K. Ananthakumar Vs. Inspector of Police, Vigilance and Anti-corruption, Salem

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SooperKanoon Citation : sooperkanoon.com/1189913

Court : Chennai

Decided On : Jul-12-2016

Judge : R. Subbiah

Appeal No. : Crl.R.C.No. 374 of 2016 & Crl.M.P.No. 2487 of 2016

Appellant : K. Ananthakumar

Respondent : Inspector of Police, Vigilance and Anti-corruption, Salem

Judgement :

(Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of the Criminal Procedure Code, praying to call for the records leading to the order dated 07.01.2016 passed in Crl.M.P.No.255/2015 in Spl.C.C.No.118/2014 on the file of the learned Special Judge (Special Court for Trail of cases under prevention of Corruption Act), Salem, and to set aside the same and allow the revision with cost.)

1. Challenging the order of dismissal of the discharge petition filed by the petitioner under Section 239 of Cr.P.C, passed by the learned Special Judge (Special Court for Trail of cases under prevention of Corruption Act), Salem, in Crl.M.P.No.255/2015 in Spl.C.C.No.118/2014 dated 07.01.2016, the petitioner has preferred this Revision before this Court.

2. The brief case of the prosecution is as follows:-

The petitioner herein has been arrayed as 8th accused in Spl.C.C.No.118 of 2014 pending on the file of the Special Judge (Special Court for Trail of cases under prevention of Corruption Act), Salem. During the period between 01.01.2005 and 30.11.2005, the accused 1, 2 and 10, being Special Officer, Secretary and Supervisor of Sri Rajaganapathy Co-operative House Building Society, Salem, respectively, along with the accused 3 to 9, who are private individuals, hatched a criminal conspiracy to misappropriate the funds of the said Society by indulging in illegal acts such as forgery, impersonation, falsification of accounts etc., in respect of the loan sanctioned to the members of the said Society. In pursuance of the above said criminal conspiracy on 19.07.2005, the accused 1 and 2 along with 10th accused and the petitioner herein prepared a cheque bearing number 038077 dated 19.07.2005 for a sum of Rs.81,900/- incorrectly in the name of one Saroja and by way of forged thumb impression and impersonation, the said cheque was converted into cash and the amount of Rs.81,900/- was misappropriated by the accused 1, 2 and 10 and as such, the accused 1, 2 and 10 have committed offence punishable under Section 120B r/w 167, 409, 465, 467, 468, 471, 477A and 419 IPC r/w 109 of IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The petitioner herein being a co-conspirator has committed offence punishable under Section 120B r/w 167, 409, 465, 467, 471, 477A, 419 IPC r/w 109 of IPC. Hence, the case has been registered against the accused persons.

3. The petitioner herein(A8) had filed a discharge petition in Crl.M.P.No.255 of 2015 in Spl.C.C.No.118 of 2014 under Section 239 of Cr.P.C., before the learned Special Judge (Special Court for Trail of Cases under Prevention of Corruption Act), Salem. But, the said discharge petition was dismissed by the Trial Court by order dated 07.01.2016. Aggrieved over the same, the petitioner has come forward with the present Revision Petition before this Court.

4. It is the submission of the learned counsel for the petitioner that the petitioner is a private individual; that only A1, A2 and A10 are the Officials, being Special Officer, Secretary and Supervisor of Sri Rajaganapathy Co-operative House

Building Society, Salem, respectively. The petitioner herein is only a Civil Engineer, who is engaged in construction of houses. During the course of his construction business, the petitioner has constructed the house of the said Saroja. Now, the said Saroja has lodged a complaint alleging that the accused 1, 2 and 10 by creating false and fabricated documents have falsified the accounts of the said Society in respect of loan granted to her. The learned counsel for the petitioner would further submit that the only allegation against the petitioner is that he has introduced the said Saroja to the other accused persons. Even as per the prosecution case, out of the total loan amount of Rs.1,30,000/-, only a sum of Rs.81,900/- covered under the Cheque No.038077 dated 19.07.2005, was alleged to have been misappropriated by the accused 1, 2 and 10. Hence there is no material on record to frame charges against the petitioner herein. Thus, the learned counsel for the petitioner sought for qushing the impugned order and consequently, to discharge the petitioner from the alleged offence.

5. But, the learned Additional Public Prosecution would contend that in the statement of P.W.33 and P.W.34, they have clearly spoken about the involvement of the petitioner herein in the offence. There is enough material to frame charge against the petitioner herein. In this regard, the learned Additional Public Prosecutor has also invited the attention of this Court to the statements of P.W.37 and P.W.38 and submitted that in his statement, P.W.38 had clearly spoken with regard to the preparing of building plan for the P.W.7 and obtaining signature from P.W.37. In his evidence, P.W.38 has made reference with regard to the petitioner herein. Thus, the learned Additional Public Prosecutor submitted that it is incorrect to state that absolutely there is no material to frame charges against the petitioner herein.

6. Heard the submissions made on either side and perused the materials available on record.

7. It is a well settled legal principle that if there is strong suspicion founded on the materials placed before the Court with regard to the offence committed by the accused, that would justify framing of charge against the accused. In the instant case, the statement of P.W.37 and P.W.38 would show that they have spoken with

regard to the money paid by the petitioner herein to P.W.38 for preparing building plan for P.W.7, who obtained housing loan. Therefore, in my considered view, there is a case for framing charges against the petitioner herein/A8 and hence, it is incorrect to state that absolutely there is no case made out to frame charges against the petitioner herein/A8.

8. Though it is the reply of the learned counsel for the petitioner that since the name of the petitioner was referred in the statements of the P.W.37 and 38, it does not mean that the petitioner is involved in the alleged offence along with the accused 1, 2 and 10, in my considered opinion, if on the basis of materials on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists.

9. In this regard, it is worthwhile to notice a judgment of the Supreme Court reported in 2013 (11) SCC 476 (Sheoraj Singh Ahlawat Vs. State of U.P), wherein it has been held that while framing charges, Court is required to evaluate the materials and documents on record to decide as to whether the facts emerging therefrom taken at their face value, would disclose existence of ingredients constituting the alleged offence; at this stage, the Court is not required to go deep into the probative value of materials on record; it needs to evaluate as to whether there is a ground for presuming that the accused had committed the offence; but, it should not evaluate the sufficiency of evidence to convict the accused; even if there is a grave suspicion against the accused and it is not properly explained or Court feels that the accused might have committed the offence, then framing of charges against the accused is justified and it is only for conviction of accused that the materials must indicate that the accused had committed the offence, but for framing of charges, if the materials indicate that the accused might have committed the offence, then framing of charge is proper.

10. Therefore, in my considered opinion, all the submissions of the learned counsel for the petitioners/A8 will not be a ground for discharge of the petitioner/A8 from the case at this stage. On the above facts and circumstances of the case and applying the principles laid down by the Apex Court in the above referred to decision, I do not find any valid ground to interfere with the impugned

order passed by the trial Court. There is no merit in the present revision and the same is liable to be dismissed.

11. For the foregoing reasons, the Criminal Revision Case is dismissed. However, the petitioner is at liberty to put forth all his contentions to prove his innocence during the course of trial by adducing oral and documentary evidence. The trial Court shall complete the trial as early as possible and the petitioner and the prosecution shall co-operate in completion of the trial before the trial Court as early as possible. Consequently, connected Miscellaneous Petition is closed.