THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

Crl.Rc.No.29 of 2019

ORDER:

The petitioner is by name Manoj Kumar, A-7 in S.C.No.408 of 2012 on the file of the VII Additional Metropolitan Sessions Judge, Hyderabad for Trial of Communal Offences. The said Sessions Case was outcome of the committal proceedings from the police final report that was the outcome of Cr.No.81 of 2011 of Shahinayathgunj Police Station, Hyderabad, registered for the offences punishable under Sections 307, 148, 302, 324, 109, 120-B, 149 and 147 of IPC.

2. The police filed charge sheet against A1 to A7 for the offences punishable under Sections 147, 148, 302, 307, 109, 120-B, 468, 471, 474, 385 read with 149 of IPC and Section 25 (1-B)(b) of Arms Act and the learned Magistrate, by citing as many as 41 witnesses including L.Ws.34 to 41 police officials including the Investigating Officers and the persons who assisted them. L.W.30 recorded the dying declaration of L.W.1 II Additional Chief Metropolitan Magistrate, Hyderabad, L.W.33-XVII Additional Chief Metropolitan Magistrate recorded Section 164 statements of witnesses. L.Ws.29 to 31 are the Scientific Officers who gave the expert opinion and the receipt and other material objects collected. L.W.28 videographed scene of offence. L.W.27 belongs to Clues Team. L.W.25-Doctor stated deceased Kishan breathed last and treated injured Murali and Christopher. L.W.26 conducted Autopsy on the body of Kishan. L.Ws.16 another photographer of scene offence. LW.17 to 24 panch witnesses to the inquest, scene observation, disclosure and confessional statements of A1 to A6 and facts discovered in relation thereto. L.Ws.1 and 2 injured persons supra. L.W.3 is brother of L.W.1. L.Ws.4 and 5 are eye witnesses, neighbour and son of

L.W.1 respectively. L.W.6 is mother of L.W.1. L.W.7 is wife of deceased. L.W.8 is wife of L.W.1. L.W.9 another eyewitness. L.W.11 is another eyewitness. L.Ws.10, 12, 13, 14 and 15 are circumstantial witnesses including in relation to the civil matter in dispute. The learned Magistrate taken cognizance and committed the case to the Court of Sessions, from which Sessions Division allotted the Sessions Case number in securing the presence of the accused.

After appearance in the Sessions Case from post cognizance stage supra, applications under Section 227 filed by A1 and A2 together in Crl.M.P.No.120 of 2018, A3 in Cr.M.P.No.111 of 2018, A5 in Crl.M.P.No.121 of 2018, A6 in Crl.M.P.No.122 of 2018 and A7 who is the petitioner herein in Crl.M.P.No.112 of 2018, it is but for A4, all others among A1 to A7 filed five petitions seeking discharge. Those petitions were ended in dismissal by the impugned common order of the learned Sessions Judge dated 31.12.2018. Leave about others, aggrieved if any or not, from the discharged dismissal applications, the petitioner-A7 filed the present revision impugning the contentions in the grounds of revision that the dismissal order of the learned Trial Sessions Judge, discharge petition of the petitioner A7 is erroneous and without consideration of there is no iota of material to connect him with the Cr.No.81 of 2011 for any of the offences and he is falsely implicated on suspicion of he and A6 are parties to the so-called alleged fabrication of document/receipt in relation to sale of property two years prior to the alleged incident of assault and attack covered by the present crime, the trial Court should have seen that trial along with A1 to A4 the petitioner A7 causes grave prejudice and even assuming for argument sake of so-called receipt is a fabricated one, sale cannot be attributed to the incident in the present crime and no nexus between the said receipt and alleged act of assault to rope the petitioner in the crime and none of the prosecution witnesses whispered any role of the petitioner in the alleged assault covered by the crime for the alleged offences that too when the petitioner-A7 not present at the scene of offence on the alleged day and in the event of so-called attack much less met A1 to A4 even prior to that with any proximity to connect him to the crime with other accused and the so-called disclosure statements of A2, A5 and A6 are hit by Section 25 of Indian Evidence Act and not at all admissible for the learned Magistrate to frame a charge but for to discharge particularly the petitioner and even from a reading of the charge sheet no offence made out against the petitioner and thereby the learned Sessions Judge erred in dismissing the discharge application without even appreciation of facts and the propositions placed reliance within the scope of law, hence to allow the revision by setting aside the dismissal order of the discharge petition by allowing the discharge application discharging the petitioner-A7 from the Sessions Case.

