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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2022

CORAM:

THE HON'BLE MR.JUSTICE N.SESHASAYEE

Criminal Revision Case No.1106 of 2021

P.Hari Rao

...Petitioner/2nd Accused

Versus

The State rep. By
The Sub-Inspector of Police,
Central Crime Branch,
Vepery, Chennai.
(Cr.No.553 of 2005)

...Respondent/Complainant

Criminal Revision Case filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the order dated 17.05.2021 made in CrI.M.P.No.10486 of 2020 in C.C.NO.1904 of 2007 on the file of the L.CCB & CBCID Metropolitan Magistrate, Egmore and set aside the same by allowing this Criminal Revision Petition.

For Petitioner : Mr.N.Manoharan

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (CrI.Side)

O R D E R

Based on the complaint preferred by Capt.Misra, Nautical Surveyor, the case in Crime No. 553 of 2005 came to be registered by the respondent for offences under Sections 420 and 120 (B) IPC. The investigation in the matter is complete and the Investigating Agency has laid its final Report.

2.On the eve of framing the charges against the three named accused persons, the present Revision Petitioner, who is arrayed as the 2nd accused has moved the trial Court with CrI.M.P.No.10486 of 2020 for discharging him from the case.

3.The prosecution case may be outlined: for obtaining an on board job in a ship, 5 documents are essential, of which, one is, what is called an Indian CDC. The first accused is alleged to have given an advertisement in an leading Malayalam Daily



that his firm would organize CDC. At least, few such advertisements were given and on coming to know of the same, the defacto complainant preferred a compliant to the Investigating Agency alleging therein that A1 has never been authorized to issue any CDC and that A1 is backed by A2 and A3 in this racket.

4.The list of statements recorded by the Investigating Agency under Section 161 Cr.P.C, explains the broader features of the complaint. The first of the statement recorded is that of Cpt.Misra. He is the Principal Officer of Mercantile Marine Department, and he speaks to the quintessence of the complaint. This is followed by the statement of Shri.Vaid, and he introduces himself as the Captain of M/s.Ericsson and Richardson, and he would implicate inter alia the Revision Petitioner. This is followed by the statement of Sudharshanam, who is also the staff of Mercantile Marine Department and he states that A2 and A3 were working in the same company. Sudharshanam is followed by Saibala, an employee of M/s.Ericsson and Richardson, and he would also implicate the role of Hari Rao, the Revision Petitioner herein as an active participant in the racket for issuing CDC. Then comes the list of victims and most of who implicate the role of the Revision Petitioner herein.

5.In the face of this, the trial Court has dismissed the Revision Petitioner's petition filed under Section 239 Cr.P.C seeking his discharge on the ground that there is a triable case against the petitioner /A2. Correctness of this order is now in challenge.

6.Heard the learned counsel for the Revision Petitioner and Mr.Leonard Arul Joseph Selvam, the learned Government Advocate (Criminal Side) for the respondent.

7.Placing reliance on the Judgement of the Hon'ble Supreme Court in CBI, Hyderabad vs. K.Narayana Rao [(2012) 9 SCC 512], the learned counsel for the Revision Petitioner argued there is not a piece of relevance or prima facie reliable material available in the final report, which may enable the Court to frame a charge for an offence under Section 420 IPC against the Revision Petitioner. The relevant portion of the Judgement is extracted hereunder;

12. ... Exercise of jurisdiction under Sections 227 and 228 CrPC

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the



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limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

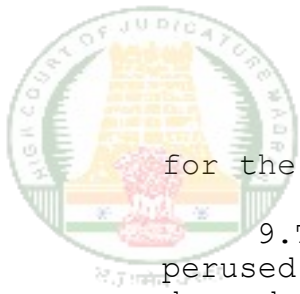
(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

8. The learned Government Advocate (Criminal Side) however, contended that there are materials enough to frame charges and the conclusion as suggested by the learned counsel for the Revision Petitioner cannot be considered and is too premature



for the Court to consider.

9.This Court weighed the rival submissions carefully and perused the entire typed set of papers. On the touchstones laid down by the Hon'ble Supreme Court and more particularly the statements of the various witnesses, it became apparent to this Court that there are materials, which are adequate enough to frame charges against the Revision Petitioner.

10.This Court therefore, does not want to interfere with the order of the trial Court and accordingly, the Criminal Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

Tsg/dk

To

1. The CCB & CBCID Metropolitan Magistrate,
Egmore, Chennai.
2. The Sub-Inspector of Police,
Central Crime Branch,
Vepery, Chennai.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.10040

+2cc to Mr.N.Srinivasulu, Advocate, S.R.No.10026

Cr1.RC.No.1106 of 2021
Cr1.M.P.No.14187 of 2021

GPL(CO)
RGA(29/03/2022)