*** THE HON'BLE SRI JUSTICE R.KANTHA RAO**

+ CRIMINAL REVISION CASE No.1788 OF 2011

% 04th December, 2013.

CRIMINAL REVISION CASE No.1788 OF 2011

B.S.Neelakanta and another .. PETITIONERs
VS.

$ The State of A.P. Rep.by Public Prosecutor
and another **..** RESPONDENT

! Counsel for the petitioner : Sri T.Niranjan Reddy
Senior Counsel

^ Counsel for the respondent No.1 : Additional Public Prosecutor

^ Counsel for the respondent No.2: Sri B.Sudhakar Reddy

< Gist:
> Head Note:

? CITATIONS:

THE HON'BLE SRI JUSTICE R.KANTHA RAO

CRIMINAL REVISION CASE No.1788 OF 2011

O R D E R:

This criminal revision case is filed against the order dated 26.08.2011 in Crl.M.P.No.4681 of 2011 in C.C.No.1037 of 2008 on the file of the III Additional Chief Metropolitan Magistrate, Hyderabad.

2. I have heard Sri T.Niranjan Reddy, learned Senior Counsel appearing for the petitioners/A1 & A2 and Sri B.Sudhakar Reddy, learned counsel appearing for the *de facto* complainant and the learned Additional Public Prosecutor representing the State.

3. The petitioners are A1 and A2 in C.C.No.1037 of 2008 on the file of the III Additional Chief Metropolitan Magistrate, Hyderabad. A charge sheet was filed against the petitioners alleging commission of offences under Sections

468 and 506 IPC. They are General Secretary and Vice President of Meridian Educational Society situated at Road No.7, Banjara Hills, Hyderabad. The indictment against them is that they fabricated a resignation letter of the *de facto* complainant who was the Vice President of the Society by forging his signature and submitted the said letter to the Registrar of Societies, Hyderabad with an intention to deprive him of his post of the Vice President of Meridian Educational Society and thereby cheated him. According to the *de facto* complainant, he applied for copies of registration of the society to find out the present position of the educational society and after obtaining copies, he was shocked to know that his name as Vice President of the society was replaced by a person by name Yugendhar, who is 2nd petitioner herein. He alleged in his complaint that without there being any meeting of the executive committee or general body or without conducting any fresh elections from 30.11.2001 to 05.12.2001 and without issuing any notice to him, he was replaced by the 2nd petitioner Mr.Yugendhar by fraudulent means. The 1st petitioner who is the General Secretary of the society removed his name by filing a forged and fabricated resignation letter before the registrar of societies as if it was submitted by the *de facto* complainant and got the name of the 2nd petitioner-Yugendhar, who is his relative, included as the Vice President of the Society.

4. The petitioners filed a petition before the trial Court under Section 239 of Code of Criminal Procedure seeking their discharge in the above case. In the said petition the petitioners contended that the 1st petitioner filed a civil suit in O.S.No.133 of 2007 and obtained orders of injunction against the *de facto* complainant in I.A.Nos.260 and 261 of 2007 on 24.05.2007, after lapse of six years, the *de facto* complainant filed the present case and he is no way connected with the activities of the society from 2001 onwards. According to them, any record submitted to the Registrar of Societies relating to the changes in the management is a verifiable fact and the petitioners have not submitted any record to the Registrar of Societies, they have sent a reply notice to the show cause notice dated 04.05.2007 issued by the Registrar of Societies, their committing forgery of the signature of the *de facto* complainant and fabricating the false resignation letter is without any basis. They asserted that, absolutely, there is no material indicating that they submitted any

documents to the Registrar of Societies. The petitioners, thus, contended before the trial Court that there is no *prima facie* material to frame charges against them and, therefore, they have to be discharged.

