

Tandale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.3410 OF 2014**

Subhashkumar Vijaykumar Allena	}	
Age : 29 Years, Occ. : Service,	}	
R/o : 70-4A-4, Padma Nagar,	}	
Ramanayyapeta, Kakinada,	}	
East Godavari District,	}	
Andhra Pradesh - 533005	}	 Petitioner.

Vs.

The State of Maharashtra	}	 Respondent.
--------------------------	---	------------------

Mr. Prathamesh Samant for the Petitioner.

Mr. A.R. Patil, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.**DATE : 1st APRIL, 2021.****ORAL JUDGMENT :-**

1. By the present Petition under Article 227 of the Constitution of India and under Section 482 of the Criminal Procedure Code (for short, "*Cr.PC.*"), the petitioner/original accused has impugned Order dated 5th July 2014, passed below Exh.3, in Sessions Case No.824 of 2013, rejecting his Application for discharge filed under Section 227 of Cr.PC.

The petitioner is accused in C.R. No.51 of 2011, dated 13th September 2011, registered with Vimantal (Airport) Police Station, Mumbai, under Section 489(b) and 201 of the Indian Penal Code, now culminated into Sessions Case No.824 of 2013.

2. Heard Mr. Samant, learned counsel for the petitioner and Mr.

Patil, learned A.P.P. for the respondent-State. Perused record annexed to the Petition.

3. The prosecution case in brief is that, on 13th September 2011, in between 6.30 a.m. to 6.45 a.m., the petitioner after arriving from United Kingdom by an international flight at Terminal-1 of Chatrapati Shivaji Maharaj International Airport, Mumbai, went to the counter of Pheroze Framroze & Co. Pvt. Ltd, for exchanging foreign currency. The petitioner was having four foreign (Sterling Pound) currency notes. He was having two currency notes of 10 Pounds and two currency notes of 20 Pounds. He tendered the said notes at the counter of the said Pheroze Framroze & Co. Pvt. Ltd.. Mr. Maruti Shendre was at the counter of the said company, who accepted the said notes and in exchange gave him Rs.3,866/-. Necessary receipt was issued in favour of the petitioner. The petitioner thereafter proceeded towards Terminal-1B for going to Hyderabad by Jet Airways.

After the petitioner left the counter of the said company, the first informant, Mr. Maruti Shendre noticed that, two currency notes of 20 Pounds each were counterfeit notes and therefore with the help of CISF personnel the petitioner was called from the security zone. It is alleged that, when the applicant was confronted with the said counterfeit notes, he torn those notes and tried to destruct the evidence. The said torn notes were seized by the CISF Personnel. A crime bearing C.R.No.51 of 2011, dated 13th September 2011 came to be registered with Vimantal (Airport)

Police Station, Mumbai, under Section 489(b) and 201 of the Indian Penal Code. After completion of investigation, Police submitted charge-sheet.

Applicant preferred an Application below Exh.3 under Section 227 of Cr.PC., for his discharge from the said case. The Trial Court by its impugned Order dated 5th July 2014 has rejected the said Application.

4. Mr. Samant, learned counsel for the petitioner submitted that, the prosecution has annexed photocopies of the said notes to the charge-sheet and therefore it means that, the said evidence was not destructed by the petitioner. He submitted that, as the evidence of counterfeit notes is available on record, Section 201 of I.P.C. can not be made applicable to the present crime. By relying on a circular of the Reserve Bank of India, he submitted that, finding of two counterfeit notes would not attract an offence under Section 489(b) of I.P.C. That, for lodgment of crime under Section 489(b) of I.P.C., it is necessary that the petitioner or an accused must have at least four pieces of counterfeit currency notes in his possession. He submitted that, the prosecuting Agency in fact ought not have lodged crime against the petitioner, who was a student at that relevant time and would have dropped the proceedings at its inception. He submitted that, the Trial Court has failed to take into consideration these aspects while rejecting his Application filed under Section 227 of Cr.PC. He therefore prayed that, the impugned Order may be set aside by allowing the present Petition.

5. At this stage, a useful reference can be made to the decision of the Hon'ble Supreme Court in the case of ***R.S. Nayak vs. A.R. Antulay and Anr. Reported in AIR 1986 SC 2045.*** While dealing with the provisions of Sections 227, 239 and 245 of Cr.P.C., the Hon'ble Supreme Court in Para 44, in unequivocal terms, has held as under:-

"The Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on police report are dealt with in Section 245. The three sections contain some what different provisions in regard to discharge of the accused. Under Section 227, the trial Judge is required to discharge the accused if he 'considers that there is not sufficient ground for proceeding against the accused.' Obligation to discharge the accused under Section 239 arises when "the Magistrate considers the charge against the accused to be groundless." The power to discharge is exercisable under Section 245(1) when "the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction...." It is a fact that Sections 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under Section 245, on the other hand, is reached only after the evidence referred to in Section

244 has been taken. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial Court is satisfied that a prima facie case is made out, charge has to be framed."

6. The Hon'ble Supreme Court in the case of ***Palvinder Singh Vs. Balwinder Singh and others reported in (2008) 14 SCC 504***, while dealing with the provisions of Section 227 of Cr.P.C., in para 13 has held that, the charges can also be framed on the basis of strong suspicion. That marshaling and appreciation of evidence is not in the domain of the Court at that point of time.

Thus, it is clear that the Supreme Court in its decisions has held that while considering the application for discharge the Court has to take into consideration *prima facie* case as made out by the complainant/prosecution.

7. Despite this aforestated settled legal position, learned counsel for the petitioner persistently persuaded this Court to analyse all the evidence available on record which this Court in fact has done.

Perusal of record would indicates that, the First Information Report is self eloquent pointing out all the necessary and relevant ingredients of Section 489(b) and 201 of I.P.C. It is the precise prosecution

case that, the applicant was found in possession of two counterfeit currency notes of 20 Pounds each and when he was accosted by the CISF Personnel, he torn it. The panchnama dated 13th September 2011 of recovery of the said notes discloses that, the said notes were recovered in torn condition. It *prima facie* appears that, after restructuring of the counterfeit currency notes, the police have annexed it's copy to the charge-sheet. The petitioner cannot be permitted to take benefit of the circular of the Reserve Bank of India for the reason that, the moment the petitioner was accosted by CISF Personnel, he tried to destruct the evidence and therefore an interference can be drawn that, the petitioner was well aware of the said fact that, the said two currency notes of 20 Pounds were counterfeit currency notes, which were in his possession and which he in fact encashed at the counter of Pheroze Framroze & Co. Pvt. Ltd. at the international Airport Mumbai. Tearing of notes denotes *mens rea* at the behest of the petitioner.

8. Perusal of record clearly indicates that, a strong *prima facie* case against the petitioner is made out by the prosecution to frame charges under Section 489(b) and 201 of I.P.C.

9. After perusing the record and impugned Order dated 5th July 2014, this Court is of the view that, the Trial Court has not committed any error either in law or on facts while passing the impugned order.

10. Petition is accordingly dismissed.

(A.S. GADKARI, J.)