HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL REVISION CASE No.133 of 2019

ORDER:

The present revision is filed by accused No.6 under Sections 397 and 401 Cr.P.C., questioning the order, dated 31.12.2018, passed in Crl.M.P.No.122 of 2018 in S.C.No.408 of 2012 on the file of the Additional Metropolitan Sessions Judge for Trial of Communal Offences Case-cum-VII Additional Metropolitan Sessions Judge, Hyderabad, wherein and whereunder an application for discharge filed by the petitioner/accused No.6 was dismissed.

A charge sheet came to be filed against the petitioner/A6 and others for the offences punishable under Sections 147, 148, 302, 307, 109, 120-B, 420, 468, 471, 474 and 385 read with Section 149 of I.P.C and Sections 25 (1-B) (b) of Arms Act.

The case of the prosecution is that accused No.2 in order to knock away the property of one Satish Patange got created a forged document purported to be a receipt of acknowledgment of advance for sale of the property. The said document was scribed by accused No.5, whereas accused No.6 (petitioner) and accused No.7 are said to be the attestors of the said forged receipt. Basing on which, accused No.2 filed a suit in O.S.No.710 of 2018. Hence, the revision petitioner/A6 assisted accused No.2 in creating a forged receipt.

Heard learned Counsel for the revision petitioner and learned Public Prosecutor appearing for the respondent/State.

Learned Counsel for the revision petitioner submits that it is not the case of the prosecution that the petitioner was present at the alleged scene of offence on the alleged date or the petitioner met accused Nos.1 to 4 prior to the alleged incident. It is further submitted that the petitioner attested the document in the year 2008 i.e. more than three years prior to the alleged offence which took place on 27.03.2011. It is further submitted that the transaction took place in the year 2008, which is the subject matter of enquiry by the Civil Court in O.S.No.710 of 2008. It has been further stated that there is absolutely no admissible evidence against the petitioner to connect the alleged illegal act of fabricating the said document except the confessional statement of co-accused, which is not admissible as the same was obtained while they were in police custody. It is further stated that this Court, by order dated 22.02.2019, while allowing the Crl.R.C.No.29 of 2019 filed by accused No.7, set aside the charges framed by the trial Court for all the offences and confined only to Section 468 of I.P.C read with Sections 34 and 149 IPC and that the revision petitioner, who is accused No.6, is also stands on the same footing as that of accused No.7.

Learned Additional Public Prosecutor opposed the revision, stating that after considering the entire material, the trial Court dismissed the discharge applications filed by the revision petitioner as well as the other accused. There are no valid grounds to allow the discharge application filed by the petitioner/A.6 as there are sustainable accusations against him. Hence, sought for dismissal of revision and confirm the order of the trial Court.

A perusal of the material on record would disclose that accused Nos.5 to 7 assisted accused Nos.1 to 3 in creating fake document. Accused No.5 scribed the said document, whereas accused Nos.6 and 7 attested the said document. The material placed before this Court discloses that the issue involved in this case has already been decided by this Court in Crl.R.C.No.29 of 2019 filed by accused No.7 and this Court gave the following findings.

> "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 attesters to the said fake receipt or forged receipt. Mere attestation itself will not mulct 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 view of the findings given by this Court in Crl.R.C.No.29 of 2019, which was filed by accused No.7 and as the revision petitioner is also stands on the same footing as that of accused No.7, this Criminal Revision Case is also allowed in part confining the charge against the revision petitioner/A6 only for the offence punishable under Section 468 read with Section 34/149 I.P.C by setting aside the charges framed by the trial Court for all the offences against the revision petitioner/A6.

Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE G. SRI DEVI

20.09.2019
Gsn.