5. The learned Additional Public Prosecutor opposed the petition on the ground that the *de facto* complainant approached the Inspector General of Registration and Stamps on 02.04.2007, prior to that, he addressed a letter to the Registrar of Societies on 09.03.2007 to restore his position as Vice President of the Society, on receipt of the said letter, the Inspector General of Registration and Stamps, issued show cause notice to the petitioners, it is an admitted fact that only after receiving the show cause notice, the petitioners filed civil suit and therefore there is no enough material to frame charges against the petitioners and there are no valid grounds to discharge the petitioners.

6. The learned trial Court after hearing both sides, expressed the view that the fake resignation letter was sent to the Hand Writing Expert in the course of investigation by the police and the expert gave an opinion that the signature of the *de facto* complainant in the said letter was not that of the *de facto* complainant and therefore, the opinion of the Hand Writing Expert is against the petitioners. The learned trial Court was of the opinion that whether the petitioners submitted the document to the Registrar of Societies is a fact which can be decided only after the prosecution letting in oral and documentary evidence in the course of trial and without conducting the trial, the said fact cannot be decided and it would not be appropriate to accept the plea of discharge basing on the mere denial made by the petitioner that they have not submitted those letters.

7. From the order of the learned trial Court it appears that for dismissing the petition, the learned trial Court took into consideration the fact that the petitioners have not attended before the Court on any date of adjournment prior to filing of the discharge petition and at the end they filed the petition seeking their discharge. The trial Court also examined the fact that admittedly there are disputes between the parties and in view of the said disputes, unless the complainant enters the witness box, it is premature to discharge the accused, when the Hand Writing Expert's opinion shows that

the signature on the resignation letter does not belong to the *de facto* complainant. Recording the aforesaid findings, the trial Court dismissed the petition filed by the petitioners under Section 239 of Cr.P.C. seeking discharge.

8. Now the point for determination, in this criminal revision case, is:

> Whether there are any valid grounds to interfere with the order passed by the trial Court dismissing the discharge petition filed by the petitioners/accused ?

POINT:

9. Sri T.Niranjan Reddy, learned Senior counsel appearing for the petitioners/A1 & A2 would submit that the *de facto* complainant was admittedly replaced by the 2nd petitioner/A2 as Vice President of Meridian Educational Society in the year 2001. First Information Report (for short 'the FIR') was lodged on 29.05.2007 i.e., after a lapse of six years. 1st petitioner also filed a suit against the *de facto* complainant and obtained temporary injunction against him in O.S.No.133 of 2007. There is no explanation, either in the FIR or in the final report, submitted by the police as to the inordinate delay in lodging the FIR. The material available on record does not show that the petitioners submitted said forged resignation letter and therefore, the learned trial Court ought to have discharged the petitioners, but erroneously dismissed the discharge petition, which requires interference in the present criminal revision case.

10. On the other hand, Sri B.Sudhakar Reddy, learned counsel appearing for the *de facto* complainant contended that the Court, at the stage of considering discharge petition, is not concerned with proof but has to find out whether there exists strong suspicion that the accused had committed the offence and thus the trial Court rightly exercised its discretion to frame the charge against the petitioners. He further contended that in revisional jurisdiction, the scope of interference by the Court of revision is very limited and therefore, the order passed by the trial Court does not require any interference in this case.

11. The learned Senior counsel appearing for the petitioners in support of his contentions placed reliance on the following judgments:

1) In ***Sajjan Kumar v. CBI***[1], the Hon'ble Supreme Court while considering the provisions referring to framing of charges and discharge of the accused, held as follows:

> "19. It is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."

2) In ***Central Bureau of Investigation, Hyderabad v. K.Narayana Rao***[2], the Hon'ble Supreme Court held as follows:

> "On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:
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> (i) The Judge while considering the question of framing the charges under Section 227 Cr.P.C. has the undoubted power to sift and weigh the evidence for the 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 there from 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 stats 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."

