

**IN THE COURT OF THE III ADDITIONAL CHIEF
METROPOLITAN MAGISTRATE AT BENGALURU.**

**Present : Parashuram F. Doddamani
III ADDL. C.M.M., BENGALURU.**

Dated this the 16th Day of December, 2022

CC.No.8757/2016

Complainant : State by HSR Layout Police Station, Bengaluru.

V/s

Accused : K.V.Ramesh and Another.

PARTIES TO APPLICATION

Applicant / Accused No.2. Smt. H.V. Rashmi
W/o K.V. Ramesh,
Aged about 32 years,
R/o House No.G-002,
3rd Main, 71st Cross,
Kumaraswamy Layout,
Bengaluru.

V/s

Respondent /Complainant : State by HSR Layout Police Station,
Bengaluru.

ORDER ON APPLICATION UNDER SECTION 239 OF Cr.P.C

This order arises out of discharge application filed on behalf of the accused No.2 under Section 239 of Cr.P.C.

2. It is stated in the application that the complainant Police have registered a case against the accused No.1 and 2 for the offences punishable under section 408, 418, 420, 468, 470

and 477A of IPC on the basis of the complaint lodged by one M.Ramakrishna who is the Director of LSI Research and Development Pvt. Ltd., dated 27.09.2011 alleging that the accused No.1 is an employee of the company and was appointed as an Executive Finance of the Finance Department in the said company and he was responsible for the advances of Foreign Currencies to employees who were traveling on overseas assignments for trips on behalf of the company. The accused No.1 is accountable for the processing and payment of invoices from the vendors which would release Foreign Currency advances to the relevant employees as per the instructions from the company. It is also alleged that the company has in the process of completing its audit and has discovered that a substantial sum of money was misappropriated under the guise of travel advances. As part of the ongoing audit the company has discovered 70 invoices depicting 71 transactions cumulatively valued at Rs.79,50,860/- have been directly attributed to the expense account of the company by accused instead of allocating them to the employee advances account. Therefore, the accused has misappropriated the aforesaid amount from April 2010 onwards. It is also alleged that the accused No.1 in a confession dated 15.09.2011 has confessed to having carried out the afore mentioned act and has confessed to having converted foreign currencies valued at Rs.80,00,000/- for his personal use and requested to take action against the accused.

3. It is also stated in the complaint that the accused No.2 is the wife of accused No.1. The Investigation Officer has recorded the statement of the accused No.1 and in the further voluntary statement of the accused No.1, he has stated that his wife had provoked and influenced him to get more money and hence he committed alleged offences.

4. It is specifically contended that the accused No.2 is innocent and has not committed the offences as alleged and there is no prima facie case against her either in the FIR or in the charge sheet, however she has been falsely implicated in the crime for extraneous reasons with oblique motive. As could be seen from the complaint lodged by one M. Ramakrishna who is the Director of LSI Research and Development Pvt. Ltd., all the allegations are on the accused No.1. The complainant nowhere stated the name of the accused No.2 in his complaint. In spite of it the complainant Police have falsely implicated the accused No.2 in the charge sheet. It is specifically contended that the accused No.2 is nowhere connected to the LSI Research and Development Pvt. Ltd., company. She is neither an employee nor a client to the said company. When such being the fact, the misappropriation, forging the document, cheating the company from the accused No.2 does not arise at all.

5. In the application the counsel for accused No.2 has reiterated the provisions of section 409, 468, 120B and 420 R/w 34 of IPC.

6. It is specifically contended that it is the after thought of the company and hence colluding with the complainant Police only with an intention to harass and bring a bad name to the accused No.2 as implicated her in the case with malafide intention. The accused No.2 is a house wife and nowhere connected to the said transactions of the company. It is specifically contended that the materials collected by the prosecution and statements taken by CWs-1 to 52, nothing of the witnesses have even whispered the name of the accused No.2 anywhere.

7. It is specifically contended that the confession to the Police officer is in admissible as contemplated under section 25 and 26 of Indian Evidence Act. But the accused No.2 has been incorporated in the charge sheet only on the basis of voluntary statement of the accused No.1, when he was in the Police custody. The learned counsel for the accused No.2 has referred the citations of the Hon'ble Apex Court is mentioned as under.

In a case of Dilavakar Banu Kurne – Versus – State of Maharashtra – reported in (2002) 2 SCC 135, wherein, it is clearly held that “That the Judge, while considering the question of framing the charges under section 227 of the Code, has the undoubted power to shift 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”. Further, it is held therein that

the Judge is satisfied that the evidence produced before him while giving rise to some suspicion, but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In the present case on hand, there is no suspicion against the accused No.2. Hence, she is liable to be discharged.

