

HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRL.R.C.No.296 of 2008

JUDGMENT:

This Criminal Revision Case is directed against the judgment of the learned I-Additional Sessions Judge, Cuddapah, in Crl.A.No.262 of 2002 dated 11.03.2003 confirming the conviction and sentence imposed against the revision petitioner-A3 by the learned II-Additional Judicial Magistrate of First Class, Cuddapah, in C.C.No.87 of 2002 dated 16.09.2002.

It is the case of the prosecution that A-1, who was working as a cook in Government Homeopathy Hospital, Cuddapah, stood surety to P.W.5, who was involved in Crime No.78 of 2001, and with a view to release him on bail, A-1 produced his salary certificate and identity card purported to have been issued by P.W.1-In charge Superintendent, Government Homeopathy Hospital, Cuddapah, before P.W.3- I-Additional Judicial Magistrate of First Class, Cuddapah. It is further stated that the sworn statement of A-1 before P.W.3 reveals that A-2 and revision petitioner-A3 prepared the salary certificate and identity card of A-1 by forging the signature of P.W.1. The petitioner-A3, A-1 and A-2 were tried for the offences under Sections 465, 468, 471 read with Section 34 I.P.C. and 473 I.P.C.

On a perusal of the entire evidence, both oral and documentary produced by the prosecution and on hearing both sides, the trial Court found the revision petitioner-A3

guilty of the offences under Sections 465 read with Section 34 I.P.C., 468 read with Section 34 I.P.C. and 473 I.P.C., convicted and sentenced him to suffer rigorous imprisonment for a period of three months and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for nine months for the offence under Section 468 read with Section 34 I.P.C. and also to suffer rigorous imprisonment for a period of six months and to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for six months for the offence under Section 473 I.P.C. No separate sentence was passed against the accused for the offence under Section 465 read with Section 34 I.P.C. since he was sentenced under Section 468 read with Section 34 I.P.C. Aggrieved by the said conviction and sentence, the revision petitioner-A3 preferred Crl.A.No.262 of 2002 and the learned I- Additional Sessions Judge, Cuddapah, by judgment dated 11.03.2003, confirmed the conviction and sentence recorded by the trial Court. Aggrieved thereby, the revision petitioner-A3 preferred this criminal revision.

While this criminal revision is taken up for hearing, it is submitted that the facts in the present case are same and similar to the facts in CRL.R.C.No.837 of 2006 and the accused is also same. The learned Public Prosecutor also does not dispute the same. The said revision was allowed by this Court vide its judgment dated 14.06.2013 and accused therein was acquitted of all the charges. The observations made therein in paragraph Nos.11 to 17 are as under:

11. The entire judgment of the trial Court does not

disclose any procedure, under which the learned Magistrate took cognizance of the case against the petitioner-A1 suo motu on the certificates produced by him.

12. Section 190 Cr.P.C. provides that a Magistrate may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence, (b) upon a police report of such facts, and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Section 195 Cr.P.C. is a sort of exception to this general provision and creates an embargo upon the power of the Court to take cognizance of certain types of offences enumerated therein. The procedure for filing a complaint by the Court as contemplated by Section 195(1) Cr.P.C. is given in Section 340 Cr.P.C.

13. Section 340 Cr.P.C.: Procedure in cases mentioned in Section 195 - (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,

- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance of the accused before such Magistrate, or if the

alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.

14. In view of the language used in Section 340 Cr.P.C., the Court has to make a complaint regarding commission of an offence referred to in Section 195(1)(b), if the interest of justice requires. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b).

15. In the instant case, neither of the procedures as contemplated under Section 340 and 195 (1) Cr.P.C have been followed. Apart from that, the learned Magistrate, without any complaint or without any cause of action, acted suo motu as an investigating agency. In this regard, the provisions of Section 340 Cr.P.C make it clear that when any Court is of the opinion that it is expedient in the interests of justice that an enquiry should be made into any offence referred to in clause (b) of sub section (1) of 195 which appears to have been committed in or in relation to proceeding in that Court or as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such

Court may, after such preliminary inquiry, if any as it thinks necessary record a finding to that effect, make a complaint thereof in writing and send it to a Magistrate of the 1st Class having jurisdiction. In this context, this provision makes it clear that such a complaint has to be sent to a Magistrate of 1st Class having jurisdiction. But, in the instant case, the complaint or the memo has been sent to the police instead of sending the same to a Magistrate of First class.

16. Thus, the procedure adopted in the instant case from the stage of summoning the witnesses and recording their statements including the statement of the accused till the registration of the F.I.R by the police and cognizance of the offence on filing the charge sheet, is utterly in violation of the provisions as contemplated Sections 195 and 340 Cr.P.C. In view of the same, this Court is of the view the conviction and sentence imposed by the Courts below, suffer from legal infirmity and thereby, the conviction and sentence imposed on the petitioner-A1 are liable to be set aside. Accordingly, both the points are answered.

17. In the result, this Criminal Revision Case is allowed, setting aside the conviction and sentence imposed by the Courts below against the petitioner-A1, and the petitioner-A1 is acquitted for the charges levelled against him. Fine amount paid by the petitioner-A.1, if any, shall be returned to him. Consequently, the miscellaneous petitions pending, if any, in this revision, shall stand closed.

18. It is made clear that this order will not enable the petitioner-A1 to claim any compensation or initiate any proceedings in any court arising out of his conviction under Sections 468 r/w 34 and 471 IPC, except to use the same in any proceeding initiated against the petitioner departmentally

regarding his services.”

The observations made in the above case are mutatis mutandis apply to the present case and therefore, following the aforesaid judgment, this Criminal Revision Case is allowed. The conviction and sentence imposed by the trial Court as confirmed by the appellate Court against the revision petitioner-A3 for the offences under Sections 468 read with Section 34 I.P.C and 473 I.P.C. are hereby set aside and the revision petitioner-A3 is acquitted of the said charges. Fine amount, if any, paid by the revision petitioner-A3 shall be refunded to him.

M.S.K.JAISWAL, J

26-08-2015
Gsn