(2023) 04 TEL CK 0048

In the Telangana High Court

Case No : Criminal Revision Case No. 97 Of 2020

S.Y. Srikumar APPELLANT

Vs

M.Sai Eahwar Swamy RESPONDENT

Date of Decision : 18-04-2023

Acts Referred:
Indian Penal Code, 1860 — Section 34, 403, 406, 418, 420, 468, 477
Code Of Criminal Procedure, 1973 — Section 244

Citation : (2023) 04 TEL CK 0048

Hon'ble Judges : K.Surender, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. The petitioner filed written complaint before the WCO-Team-V, CCS, Hyderabad, which was registered as Crime No.176 of 2008 under Sections 403, 406, 418, 420, 465, 477 r/w 34 of IPC.

2. Briefly, the case of the petitioner is that he was director in the company namely M/s.Vision Broadband Service Private Limited during the period from 2005-2007. The company was incorporated in the year 2005 and his share was 33%. The 1st respondent/A1 used to look after the day to day affairs of the company. During the year 2005-2006, the turnover of the company was Rs.1.09 Crore and during the year 2006-2007, it was Rs.3.00 Crores. The 3rd respondent was auditing the accounts of the company. In 2007, APIIC allotted Acs.2.00 of land to the company at the cost of Rs.1.20 Crores. It is alleged that there were several irregularities regarding the finances in the company. There was Vigilance department raid on the company for tax evasion and all the accounts books of the company were seized. During December 2007, complainant came to know that the shares were allotted to respondent Nos.4 to 20, who are A4 to A20 and his share was reduced from 33.34% to 1%.

3. The Petitioner/complainant/Director was not informed about any proceedings in the company. Having taken the copies of documents from the Vigilance

Department under Right to Information Act, he found that the accounts were not maintained properly and the company used to maintain two sets of accounts. Accordingly, the petitioner was cheated by the other members, who are the respondents/directors of company.

4. Having received the complaint police investigated the case and found that the transactions were amongst the directors in a company. The petitioner having 3,334 shares was a whole time director of the company for 2 years and drew salary. He was aware of the financial and business transactions and it was found that the complainant was wrong in pleading ignorance about the transactions in the company. The police further found that if there was any tax evasion, the Vigilance and Enforcement Department had already conducted raid and they would look into the case. Further, the petitioner/complainant had approached the Tribunal by filing a suit against the respondents, which was pending adjudication at the relevant point of time. For the said reasons the police found that no criminal offence is made out and accordingly filed final report as 'lack of evidence' on 20.06.2009.

5. Aggrieved by the police filing final report, the petitioner approached XII Additional Chief Metropolitan Magistrate, Hyderabad and filed protest petition on 02.08.2010. The learned Magistrate having examined four witnesses produced on behalf of the complainant/petitioner herein and marking Exs.P1 to P23 and also the defence Exs.D1 to D5 found that there was no case made out against the respondents/accused. The said orders were passed in the discharge application vide Criminal Miscellaneous Petition No.4983 of 2019 in C.C.No.189 of 2010. Learned Magistrate while discharging the respondents found that the transactions which are alleged by the petitioner herein did not satisfy any of the ingredients of the offences alleged under Sections 403, 406, 418, 420, 465, 477 r/w 34 of IPC.

6. Learned Magistrate further found that the oral evidence was contrary to the documents filed by the petitioner. The evidence adduced by the complainant did not make out the ingredients of any offence and was inconsistent, self-contradictory and suffering from infirmities. Learned Magistrate had discussed the entire evidence and documents in detail and passed an order running into 52 pages.

7. Learned counsel appearing for the petitioner/complainant would submit that the learned Magistrate has committed error in discharging the accused when prima facie evidence was made out against all the accused. He tried to draw different conclusions from what the learned Magistrate has concluded in respect of the transactions. Learned Magistrate ought to have tried the accused and should not have discharged the respondents. For the reason of the offence being made out on the basis of evidence of P.Ws.1 to 4, learned counsel requested to direct the learned Magistrate to try the accused by setting aside the discharge order dated 13.09.2019.

8. This court under the powers of revision can call for examining the record of

any proceeding before any inferior criminal court to ascertain the correctness/ legality or propriety of any finding.

9. In the present case, the procedure under Section 244 of Cr.P.C was adopted by recording the evidence and marking the documents and thereafter, the accused were given permission to cross-examine the witnesses. After opportunity was given to the complainant to adduce evidence and also to the accused to cross-examine the witnesses, the learned Magistrate found that no criminal offence was made out to discharge the accused/respondents.

10. Learned counsel argues that the conclusions drawn by the learned Magistrate in discharging the accused were improper for the reason of a different view can be taken from what the learned Magistrate has taken in the present case.

11. Though two different views are possible, when the view taken by the learned Magistrate is legal and probable basing on the evidence placed on record, the same cannot be interfered with. All the transactions spoken to by the complainant regarding floating of the company, loans taken by the company for the purchase of vehicle or developing the company and all other aspects pertain to the day to day affairs of the company. The documents were already seized by the concerned Vigilance Department and violations, if any would be taken care of by the said department. In the present facts, as stated by the learned Magistrate, there is no amount which is entrusted to the accused by the complainant which was misappropriated. The complainant had received amount multiple times to what his investment was. The transactions pertaining to the banks are in the process of obtaining loans and if any illegality committed, it is for the Bank to question or initiate action for any misdeeds.

12. Firstly none of the ingredients of any of the offences are made out and secondly the time of investigating agency and the court has been considerably consumed on account of the frivolous complaint of the petitioner. I do not find any infirmity in the order of the learned Magistrate in discharging the accused.

13. Accordingly, the Criminal Revision Case is dismissed. Consequently, miscellaneous applications, if any pending, shall stand closed.