

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.8723 of 2015

ORDER:

This Criminal Petition is filed to quash the order dated 06.08.2015 passed in CrI.M.P. No.471 of 2015 in C.C. No.59 of 2014 on the file of XX Metropolitan Magistrate, Cyberabad at Malkajgiri (for short, 'the trial Court'), whereunder, the petition filed by respondent No.1 herein to receive documents set out in the list, i.e., compact disc with CD cover, was allowed.

2. The petitioners herein (accused) were the respondents before the trial Court. Respondent No.1 herein filed CrI.M.P. No.471 of 2015 in C.C. No.59 of 2014 before the trial Court under Section 242(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') to receive the documents set out in the list, alleging that there was a reference of some documents in the report of the *de facto* complainant and in the evidence of P.W.1 before the trial Court on 30.04.2015 and the prosecution filed the original documents to mark them as exhibits during the course of further evidence of P.W.1 and that those documents are crucial to decide the real controversy between the parties and that no prejudice would be caused to the petitioners herein, if the documents are received by exercising power under Section 242(2) Cr.P.C.

3. Petitioners herein filed counter denying the material allegations and mainly contended that the electronic record should not be marked and Section 65B of the Indian Evidence Act, 1872 should be followed strictly and placed reliance on a judgment of the Hon'ble Supreme Court in ***Anvar P.V. Vs. P.K. Basheer and others***, wherein it was held that for making the documents, Section 65B of the Indian Evidence Act, 1872 is required to be complied with, and in the absence of certification, the documents, i.e., photographs and CD copy, cannot be admitted in evidence and that the documents are not relevant for deciding the real controversy between the parties and prayed to dismiss the petition.

4. The trial Court upon hearing argument of both the learned counsel, allowed the petition and received the documents set out in the list by exercising power under Section 242(2) Cr.P.C., while postponing the decision about the admissibility of the document in evidence.

5. Challenging the said finding of the trial Court, the present criminal petition is filed mainly contending that unless the admissibility of the documents is decided, the trial Court cannot receive the documents filed along with the petition by exercising power under Section 242(2) Cr.P.C. and before receiving documents, the Court has to record its satisfaction that those documents are necessary for deciding the real controversy and in the absence of a decision about the admissibility of the document and satisfaction about the relevancy of the documents to decide the real controversy, the order of the trial Court is not sustainable and prayed to quash the same by exercising power under Section 482 Cr.P.C.

6. During the course of hearing, learned counsel for the petitioners while reiterating the contentions, drawn the attention of this Court to a judgment of this Court in ***Dilwar Hussain Vs. State of Andhra Pradesh and others*** and contended that unless the documents were considered during investigation by the investigating agency and referred in the charge sheet, they cannot be received as evidence by exercising power under Section 242(2) Cr.P.C. He further contended that unless a certificate is annexed in compliance of Section 65B of the Indian Evidence Act, 1872, the compact disc and CD cover, etc., which are in electronic form, cannot be received in evidence, and even to receive the documents in evidence, the Court has to record its finding about the admissibility, otherwise, the order is erroneous on the face of record and liable to be quashed.

7. Whereas, the learned Public Prosecutor drawn the attention of this Court about the postponement of decision about the admissibility of the document in paragraph No.3 at page No.2 of the order under challenge and contended that the admissibility need not be decided at the stage of receiving documents in evidence.

8. Considering the rival contentions and perusing the material available on record,

the point that arises for consideration is:

"Whether the order under challenge is in accordance with law? If not, liable to be quashed?"

9. Admittedly, the petition was filed before the trial Court under Section 242(2) Cr.P.C. to receive documents set out in the list annexed to the petition. The main endeavour of the learned counsel for the petitioners is that unless those documents are considered during the investigation by the investigating agency and referred in the charge sheet, they cannot be received by exercising power under Section 242(2) Cr.P.C. No doubt, Section 242(2) Cr.P.C. permits the parties to adduce additional evidence after framing of charges, if it is before framing of charges, the provisions of Section 173(3) and (4) Cr.P.C. are applicable. In the present case, the charges were already framed and the matter is at the stage of cross-examination of P.W.1. A similar question came up before this Court in ***Dilwar Hussain's*** case (supra 2), wherein this Court held that since the investigation was done, touching the transactions under proposed documents, by marking them, it cannot be said that the prosecution is introducing any new facts or introducing any new case, unless the documents are considered and referred in the charge sheet, they cannot be received as additional evidence by exercising power under Section 242(2) Cr.P.C. But in a judgment of the Apex Court in ***Narayan Rao Vs. The State of Andhra Pradesh***, the Apex Court considered the power of the Court to receive additional evidence after framing of charges and held as follows:

"It has rightly been contended on behalf of the appellant that it was the duty of the magistrate to see that the provisions aforesaid of the Code have been fully complied with. Magistrates, therefore, have to be circumspect, while conducting such proceedings, to see to it that accused persons are not handicapped in their defence by any omission on the part of police officers concerned, to supply the necessary copies. But we are not prepared to hold that non-compliance with those provisions has, necessarily, the result of vitiating those proceedings and subsequent trial. The word "shall" occurring both in sub-section (4) of Section 173 and sub-section (3) of Section 207A is not mandatory but only directory, because an omission by a police officer, to fully comply with the provisions of Section 173, should not be allowed to have such a far-reaching effect as to render the proceedings including the trial before the Court of Session wholly ineffective. Instead of simplifying the procedure, as was intended by the amending Act, as indicated above, the result contended for on behalf of the appellant, will, necessarily, result in re-

opening the proceedings and trials which may have been concluded long ago. Such a result will be neither conducive to expeditious justice nor in the interest of accused persons themselves. Certainly, if it is shown, in a particular case, on behalf of the accused persons that the omission on the part of police officers concerned or of the magistrate before whom the committal proceedings had fended, has caused prejudice to the accused, in the interest of justice, the Court may reopen the proceedings by insisting upon full compliance with the provisions of the Code."

10. In another judgment of the Rajasthan High Court in ***Alarakh Vs. State of Rajasthan***, the Rajasthan High Court discussed at length about the provisions regarding permissibility to receive documents by exercising power under Sections 173(4) and 242(2) Cr.P.C. and held that the document can be received, if they are relevant and necessary to decide the real controversy between the parties.

11. In ***Dilwar Hussain's*** case (supra 2), ***Narayan Rao's*** case (supra 3) was not brought to the notice of the learned Single Judge of this Court. Merely because the documents are not referred in the charge sheet by the investigating agency, when the material evidence came to the notice of the parties, which decides the real controversy between the parties, the Court can receive the documents by exercising power under Section 242(2) Cr.P.C. in view of the law laid down by the Apex Court. Hence, the principle laid down in ***Dilwar Hussain's*** case (supra 2) cannot be applied to the present facts of the case. Hence, the order under challenge cannot be quashed on this ground.

12. The main endeavour of the learned counsel for the petitioner is that unless a certificate is enclosed to the document as required under Section 65B of the Indian Evidence Act, 1872, the same cannot be admitted in evidence and cannot be received as additional evidence by the trial Court, but the trial Court conveniently postponed the decision about the admissibility, since it is not the appropriate stage to decide admissibility of documents. The learned counsel for the petitioner, in support of his contention, relied on the decision of the Supreme Court in ***Anvar P.V.'s*** case (supra 1), wherein, in paragraph Nos.19, 20, 21, 22 and 24, the Supreme Court discussed about the admissibility of evidence in electronic form and requirements of Section 65B of the Indian Evidence Act, 1872, to admit the

documents in evidence. There is no dispute about the law declared by the Apex Court in **Anvar P.V.'s** case (supra 1), which is governed by the Code of Civil Procedure. However, in the present case, the trial Court did not decide the admissibility of the documents, sought to be received by exercising power under Section 242(2) Cr.P.C. and postponed the decision on the admissibility, while receiving the documents. Receiving the documents by exercising power under Section 242(2) Cr.P.C. and admitting the documents in evidence are totally distinct acts. Receiving the document does not amount to admitting the document in evidence. The Court has to apply its mind about the admissibility strictly adhering to the rules governing the Evidence Act. But for receiving the documents, compliance of procedure under Section 242(2) Cr.P. and recording of satisfaction of Court that those documents directly throw light of the real controversy is sufficient. The trial Court in the present case, satisfied about the necessity to receive the documents by exercising power under Section 242(2) Cr.P.C. and received documents while postponing decision on the admissibility of the documents filed along with the petition. Admission of documents can be decided at the time when documents are tendered in evidence before the trial Court, but at the stage of receiving documents, admissibility need not be decided. Therefore, postponing the decision on admissibility of the document is not a ground to quash the proceedings by exercising power under Section 482 Cr.P.C. Hence, I find no error in the order under challenge, passed by the trial Court. However, the petitioner is at liberty to question the admissibility of the documents when they are confronted to the witness during trial and the trial Court is directed to decide such objection, if any raised, in accordance with law.

13. Accordingly, this Criminal Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any pending in this petition, shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 30-09-2015

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