from registration of FIR no way sustained without going into those matters, even there are no allegations as to time, place and manner of occurrence as to who committed the offence at what time and place and manner of occurrence as to who committed the offence at what time and at what manner which are the pre-requisites not only to file final report with those but also to frame a charge. Thereby, for all these reasons, the dismissal of the discharge applications and taking discharge order even framing of charge *per se* unsustainable.

¹ 2015(4) SCC 609

Accordingly, the petition is allowed setting aside the dismissal of the discharge application and framing of charge by allowing the discharge application discharging the accused for no grounds to frame any charge against him either for the offence under Section 431 or to a lesser offence under Section 427 IPC referred Supra. The accused acquitted. The bails bond if any shall stands cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

19.02.2019.
kvrn

Dr. B. SIVA SANKARA RAO, J