The learned counsel for the petitioner reiterated the same.

Learned Public Prosecutor opposed the same, saying that the trial Court, after considering the entire material along with the other applications of the other accused among A1 to A7 including the petitioner other than A4 supra, from the prosecution investigation material of sustainable accusation to put the accused to face the trial on the face value of allegations taken together, suffice to make out the guilt of the accused unless rebutted during trial and thereby there is nothing for dismissal of the discharge applications of the accused persons even that of A7 and sought for dismissal of revision by confirming the lower court dismissal order.

Heard and perused the material on record.

The factual matrix relevant for the purpose in nutshell to state that A1-Paras Yadav, A2-Deepak Yadav, A3-Inderjeet Yadav are own brothers and sons of one Sohanlal Yadav of Deepak Bhavan Hotel, Chudi Bazar. A4-Shankar Singh is a worker in the said Deepak Bhavan Hotel. A5-Veerender is a document writer. The deceased Kishan Kumar, L.W.1-Murali Mohan are sons of Venkatesham among other, purchased from one Satish Patangay-L.W.10, House bearing No.14-6-125 admeasuring 135 sq.yards, which is opposite to the Deepak Bhavan Hotel supra and by then there was a tenant by name Hari Kishan in that house L.W.2, who vacated and L.W.1, deceased, Christopher L.W.2 another injured along with L.W.1, Dayanand L.W.4 went to the premises supra and tenant who vacates by name Hari Kishan with his Advocate Veeresham L.W.14, present there and the said Veeresham wanted copy of the agreement executed by Hari Kishan for handing over possession, deceased along with L.W.1 Murali Mohan's son by name Rahul went to get the photostat copy of the document. Meantime, A1 to A3 who are running a Hotel opposite to that property by name Deepak Bhavan supra, out of whom, A2 already filed suit for specific performance in O.S.No.710 of 2008 in December, 2008 before the Court of Chief Judge, City Civil Court, Hyderabad against Satish Patangay-LW-10, which as per the prosecution a forged receipt for payment of Rs.2.00 lakhs advance against oral agreement of sale out of consideration of Rs.18 lakhs that said to have been created by the document writer A5 by also using the services of A6 and A7 to benefit A1 to A3 supra, that A1 to A4 who came there and A2 started abusing L.W.1 Murali Mohan and bet him while the others tried to rescue, A1 stabbed them and caused bleeding injuries and A2 brought a boulder an thrown on LW1-Murali Mohan and while deceased tried to rescue Murali Moan-LW1 being his brother from

A1 to A4, they also bet him and A1 stabbed him and deceased was shifted to Care Hospital, Mozamjahi Market, where declared dead.

So far as the petitioner herein is concerned, what the investigation material shows is that A5 to A7 assisted A1 to A3 in creating fake document of properties in maintaining litigation by A2 in dragging the proceedings, for which A5 was scribe who forged and A6 and A7 are the witnesses to the fake and forged receipt as if signed by L.W.10-Satish Patangay, owner of the house premises under alleged oral agreement for the so-called Rs.2.00 lakhs advance out of Rs.18.00 lakhs. It further reads that L.W.29 given opinion of the said receipt forged one vide FSL File No.254/2011 dated 5.8.2011.