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3) In ***Kishan Singh(dead) through LRs. V. Gurpal Singh and others***[3], the Hon'ble Supreme Court while dealing with the quashing of FIR in exercise of powers under Section 482 Cr.P.C., on the question of delay in lodging the report, held as follows:

"In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases, the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal proceedings just to harass the other side with *mala fide* intentions or the ulterior motive of wreaking vengeance on the other party."

12. The aforesaid judgment 3rd cited, however, was rendered with regard to the jurisdiction of the High Court to quash the proceedings in exercise of power under Section 482 Cr.P.C. The power of the trial Court to discharge an accused person is some what different from the power of the High Court to quash the FIR or criminal proceedings in exercise of powers under Section 482 Cr.P.C. However, in my view, for the purpose of arriving at a decision, whether a *prima facie* case has been made out, the trial court while considering a discharge petition is not precluded from taking into account the inordinate unexplained delay in lodging the FIR. This also can be one of the aspects which falls for consideration by the trial Court while disposing of the petition filed seeking discharge.

13. On the other hand, the learned counsel appearing for the *de facto* complainant relied on ***Amit Kapor v. Ramesh Chander and another***[4] wherein the Supreme Court by examining relative scope of Sections 227 and 228 Cr.P.C., laid down the following principles in the matter of framing charge

or discharge.

> *"the Court is required to consider the record of the case and documents submitted therewith; and after hearing the parties may either discharge the accused if it appears to the Court or in its opinion if, there is a ground for framing the charge that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of Section concerned exists, then the Court would be right in presuming that there is a good ground in proceeding with the case by framing charge. This presumption is not a presumption of law as such. The satisfaction of the Court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua none for exercise of such jurisdiction. It may even be weaker than a prima facie case. At the initial stage of framing of charge, the Court is concerned not with proof, but with strong suspicion that the accused has committed offence which, if put to trial, could prove him guilty. All that Court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage."*

14. In the light of the above principles, it has to be examined whether the order passed by the trial Court dismissing the discharge petition filed by the petitioners can be interfered within this revision, so as to set aside the same and discharge the petitioners.

15. From the aforesaid propositions laid down by the Hon'ble Supreme court in the judgments above referred, the Court at the time of framing of charge is not concerned with the issue as to whether ultimately the case would end in conviction or acquittal. The existence of grave suspicion is enough for framing the charge. However, the suspicion must be strong and grave, and then only the Court would be justified in framing the charge against the accused. For taking a decision whether to frame a charge or discharge the accused, it is not enough on the part of the trial Court to merely peruse the final report or the complaint, but it has to examine all the material placed along with the final report or complaint. After considering the entire material available on record, if the Court considers that there is no sufficient ground for proceeding against the accused, then the Court shall discharge the accused and record its reasons for doing so. Therefore, when once the Court arrives at an opinion that there is no sufficient ground to proceed against the accused, it is imperative on the part of the Court to discharge the accused and for that purpose, the Court may have to record reasons for discharging the accused.
It is not enough that the contents of the final report or the complaint make out

an offence. It is further necessary that there must be a *prima facie* material to show that the accused had committed the offence. The Court has to scrutinize the material placed on record by applying its judicial mind and for the purpose of framing the charge, it has to arrive at a positive opinion that *prima facie* case bas been made out that the accused committed the offence.

16. If we examine the facts of the present case, the petitioner was admittedly displaced from the post of Vice President in the year 2001. In the regular course of its business, there would be frequent meetings of the society. The Vice President would normally attend the meetings. Obviously in this case, the *de facto* complainant was not attending the meetings from the year 2001 to 2006. He filed the complaint, basing on which the present case is filed in the year 2007. Thus, there is inordinate delay of six years in filing the complaint. Absolutely, there is no explanation for filing the complaint with such an inordinate delay. The delay ought to have been explained either in the FIR or in the final report submitted by the police after investigation. But there is no such explanation forthcoming in this case. Normally, the delay may not be much relevant to decide the question, whether the accused can be discharged or not. But in the peculiar facts and circumstances of the present case, the delay assumes great importance and the non-explanation of the delay ought to have been considered by the trial Court while dealing with the discharge petition filed by the petitioners.

