IN THE COURT OF THE III ADDTIONAL CHIEF METROPOLITAN MAGISTRATE AT BENGALURU.

Present : Shreyansh Doddamani
III ADDL. C.M.M., BENGALURU.

Dated this the 28th Day of May, 2024

CC No.7100/2020

Complainant	**:**		**State by Mahadevapura Police Station, Bengaluru.** **(Represented by Sr. APP)**
			V/s
Accused	**:**	**2.**	**Smt.Spandana Talluri** **W/o Gadamsetty Venkata Sayi Dileep @ Dileep,** **Aged about 26 years,** **R/at No.D-203,** **DNR Atmosphere Apartment,** **Ramagondanahalli,** **Whitefield,** **Bengaluru.** **Own Town:** **No.1-3/24-3/8,** **Chandul Varishree,** **Vidhyadharapuram,** **Vijayawada Town,** **Andhrapradesh State.** **(Repted., by N.S. Adv.,)**

ORDER ON APPLICATION UNDER SECTION 239 OF CRIMINAL PROCEDURE CODE

The accused No.2 has filed application under section 239 of Criminal Procedure Code, for discharge her for the offences punishable under section 408, 420, 465, 468, 471, 506, 120B read with section 34 of Indian Penal Code, (Herein after called as IPC in short).

2. The accused No.2 in her application reiterated the contents of complaint and further contended that the accused No.1 is her husband but there is no allegation against the accused No.2 there are allegations against accused No.1 only. The accused No.2 not involved in the alleged offences but falsely implicated her in this case. Father of accused No.2 and relative transferred some of rupees to the accused No.2 for which she has having proof. The complainant alleged that the accused have been committed an offences from 11.04.2016 to 12.05.2020 for the period of four years. In this period there was no specific role played by the accused No.2 either in the FIR or in the charge sheet. It is only allegation against accused No.1 transferred some of amount to the accused No.2. The accused No.2 has no knowledge about the any transaction. Therefore, the offences punishable under section 420, 406, 120B of IPC are not attracted against accused No.2. Hence he sought for discharge her from the above offences.

3. The learned Sr.APP has filed objection to the above application by denying the contents of application and contended that the application is not maintainable either in law or on facts and reiterated the contents of the complaint. The Police have filed charge sheet against the accused persons for the offences punishable under section 120(B), 408, 420, 465, 468, 471, 506 read with section 34 of IPC and reiterated

the contents of complaint. After registration of the case the IO collected the relevant documents regarding involvement of the accused persons for framing the charge. The learned Sr.APP also relied citation (2020) 1. Supreme Court Cases (Cri) 581, (2020) 2. Supreme Court Cases 217. The accused have not made out any tenable ground to seek discharge. The evidence collected by the IO at the time of framing of charge need not to be considered meticulously. Truth and veracity of the evidence need not to be taken into consideration while framing the charge. The accused No.2 has not made out any tenable ground to seek discharge. Hence, prayed to reject the application.

4. Heard the arguments on both side. Perused the materials on record.

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

1. Whether the application filed by the accused No.2 made out grounds for the offence punishable under section 120B, 403, 406, 408, 420, 465, 468, 471, 506 read with section 34 of IPC?

2. What order?

6. Perused the records. The above point is answered in the **Affirmative** for the following;

REASONS

7. **Point No.1:** This case is arising out of the Police report based on the information given by the complainant Mr.Vishwas Mudagal S/o Gurappa Mudagal. It is alleged that the complainant was the owner of the Good Work Lab Private Limited Company and the accused No.1 was the Finance Manager in the said company. The complainant alleged that the Gadamsetty Venkata Sayi Dileep i.e., accused No.1 who is husband of the accused No.2 had produced fake documents making complainant to believe that the accused No.1 was a qualified Chartered Accountant. The accused No.1 involved some accounts with staff of the company and made payment to the said persons, who are not staff of the company. The accused No.1 involved in some mismanagement due to which the company of complainant's has suffered huge loss. The accused No.1 in the year April 2017 to March 2018 transferred for a sum of Rs.13,00,298/- to his HDFC Bank account bearing No.04461140037522 from the company account and also he transferred from the company account to the accused No.2 (Wife of accused No.1) HDFC Bank account bearing No.50100040853481 for a sum of Rs.22,39,298/-. The accused No.1 also threatened the complainant and thereby the accused have committed the above offences.

8. The advocate for accused No.2 argued that the accused No.2 was not a employee of complainant and she has not involved in the case. There is no specific allegation against the accused No.2. hence he sought for the allow the

application.