Coming to the discharge application dismissal order of the learned Sessions Judge, paragraphs 15 to 20 are relevant of the said order, which speak in nutshell insofar as involvement of A5 to A7 concerned, that A2-Deepak Yadav in his disclosure statement stated that he used to take address from Roopchand in preparing the documents to create litigation and also taken help of Veerender-A5 document writer and broker at Doodhbowli and A2 and Veerender took a certified copy of Document No.1803 of 2008 of Sub-Registrar, Doodhbowli executed by Satish Patangay-LW10 in favour of Venkatesham, father of deceased and L.W.1 in respect of said house property and according to their plan, A5 Veeresham forged signature of Satish Patangay LW10 by seeing model signature on Document No.1803 supra and prepared a fake receipt as if Satish Patangay LW10 entered agreement of sale with A2 for Rs.18 lakhs and taken advance of Rs.2 lakhs and Nandu A6 and Manoj Kumar A7 petitioner stood as witnesses to the receipt and with the help of that receipt, A2 filed civil suit for specific performance in City Civil Court, Hyderabad. The order at paragraphs 17 and 18 refers to the legal position of Rajbir Singh v. State of U.P. [Criminal Appeal No.303 of 2006] and Mohd.Maqbool Ahmed, Basheer Ahmed v. State of Andhra Pradesh [2007 Law Suit (AP) 401], of which Rajbir Singh, paras 7 to 9 reproduced the same "But at the initial stage if there is a strong suspicion which leads the Court to think that there is a ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The Court, therefore, need not undertake an elaborate inquiry in sifting and weighing the materials. Nor is it necessary to delve deep into various aspects. All that the Court has to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime".

In *Mohd. Maqbook Ahmed, Basheer Ahmed's* case that at the stage with regard to sale transaction between petitioner and A2, for the allegation of giving fake currency to A2 as sale consideration, statement of witnesses during investigation from that material gives grave suspicion with regard to his participation in the commission of offence covered by the crime and final report, not a fit case to discharge, that too when the trial Court considered the discharge application and with reference to it in saying as the material on record gives grave suspicion with regard to participation of all the petitioners in commission of crime taken place in the broad day light causing death of one person and injuries to two persons including grievous injury to one person and there are statements of eyewitnesses, all reasonably connecting the accused to the crime, not a fit case to discharge any of them.

In fact, having referred the legal position, the conclusion in para 19 of the said observation of the learned Sessions Judge is incorrect for no any whisper of any role of A7 in relation to the attack causing death of deceased and injuries to LW1 and 2. The only allegation from the investigation, including the so-called disclosure statement of A2 with reference to the statements of witnesses in linking A5 to A7 of whom, A5 joined hands with A2 particularly among A1 to A3 in securing a model document of LW10 in forging the signature of LW10 in creating a receipt mentioning about oral sale transaction for Rs.18 lakhs by payment of Rs.2.00 lakhs advance and in saying so far as A6 and A7 concerned only attestors to the said fake receipt or forged receipt. Mere attestation itself will not mulk any person with knowledge to impute the signature as forged and the expression of the Apex Court in M.L.Abdul Jabbar Sahib v. M.V.Venkata Sastry and Sons [AIR 1969 SC 1147]. However, even taken for argument sake, he attested knowingly of the signature is not that of L.W10, but forged by A5 and A2 among A1 to A3 and A5 in making use as if genuine in knowingly attested by petitioner A7 besides A6, then it is only forgery for purpose of cheating including using as genuine forged document within the scope of Sections 468 and 471 of IPC that attracts and nothing beyond for any of the offences and same is not considered by the learned Sessions Judge in framing a charge against the petitioner for the grave offence under Sections 302, 307 147, 148, 109, 120-B etc., without any basis. Having regard to the above and in the result, without prejudice to the defence of the accused left open, the charge framed by the trial Court for all the offences, set aside by confining only to Section 468 of IPC read with 34/149 IPC against the petitioner/A7 along with A2 A5 and A6 if any.

In the result, the Criminal Revision is partly allowed. As a sequel, the applications, if any, shall stand closed. There shall be no order as to costs.

Dr.SSRB,J

Date: 22.2.2019

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