THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

CRIMINAL REVISION CASE No.82 OF 2021

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Criminal Procedure Code (in short 'Cr.P.C.') is filed by the petitioner aggrieved by the order dated 27.01.2021 passed by the Special Sessions Judge for trial of Criminal Cases relating to elected M.Ps. and M.L.As. of the State of Telangana at Hyderabad, in Crl.M.P.No.1001 of 2020 in C.C. No.16 of 2020, whereby the petition filed by the petitioner under Section 239 of Cr.P.C. seeking to discharge him for the offence under Sections 353, 354 and 509 of Indian Penal Code (in short 'I.P.C.') has been dismissed.

The case of the prosecution, in brief, is that on 12.07.2017 at 6.00 p.m., one Dr.Preeti Meena, I.A.S., Collector & District Magistrate, Mahabubabad, the *de facto* complainant herein, has sent a written report to Mahabubabad Town Police Station, stating that on the same day at about 12.35 p.m. when she was attending the '3rd Phase Haritha Haram' programme at NTR Stadium, Mahabubabad, along with the Joint Collector, Revenue Divisional Officer of Mahabubabad and other officials, the accused (petitioner herein) caught hold of her hand and pushed her from one place to another place in most indecent and disrespectful manner in the public and caused high annoyance and obstruction to her legitimate duties and therefore requested to take action. Based on the above complaint, the Inspector of Police, Mahabubabad Town Police Station, registered a case in Crime No.230/2017 for the offences under Sections 353, 354 and 509 I.P.C. Subsequently, the Sub-Divisional Police Officer, Thorrur, took up the investigation,

visited the scene of offence, recorded the statements of the witnesses, drawn rough sketch of scene of offence, collected video coverage footage at the spot and after completion of entire investigation, found that the accused has obstructed the legitimate duties of the public servant and used criminal force with malicious intention and insulted the *de facto* complainant in the public by commenting her and also tried to outrage her modesty by catching hold of her hand, and filed a charge sheet in the Court. Cognizance of the said case was taken on file as C.C.No.16 of 2020, wherein the accused has filed Crl.M.P.No.1001 of 2020 seeking to discharge him from the alleged offences. The learned Special Sessions Judge, by the impugned order dated 27.01.2021, has dismissed the said Petition. Aggrieved by the same, the petitioner/accused filed the present Criminal Revision Case.

Heard Sri A.Prabhakar Rao, the learned counsel for the petitioner/accused, and the learned Public Prosecutor appearing for the respondent-State.

The learned counsel for the petitioner/accused has vehemently argued that the Court below, without appreciating the evidence on record, in a mechanical manner, has simply dismissed the petition filed by the petitioner/accused under Section 239 Cr.P.C. That the material placed before the Court below does not disclose the commission of any offences muchless Sections 353, 354 and 509 I.P.C. The learned counsel has further stated that though the statements of the witnesses recorded under Section 161 Cr.P.C do not disclose that the accused has committed the alleged offences, the trial Court, without discussing the same, has

simply held that there is *prima facie* material against the accused to frame charges against him for the offences under Sections 353, 354 and 509 I.P.C., and dismissed the discharge petition. The learned counsel has taken this Court through the statement of the *de facto* complainant (L.W.1) and also Sections 353, 354 and 509 I.P.C, to buttress his contention that the allegations made against the accused do not attract the ingredients of the offences punishable under Sections 353, 354 and 509 I.P.C. That merely touching the *de facto* complainant on her shoulder does not amount to outraging her modesty or preventing her from discharging her duties. The learned counsel has further stated that touching the *de facto* complainant by the accused was inadvertent and there was no intention on the part of the accused to outrage the modesty of the *de facto* complainant; that the accused did not utter any words against the *de facto* complainant and that the accused did not try to intimidate the *de facto* complainant nor obstructed her from discharging her official duties.

Per contra, the learned Public Prosecutor appearing on behalf of the State has argued that the statements recorded by the Investigating Officer under Section 161 Cr.P.C reveal that the accused has tried to insult the *de facto* complainant while she was discharging her duty and that only with an intention to outrage the modesty of the *de facto* complainant, the accused caught hold of her hand and obstructed her from discharging her duty. That the statements of L.Ws.2 to 6 support the allegations made by the *de facto* complainant in her complaint. That a *prima facie* case is made out against the accused and that there is sufficient material to show that the allegations made against the accused are true and

correct. That the question of discharging the accused at the stage of framing of the charges does not arise, and therefore, the trial Court has rightly passed the impugned order, and that the Court cannot conduct a roving enquiry at this stage to find out the guilt or otherwise of the accused and that unless and until a full fledged trial is completed, the accused cannot the discharged.

A reading of the impugned order dated 27.01.2021 discloses that the learned Special Sessions Judge has come to the conclusion that there is *prima facie* material against the accused to frame charges against him for the offences under Sections 353, 354 and 509 I.P.C., and further held that at that stage, the trial Court cannot come to a conclusion whether the said *prima facie* material is sufficient to record conviction or acquittal against the accused, and accordingly dismissed the petition.

In order to appreciate the various contentions raised by the learned counsel for the parties, it is necessary to extract Sections 239 and 240 Cr.P.C.

