

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

CRL.R.C.No.329 OF 2019

ORDER:

This criminal revision case is filed by the petitioner/A-2 to set aside the order dated 01.02.2019 in Crl.M.P.No.201 of 2019 in C.C.No.605 of 2016, on the file of the learned I-Additional Judicial Magistrate of the First Class, Nizamabad, wherein the said petition filed by the petitioner/A-2 under Section 239 Cr.P.C., seeking discharge, was dismissed.

2. Heard learned counsel for the petitioner and the learned Assistant Public Prosecutor for the respondent/State.

3. It is the case of the petitioner/A-2 that the *de facto* complainant viz., Bachu Lingam filed a private complaint against the petitioner/A-2 and two others i.e., A-1 and A-3 before the learned Magistrate alleging offences punishable under Sections 406, 420, 448 and 506 IPC and the same was referred to the police. After due investigation, the police filed charge sheet and the same was taken cognizance by the learned Magistrate for the offences under Sections 448 and 506 IPC.

4. The learned counsel for the petitioner contends that the petitioner was out of country i.e., China at the time of alleged offence and was working as Software Engineer there. The petitioner has produced copies of passport in support of the said contention, but the said plea was not entertained by the court below. A false case has been foisted against him. He prays for setting aside the orders of the court below.

5. A perusal of the impugned order passed by the court below shows that earlier the petitioner/A-2 filed Crl.P.No.8867 of 2018 under Section 482 Cr.P.C. to quash the proceedings in C.C.No.605 of 2016, pending on the file of I-Additional Judicial Magistrate of First Class, Nizamabad, registered for the offences punishable under Sections 448 and 506 IPC. By order dated 23.08.2018, the said criminal petition was allowed-in-part quashing the proceedings in C.C.No.605 of 2016 against the petitioner/A-2 for the offence punishable under Section 448 IPC, while permitting the learned Magistrate to proceed against the petitioner for the offence punishable under Section 506 IPC. The learned Magistrate further

observed that the plea of alibi is a question of fact which has to be decided during trial and cannot be decided at that stage.

6. As rightly held by the learned Magistrate, without adducing evidence in trial, the petitioner cannot be discharged on the plea of alibi. Further, this court also held in Crl.P.No.8867 of 2018 that the plea of alibi is a question of fact which has to be decided during trial and cannot be decided at this stage. Therefore, without conducting trial, the petitioner/A-2 cannot be discharged from the case.

7. On a perusal of the material on record and the order of the Court below, I am of the considered view that there are no valid grounds to interfere with the findings recorded by the court below. I do not find any illegality or infirmity in the impugned order, warranting interference by this Court.

8. The criminal revision case is, accordingly, dismissed.

9. Pending miscellaneous petitions, if any, stand closed.

A.SANTHOSH REDDY, J

12.04.2022

Lrkm