

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

Case No. Crl.R.C. No.1416 of 2015

Between:

Chalasani Kalyana Krishna

... Petitioner/Appellant (s)

and

The State of Andhra Pradesh,
rep.by Public Prosecutor
through S.H.O., Eluru III Town Police Station,
High Court at Hyderabad for the State of Telangana
& Andhra Pradesh.

... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: 24.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAJA ELANGO

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|---|---|--------|
| 1 | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be
marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

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THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1416 OF 2015

ORDER:

This Criminal Revision Case is filed against the order, dated 09.06.2015, passed in CrI.M.P. No.1543 of 2015 in CC No.301 of 2014 by the Judicial Magistrate of First Class, Special Mobile Court, Eluru.

The brief facts of the case are that the de facto complainant is working as a lecturer in C.R. Reddy College, Eluru. One Chalasani Krishna Chaitanya (accused) and his brother Chalasani Kalyana Krishna i.e. the petitioner herein, approached the de facto complainant and represented that they were engaged in real estate business and they showed him some plots at Hanuman Nagar. Believing them, the de facto complainant paid an amount of Rs.4,00,000/- on 27.01.2007 to them towards advance for purchase of the plot. After receipt of that amount, the accused and the petitioner were disappeared. When the matter was placed before the elders during February 2011, the accused and the petitioner agreed to pay the amount along with interest. However, they did not pay the amount and hence, the de facto complainant lodged the complaint against the petitioner and the accused.

After completion of the investigation, the Sub-Inspector of Police, Eluru III Town Police Station, filed charge sheet against the accused only and deleted the name of the petitioner. The prosecution filed an application under Section 319 Cr.P.C. before the Court below to add the petitioner also as A2 in the case. The learned Magistrate allowed the application and added the petitioner as A2 in the case. Challenging the said order, the present revision case is filed.

Heard and perused the material available on record.

Learned counsel for the petitioner submitted that the order of the trial Court is contrary to law, that the trial Court ought to have seen that after thorough enquiry about the antecedents of the petitioner, the

investigating officer has deleted the name of the petitioner. He further submitted that there is no material against the petitioner to show that he also involved in the crime and except orally mentioning the name of the petitioner in his chief examination, PW.1 also did not state anything against the petitioner.

The learned Magistrate has observed as follows in paragraph-8 of the order impugned:

“In this context, it is profitable to have a cursory glance over section 319 Cr.P.C. The sole essence of section 319 Cr.P.C. is that during the course of trial it appears to the court that when other person is involved in the crime along with the accused who is arrayed in the charge sheet can be arrayed in the charge sheet as an accused and the trial shall be commenced against him. In the case on hand, Ex.P.1, the verbal testimony of PW.1 and section 161(3) Cr.P.C. statement pertaining to P.W.1 gives some iota of indication with respect to the complicity of the proposed accused. The investigating officer did not assign any cogent and convincing reasons for deleting the proposed accused from the charge sheet.”

By observing as above, the learned Magistrate has added the petitioner as A2 in the case.

Section 319 Cr.P.C. reads as follows:

“319. Power to proceed against other persons appearing to be guilty of offence:

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then-

(a) the proceedings in respect of such person shall be commenced a fresh, and the witnesses re- heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

As seen from the order of the trial Court it appears that after chief examination of PW.1 only, the trial Judge had added the petitioner as A2. The Court below is always at liberty to add persons as additional accused invoking the provisions under Section 319 Cr.P.C. But in the present case, the petitioner was included as an accused basing on the chief examination of PW.1 only, which is not in accordance with law. It is to be noted here that the evidence means not only the chief examination of the witnesses, but also the answers elicited during the course of cross-examination. Further, except the chief examination of PW.1, there is no other evidence on record. Hence, the order impugned is not sustainable and the same is liable to be set aside.

Accordingly, the Criminal Revision Case is allowed setting aside the order, dated 09.06.2015, passed in CrI.M.P. No.1543 of 2015 in CC No.301 of 2014 by the Judicial Magistrate of First Class, Special Mobile Court, Eluru. However, after examination of the witnesses, if the petitioner appears to have committed the offence, along with the accused, the trial Court is at liberty to proceed against him in accordance with law. Miscellaneous petitions, pending if any, shall stand closed.

RAJA ELANGO, J

July 24, 2015.
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