

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.2172 of 2014

ORDER:

1. This Criminal Revision case is filed challenging the order dated 09.10.2014 passed by the XIII Additional Chief Metropolitan Magistrate (Mahila Court), Hyderabad, in CrI.M.P.No.4764 of 2014 in C.C.No.508 of 2010.

2. The petitioners are facing trial in the above C.C. for the offence punishable under Sections 498-A and 406 r/w 34 IPC and Sections 4 & 6 of the Dowry Prohibition Act. In the above C.C., after examination of some of the witnesses, the prosecution filed the above CrI.M.P. under Section 311 Cr.P.C. seeking to summon three witnesses so as to examine them on behalf of the prosecution for proper adjudication of the matter. The trial Court allowed the above CrI.M.P. Aggrieved by the same, the petitioners-accused filed the present petition.

3. Heard and perused the material available on record.

4. The grievance of the petitioners herein is that the alleged witnesses sought to be examined by the prosecution were not examined by the investigating agency and their statements were also not recorded and the trial Court passed the order under revision only on the ground that the name of one of the witnesses sought to be examined was mentioned as L.W.2 in the complaint and the other two witnesses are alleged to have participated in the panchayat. The learned trial Judge viewed that the examination of these witnesses is necessary for adjudication of the matter,

5. Learned Counsel for the petitioners submitted that the statements of the alleged witnesses under Section 161 Cr.P.C. were not recorded during the course of the investigation and as such, the petitioners would be deprived of their opportunity to contradict their

statements during the course of the trial.

6. The contention of the learned Counsel for the petitioners cannot be brushed aside in view of the failure on the part of the Investigating Agency to record their statements under Section 161 or 162 Cr.P.C.

In such circumstances, if the proposed witnesses are examined, the petitioners would be deprived of their opportunity to contradict their statements during the course of the trial as rightly contended by the learned counsel for the petitioners. However, since there are no such statements of the proposed witnesses under Section 161 or 162 Cr.P.C, the petitioners are always at liberty to take advantage of the same and the trial Court can also draw an inference in that regard.

7. In support of his contention that in case of failure to record the statements under section 161 or 162 Cr.P.C by the Investigating Agency, an adverse inference can be drawn by the Courts for non-filing of the said statements along with the charge sheet, the learned Counsel for the petitioners relied on a judgment of the Apex Court reported in **Pratap Singh and another Vs. State of M.P**^[1], wherein it has been laid down that when the investigating officer has not recorded the statements of any of the witnesses proposed to be examined before the Court and when no such statements were filed along with the charge sheet and when the witnesses deposed for the first time during the course of trial before the Courts, an adverse inference should be drawn.

8. In the light of the principles laid down by the Apex Court coupled with the facts and circumstances of the case, this Court is of the view that the petitioners can take advantage of the fact, at the relevant point of time, that the proposed witnesses were not examined by the investigating agency and their statements were not filed along with the charge sheet. Therefore, this Court is not inclined to interfere with the order under revision.

9. However, the trial Court is directed to proceed with the trial by examining the proposed witnesses also and dispose of the case as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order, without being influenced by the observations made in the course of this order.

10. Accordingly, the Criminal Revision Case is disposed of. Consequently, the miscellaneous petitions pending, if any, shall stand closed.

RAJA ELANGO, J

Dated:1.7.2015

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[\[1\]](#) (2005) 13 SCC 624