In a case of Dipakbhai Jagadishechandra Patel – Vs – State of Gujarat in Criminal Appeal No.714/2019 the Hon'ble Supreme Court has come to a conclusion that on the basis of confession of co-accused still proceeding further that there is a joint trial of the accused is no point and the statement of co-accused cannot be considered, and when there is no material against the accused, he can be discharged and accordingly has discharged.

8. It is specifically contended that the Hon'ble Apex Court held in several cases that when there is no evidence, or there is no prima facie materials before the court to frame the charges against the accused, the court cannot frame the charges and go for Trial, and waste the precious time of the court. In view of these grounds the counsel for accused No.2 requested to discharge the accused for the alleged offences in the interest of justice and equity.

9. The learned Sr.APP filed objections to oppose the application on the grounds that the Investigation Officer has

filed charge sheet against the accused for the offences punishable under section 409 and 420 of IPC. The complaint has given a detailed complaint regarding the accused person about how they have committed the offences. IO has collected evidence against the accused regarding their involvement in the case and there is sufficient material on record to come to a conclusion that the said offences have been committed by the accused persons and sufficient materials to frame charge against the accused. The evidence collected by the IO at the time of framing of charge need not to be considered meticulously. Even if the prosecution has made out the doubtful case against the accused person charges can be framed. Truth and veracity of the evidence need not to be taken into consideration while framing the charge. It is specifically contended that the accused has not made out any tenable grounds to seek discharge. In view of these grounds the learned Sr. APP requested to reject the application in the interest of justice.

10. The point that arises for the consideration of the court is as under;

Whether the accused No.2 has made out sufficient and proper grounds to allow the application?

11. Perused the records. The above point is answered in the **Negative** for the following;

REASONS

12. During the arguments the learned counsel for the accused No.2 and the learned Sr.APP for the prosecution have reiterated the contents of application and objections.

13. Considering the rival contentions I have carefully perused the materials available on record.

14. The Director of LSI Research and Development Pvt. Ltd., has lodged a first information statement against the accused stating that the accused No.1 was appointed as an Executive (Finance) in the year 2007. He was responsible for advances for foreign currency to the employees who were traveling overseas he was accountable for the processing and payment of invoices with record to the foreign currencies. He was also responsible for issuing instructions to the vendor to collect the foreign currency. In the complaint it is alleged that during course of audit it was found that the accused No.1 had misappropriated about Rs.79,50,861/- under the guise of travel advances. It is further alleged that the accused No.1 had manually processed the invoices, though the company mandates the process of uploading invoices to as on line everyday form of the company. In the complaint it is further stated that M/s. Pheroze Framroze and Co. Pvt. Ltd is one of the foreign exchange vendors, who was supplying foreign currencies to the employees. The Finance Department used to give express instructions to the vendor to supplying foreign currency. The auditors have discovered that the accused

generated several travel advances. The normal procedure is that the concerned employees traveling Abroad have to collect the foreign exchange directly from the vendor. However, by violating this process the accused No.1 has received the said amount and misappropriated it. The documents of the company did not disclose any foreign travel undertaken by employees with regard to the amount withdrawn to the accused No.1. According to the prosecution during the course of investigation the accused No.1 has confessed the alleged guilt and further stated that he has committed the said offences at the instigation of his wife accused No.2. No doubt, the confession statement made by the accused before the Police is not admissible under law as contended by the counsel for accused No.2 in the application. But the prosecution papers prima facie discloses that the accused No.2 provoked and instigated the accused No.1 for misappropriation of the amount involved in the case. So unless full pledged Trial it is not proper to hold that there is no involvement of the accused No.2 for the commission of offences. If any person provoke for commission of offence he shall be punished with the punishment provided for the offence.

15. Section 109 of IPC.- Punishment of Abettment if the act abetted is committed in consequence and where no express provision is made for his punishment.- Whoever abets any offence shall, if the act abetted is committed in consequence of

the abetment, and no express provision is made by this code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.- An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid, which constitutes the abetment.

Illustrations

- (a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in Section 161.
- (b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.
- (c) A and B conspire to poison Z. A in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

Classification of Offence.- The offence under this section, according as the offence abetted is cognizable or non-cognizable and according as the offence abetted is bailable or

non bailable, non-compoundable and triable by the court by which the offence abetted is triable.

16. A plain reading of the above said provision it is clearly says that if any person abates commission of offence he shall also liable to be punish under law. In view of these reasons, I am of the considered opinion that the accused No.2 has not made out any grounds to discharge her for the alleged offences. On the other hand there are sufficient materials to frame the charges against the accused No.2 also. In view of these reasons, the above point is answered in the **Negative** and I proceed to pass the following;

ORDER

**The application filed on behalf of
the accused No.2 under Section 239
of Cr.P.C is hereby rejected.**

(Dictated to the stenographer, transcribed by him on computer, corrected and then signed and pronounced by me in the open court on this the 16th day of December, 2022.)

(Parashuram F. Doddamani)
III ACMM, Bengaluru.