9. Learned Sr.APP argued that there are sufficient materials to take the cognizance at this stage. At this stage the court cannot looked in to the documents produced by the accused. The Court only looked in to the charge sheet and documents produced by the investigating officer. As such there is specific allegation that accused No.2 involved with accused No.1 and got transferred the amount. There are oral and documentary evidence about the involvement of accused No.2. If she has not received the amount then only she can be discharged. As per the documents amount has been transferred from the company account to the accused No.2's account and she is wife of accused No.1. Hence, he prayed to reject the application.

10. On perusal of the charge sheet admittedly the accused No.1 was only the employee of complainant company. The accused No.2 is wife of accused No.1. There is no specific allegation against the accused No.2 in the commission of offences punishable under section 403, 406, 408, 420, 465, 468, 471, 506, 120B read with section 34 of IPC. It is specifically contended that the amount has been transferred from the account of accused No.2 through accused No.1. Only on that base the investigating officer involved the accused 2 in this case. It is also alleged that the accused No.1 also transferred amount to other persons. But the investigating officer has not made the persons who received the money to their accounts through accused No.1 as accused persons.

But the accused No.2 is wife of the accused No.1 and amount transferred to her account, only on that reason the investigating officer made her as accused No.2. There is specific allegations against the accused No.1 as he being the employee of the complainant company had produced fake documents as he is a Chartered Accountant and he financial mismanagement of the company and got transferred the amount to his wife's accounts and his personal account and other persons by misusing his position and thereby committed the above offences. There is no specific allegation against the accused No.2. It is simply stated in column no.7 that the accused no.1 and 2 colluded with intention to cheat the complainant, made criminal conspiracy and illegally got transferred the amount to their account.

11. The advocate for accused relied on the following decisions;

1. 2001 CRI. L. J.2726 reported in Hon'ble High Court of Jharkhand in the case of Binod Bihari Rajwar Vs State of Bihar in Cr.Misc.No.7576 of 1998,

Criminal P.C. (2 of 1974), S.239 – Discharge – Applicant Branch Manager of Bank, impleaded as co-accused in trial against accused for commission of forgery – First information report was lodged only against accused and no allegations were made against co-accused – Accused who admitted his guilt did not state any thing against co-accused – No prima facie evidence brought on record through prosecution witnesses – Co-accused entitled for discharge. Penal Code (45 of 1860), S.468-

2. (1979) 3 Supreme Court Cases 4 in the case of Union of India Vs Prafulla Kumar Samal and Another in Criminal Appeal No.194 of 1977.

Criminal Procedure Code, 1973 – Section 227 – Special Judge's power to pass order of discharge under – Ambit and scope – When discharge order should be passed – Principles stated – Special Judge should not act as a trial Judge but should weigh evidence and form opinion only on the limited question of whether a prima facie case made out – Excepting the cases of grave suspicion which the accused is unable to explain, he is empowered to discharge the accused – On facts, Special Judge justified in passing the discharge order.

3. (2008) 10 Supreme Court Cases 394 reported in Hon'ble Supreme Court Cases in the case of Yogesh Alias Sachin Jagadish Joshi Vs State of Maharashtra in Criminal Appeals Nos.744-45 of 2008.

A. Criminal Procedure Code, 1973 – Ss.227, 228 and 209 – Discharge – Scope and ambit of powers of trial court under S.227 – Held, if two views are equally possible and the Judge is satisfied that evidence produced gives rise to suspicion only, as distinguished from grave suspicion, he would be fully within his right to discharge the accused – At this stage he is not to see whether the trial will end in conviction or not – Words and Phrases – Expression "not sufficient ground for proceeding against the accused appearing in S.227, explained.

12. I have gone through the above decisions. Though the facts of the above cases and the present case are very different the question of law discussed is applicable to the case on hand. Bearing in mind the above law, applying to the present case, in the present case in the first information and in the charge sheet there is no specific allegations against the

accused No.2. the investigating officer made her as the accused No.2 only on the ground that the amount has been transferred by the accused No.1 to her account being his wife. But there is no active involvement of the accused No.2 in the above offences. The above offences are not attracted against the accused No.2. There is no materials to frame charges against the accused No.2. Therefore, the accused No.2 is entitled for discharge for the above alleged offences. Hence, this Court is answered point No.1 in the Affirmative.

13. **Point No.2:-** In view of the above decision, this Court has proceed to pass the following:

//ORDER//

The Application filed by the accused No.2 under section 239 of Code of Criminal Procedure is hereby allowed.

The accused No.2 is hereby discharged for the offences punishable under section 120(B), 408, 420, 465, 468, 471, 506 read with section 34 f IPC.

The accused No.2 is hereby directed to furnish the surety.

Accused No.2 is directed to comply Section 437(A) of Cr.PC.

(Dictated to the stenographer, transcribed him on computer, corrected and then signed and pronounced by me in the open court on this the 28th day of May, 2024).

III ACMM, Bengaluru.