17. The trial Court also expressed the view that the petitioners have not been attending the Court till the date of filing of the discharge petition, but the same cannot be a ground for considering the discharge petition. The material on record shows that petitions have been filed on several occasions to dispense with the personal attendance of the petitioners and they have been allowed. The foremost among the issues which require consideration is, whether the material placed on record by the prosecution would be enough to make out a *prima facie* case even without the cross-examination by the accused. Much reliance has been placed by the complainant on the report of the Hand Writing Expert which indicated that the signature on the resignation letter which was submitted to the Registrar of Societies doesn't belong to the complainant. That itself, in my opinion, would not make out a *prima facie* case unless there is material on record indicating as to who actually

subscribed the said resignation letter. Absolutely, there is no material placed on record showing that the petitioners submitted the resignation letter, purportedly written by the *de facto* complainant, to the Registrar of Societies. The *de facto* complainant was replaced by the 2nd petitioner as the Vice President of the Society in the year 2001. It is not understandable as to why the *de facto* complainant waited for six long years without raising any protest as to his replacement as the Vice President. The material placed by the prosecution on record does not show that the petitioners, in fact, submitted the resignation letter to the Registrar of Societies. In the absence of any evidence showing that the petitioners submitted the resignation letter to the Registrar of Societies, mere opinion of the expert that the signatures on the resignation letter of the complainant might be forged, will not serve any purpose.

18. Further as rightly contended by the learned Senior counsel appearing for the petitioners that after six years, there will be drastic change in the signature of the complainant and the signature of the complainant after six years would normally vary from that of his earlier signature and therefore, much credence cannot be given to the opinion of the Hand Writing Expert. As there is no material brought on record showing that the petitioners submitted the resignation letter to the Registrar of Societies, it would not be possible for the prosecution to prove even if the trial takes place that the petitioners are persons, who in fact, submitted the resignation letter. Though the question as to whether the case would end in conviction or acquittal would be irrelevant while considering the discharge petition, having regard to the peculiar facts and circumstances of the present case, the absence of evidence as to who submitted the resignation letter assumes much importance and the learned trial Court, in my opinion, ought not to have ignored the said fact.

19. Therefore, in my view, there was no material before the learned trial Court that the accused might have committed the offence. Even grave suspicion, which required for framing charge, is absent in the present case. According to me, the learned trial Court failed to apply its judicial mind to the material placed on record. When there is no *prima facie* case for framing of charge, it is imperative for the trial Court to discharge the accused and the opinion of the trial Court that it would be known only after letting evidence by

the prosecution, cannot be said to be a correct view. The trial Court is required to take a decision either to discharge or to frame a charge only basing on the material available with it. It cannot make the petitioners/accused to face the trial thinking that some evidence would be placed in the course of trial.

20. For all the above reasons, I am of the considered view that the trial Court without applying the judicial mind to the material placed on record by the prosecution erroneously dismissed the discharge petition filed by the petitioners. There is patent error committed by the trial Court in the instant case which obligates this Court to interfere with the said finding, to set aside the same.

21. Accordingly, the Criminal Revision Case is allowed, setting aside the dismissal order passed by the trial Court in Crl.M.P.No.4681 of 2011 in C.C.No.1037 of 2008. Consequently, the petition filed by the petitioners in Crl.M.P.No.4681 of 2011 under section 239 Cr.P.C. seeking their discharge, is allowed.

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R.KANTHA RAO, J

04th December, 2013

Note: L.R. Copy to be marked.

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[1] 2010(9) SCC 368

[2] 2012(9) Supreme Court Cases 512

[3] 2010(8) Supreme Court Cases 775

[4] 2012(9) Supreme court Cases 460