

HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

SINGLE BENCH

BEFORE JUSTICE S.K.AWASTHI

Criminal Revision No.668/2016

Prabhulal

Versus

Mohommad Vasheer Khan and Others

Shri Nirmal Sharma, learned counsel for the applicant.

Shri F.A.Shah, learned counsel for the respondents.

O R D E R

(10.1.2017)

The applicant has been filed this criminal revision petition under Section 397 read with Section 401 of Cr.P.C. being aggrieved by the order dated 19.05.2016 passed by Sessions Judge, Sironj, District Vidisha in S.T. No.16/2015, whereby the Additional Sessions Judge, Sironj, District Vidisha discharged the accused from the charge under Section 392/34 of IPC.

2. The agricultural land bearing Survey No.168 situated at village Kulua Mahua Kheda, Tehsil Sironj, District Vidisha is a root for initiation of criminal prosecution. As per prosecution case, the allegation levelled against the non-applicants is that on 21.02.06, they entered into the agricultural field belonging to the applicant and took away crop of Gram by force without consent of the applicant, thereupon the applicant informed the Police regarding the commission of above offence. However, the Police did not take any action, in furtherance to the complaint prompting the applicant to take recourse of remedy of filing application under Section 200 of the Code of Criminal Procedure, 1973 before the Judicial Magistrate, First Class, Sironj which was dismissed by the Court. The applicant preferred criminal revision no.188/2007 before the Court of

Additional Sessions Judge, Sironj which was allowed on 06.08.2010 and the Additional Sessions Judge, Sironj directed the trial Court to take cognizance against the non-applicants under Section 384 of IPC or other greater offence, if he found fit. Thereafter the Judicial Magistrate, First Class, Sironj registered the complaint under Section 384 of IPC against the non-applicants and after appearance of the non-applicants, the case was fixed for recording of evidence before charge.

The Judicial Magistrate First Class recorded the statement of complainant Prabhulal and his wife Sharda Bai and found prima facie that the charge under Section 392 of IPC is made out against the non-applicants/accused and directed to commit the case before the Sessions Court under the provisions of Section 323 of Cr.P.C. vide order dated 8.5.2014. That order was challenged by the non-applicants/accused persons before the Sessions Court by filing revision petition no.94/2014 which was dismissed by the Additional Sessions Judge, Sironj vide order dated 25.11.2014 and the order of the trial Court was upheld. Thereafter, Judicial Magistrate First Class, Sironj vide its order dated 26.12.2014 committed the case to the Sessions Court for the trial regarding commission of offence under Section 392 of IPC.

3. When the matter was put up before the Additional Sessions Judge, Sironj, he heard the argument before charge on 18.05.2016 and after scrutiny of the evidence before charge recorded by the Judicial Magistrate First Class found that no case was made out against the non-applicants and discharged the accused persons. This is the order which is challenged before this Court.

4. Learned counsel for the applicant submits that the order of the trial Court is bad in law. At the stage of framing the charge, the Court is required to see as to whether prima facie

case is made out against the accused persons or not on the basis of the material available on record. The court is not required to evaluate the material and documents on record.

5. Learned counsel for the non-applicants/accused supported the impugned order and prays for dismissal of the revision petition.

6. I have considered the rival contentions of the parties and perused the record of the trial Court.

7. It is well established principle of law that at the stage of framing of the charge, the truth, veracity and effect of the evidence, which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of Code of Criminal Procedure. The Court at the stage of framing of charge 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 disclose the existence of all the ingredients constituting the alleged offence charge can be framed.

8. In the case of **Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao 2012 AIR SCW 5139**, the Apex Court considered the scope of Sections 227 and 228 of Cr.P.C. and held that for framing of charge, a roving enquiry in pros and cons of matter and weighing of evidence as is in done in trial is not permissible at this stage. The charge has to be framed if Court feels that there is strong suspicion that accused has committed offence. Thus, even 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, a charge can be framed.

9. In the present case, learned Additional Sessions Judge

considered the evidence before charge recorded by the Court of JMFC while dealing the case for the commission of an offence under Section 384 of IPC but that evidence is not required to be analyzed at the stage of framing the charge under Section 227 of Cr.P.C. because there is no provision as prescribed for the recording of evidence before charge in session trials. It is pertinent to note that the non-applicants have preferred the revision petition challenging the order of taking cognizance for the commission of offence under Section 392 of IPC and committal of case to the Sessions Court, and that revision application was dismissed by the Additional Sessions Judge, Sironj and the said order has attained finality.

10. For the reasons stated above, this Court is of the considered view that the trial Court has committed grave error while discharging the non-applicants on the basis of evidence recorded before charge by the JMFC with regard to offence under Section 384 of IPC. Therefore, the impugned order of the trial Court is hereby set aside and the Sessions Court is directed to frame appropriate charge or charges against the non-applicants/accused persons and shall proceed further in accordance with law.

11. Accordingly, the revision petition is hereby allowed.

Copy of this order be sent to the trial Court for necessary information and compliance.

(S.K.Awasthi)
Judge