Section 239 Cr.P.C. reads as under:

> *"**When accused shall be discharged**: - If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."*

Section 240 Cr.P.C. reads as under:

> *"**Framing of charge**: - (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion*

that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.
(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried."

A combined reading of Sections 239 and 240 Cr.P.C. makes it abundantly clear that before framing the charges, the trial Court is expected to consider the material placed before it in order to decide whether the charges can be framed against the accused or not.

The Hon'ble Supreme Court in ***Onkar Nath Mishra v. State (NCT of Delhi)***[1] has held as under:

"It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

In ***State of Maharashtra v. Som Nath Thapa***[2], a three-Judge Bench of the Hon'ble Supreme Court, after noting three pairs of sections viz. (i) Sections 227 and 228 insofar as sessions

[1] *(2008) 2 SCC 561*
[2] [(1996) 4 SCC 659

trial is concerned; (ii) Sections 239 and 240 relatable to trial of warrant cases; and (iii) Sections 245(1) and (2) qua trial of summons cases, which dealt with the question of framing of charge or discharge, stated thus:

> *"32. … 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. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."*

In ***State of M.P. v. Mohanlal Soni***[3]**,** the Hon'ble Supreme Court, while referring to several previous decisions held as under:

> *"7. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."*

In ***State by Karnataka Lokayukta, Police Station, Bengaluru v. M.R. Hiremath***[4]**,** the Hon'ble Supreme Court has held as under:

> *"It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the*

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[3] [(2000) 6 SCC 338
[4] (2019) 7 SCC 515

existence of the ingredients necessary to constitute the offence."

A combined reading of all the above judgments shows that in order to discharge a person under 239 Cr.P.C., the Court has to necessarily see whether there is any *prima facie* material available on record to charge the accused. The Courts can discharge the accused if the material available on record is insufficient to connect the accused with the commission of the offence or that the trial Court is barred by law to proceed with the case i.e., cases where prior permission is needed to prosecute the accused or if the trial is allowed to proceed, the same will be an abuse of process of law, but not otherwise.

Undoubtedly, unless and until the Court is satisfied that there is no iota of evidence against the accused or that the charges leveled against the accused are groundless, and there is no *prima facie* case, the accused cannot be discharged from the offence even before framing of the charges.

Moreover, as discussed in the previous paragraphs, the scope of interference by this Court, under Sections 397 and 401 Cr.P.C., while dealing with the orders of trial Court, more specifically in case of discharge petitions, is very limited. Unless and until the accused is able to show that the material before the trial Court was insufficient or that the charges, which are sought to be framed against him, are frivolous in nature or that no *prima facie* case is made out against him, the scope of interference by this Court in the present Criminal Revision Case is very minimal.

The Hon'ble Supreme Court in ***Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation***[5]**,** has held that interference in the order framing charges or refusing to discharge is called for in rarest of rare case only to correct the patent error of jurisdiction.

The Hon'ble Supreme Court in ***Asian Resurfacing*** (supra) while expressing concern regarding the need to tackle rampant pendency and delays in our criminal law system, followed the ratio laid down in an earlier decision in ***Madhu Limaye v. State of Maharashtra***[6]**,** *as can be seen from the following extract:*

> *"Thus, even though in dealing with different situations, seemingly conflicting observations may have been made while holding that the order framing charge was interlocutory order and was not liable to be interfered with under Section 397(2) or even under Section 482 CrPC, the principle laid down in Madhu Limaye [Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551: 1978 SCC (Cri) 10] still holds the field. Order framing charge may not be held to be purely an interlocutory order and can in a given situation be interfered with under Section 397(2) CrPC or 482 CrPC or Article 227 of the Constitution which is a constitutional provision but the power of the High Court to interfere with an order framing charge and to grant stay is to be exercised only in a exceptional situation."*

The discretion vested in the High Court is to be invoked carefully and judiciously for effective and timely administration of criminal justice system. Unless and until it is shown that there is every likelihood of serious prejudice to the rights of the accused, this Court, as a matter of fact, cannot interfere with the order passed by the trial Court under Section 239 Cr.P.C.

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[5] (2018) 16 SCC 299
[6] (1977) 4 SCC 551

In the instant case, the allegations made against the accused that he caught hold of the hand of the *de facto* complainant, pushed her from one place to another place in most indecent and disrespectful manner in public causing high annoyance and obstructed her to discharge her legitimate duties, are supported by the 161 Cr.P.C statements of L.Ws.2 to 6. The truth or otherwise of the same can be gone into by the trial Court only during the course of trial. The issued raised can be decided more appropriately only after the trial where the evidence is adduced by both the parties rather than at the time of deciding the application made under Section 239 Cr.P.C.

Therefore, this Court is not inclined to entertain this Criminal Revision Case, and the same is, accordingly, dismissed. However, it is made clear that the trial Court shall deal with the Calendar Case on its own merits, without being influenced by any of the observations made by this Court in this order or by the trial Court in the impugned order.

Miscellaneous petitions pending, if any, shall stand closed.

A.ABHISHEK REDDY, J

Date : 02.06.2021.
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