

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.439 OF 2010

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the order dated 11.02.2010, passed by the II Additional Chief Metropolitan Magistrate, Hyderabad, in CrI.M.P.No.3951 of 2009 in C.C.No.288 of 2002.

02. The brief facts of the case are that the revision petitioner herein is the *de facto* complainant/PW.1 in C.C.No.288 of 2002 on the file of II Additional Chief Metropolitan Magistrate, Hyderabad. Trial was conducted and when it was about to be completed, the prosecution filed CrI.M.P.No.3951 of 2009 in the above said case, under Section 311 Cr.P.C, to recall PW.1 for marking additional documents. Respondent Nos.2 to 7/A.1 to A.6 filed the counter and contested the said petition. The learned Magistrate after hearing both sides and after considering the material on record dismissed the petition on 11.02.2010. Aggrieved by the said order, the State has not preferred any revision, but the *de facto* complainant/PW.1 filed the present revision to set aside the said order.

03. The learned counsel appearing for the revision petitioner/PW.1 argued that the prosecution filed an application in CrI.M.P.No.2451 of 2007 to add the additional charge under Section 420 I.P.C and the said application was allowed by the learned Magistrate; that aggrieved by the said order of framing the additional charge under Section 420 I.P.C, the accused filed Criminal Revision Case No.1605 of 2008 and the same was dismissed by this Court on 03.11.2008; that thereafter, the petition in CrI.M.P.No.3951 of 2009 was filed by the prosecution to recall PW.1 after seven witnesses were examined by the prosecution including the Investigating Officer, and as the said petition was dismissed, the present revision is filed by the revision petitioner/PW.1. The learned counsel also argued that recalling PW.1 and marking certain important documents to prove the ingredients of cheating under Section 420 I.P.C is essential, no prejudice will be caused and the accused has an opportunity to cross-examine PW.1 after marking the documents. It is also argued that the

revision petitioner does not want to bring new facts to the case and the documents are known to the accused, and that subject to relevancy and admissibility, the documents can be marked by recalling PW.1, and therefore prayed the Court to allow the revision case.

04. On the other hand, the learned counsel appearing for respondent Nos.2 to 7/accused opposed for allowing the revision on the ground that originally, police filed charge sheet against the accused for the offences punishable under Sections 120-B, 148, 448, 427, 323, 504 & 506 I.P.C against the accused and deleted section 420 I.P.C; that by filing CrI.M.P.No.2451 of 2007, additional charge was framed and this Court while dismissing Criminal Revision Case No.1605 of 2008, held that “as in case the entire evidence is completed and thereafter additional charge is framed, an opportunity would be given to the accused to cross-examine the witnesses further”; that when such observation was given by this Court, PW.1 cannot be recalled. It is also argued that when the petition for framing the additional charge under Section 420 I.P.C was allowed, the trial Court observed that PW.1 and his family members gave 161 Cr.P.C statements to the police officer; that the facts and circumstances stated in the charge sheet and the evidence of PW.1 before the trial Court constitute the ingredients of the offence under Section 420 I.P.C, and as such the additional charge was framed.; that it is also observed by the trial Court that the accused has ample opportunity to cross-examine the witnesses, who are to be examined by the prosecution or recall the prosecution witnesses, who are already examined by the prosecution and finally prayed the Court to dismiss the revision case.

05. Now, the point for consideration is:

Whether the revision petitioner is entitled to recall PW.1 for marking additional documents as prayed for or not?

06. **P O I N T:** Petitioner is the *de facto* complainant in C.C.No.288 of 2002. Police after investigation, filed the charge sheet against the respondents/accused for different offences. Thereafter, trial was commenced and PWs.1 to 7 were examined including the Investigating Officer. At that stage, the prosecution filed CrI.M.P.No.2451 of 2007 for framing of additional charge under Section 420 I.P.C. The said petition was allowed on 08.09.2008 by the II Additional Metropolitan Magistrate, Hyderabad. Aggrieved by the

orders passed by the Magistrate, the accused preferred Criminal Revision Case No.1605 of 2008. The said revision was dismissed and an opportunity was given to the accused to cross-examine the witnesses further. At that stage, the State filed another application in CrI.M.P.No.3951 of 2009 to recall PW.1 for marking necessary documents, which are known to the accused. In the said petition, respondents/accused filed a counter. After hearing both sides, the Magistrate dismissed the application on the ground that if the petition is allowed, certainly it will prejudice the defence since the orders of the Magistrate as well as the orders of this Court are quiet unequivocal with regard to the opportunity given to the accused only for further cross-examination in the light of additional charge framed, and that there is absolutely no justification for the prosecution to file petition once again for the purpose of marking some more documents.

07. Section 311 of Cr.P.C reads as thus:

Sec.311. Power to summon material witness, or examine person present.- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

08. Admittedly, after dismissing Criminal Revision Case No.1605 of 2008, witnesses were not recalled for further cross-examination by the accused with regard to the additional charge under Section 420 I.P.C. The revision petitioner, who is the *de facto* complainant, has to prove his case including the additional charge under Section 420 I.P.C, by producing the oral and documentary evidence.

09. The learned counsel for the revision petitioner to support his case, relied upon the case law reported in ***P. Sanjeeva Rao v. State of Andhra Pradesh***, wherein it is held at para 12 as follows:

*“12. The nature and extent of the power vested in the Courts under Section [311](#) Code of Criminal Procedure. to recall witnesses was examined by this Court in **Hanuman Ram v. The State of Rajasthan and Ors.** [(2008) 15 SCC 652]. This Court held that*

The object underlying Section [311](#) of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the

accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquires and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section [311](#) the significant expression that occurs is "at any stage of inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind."

10. The allegation of the revision petitioner/*de facto* complainant in the complaint is that the accused cheated him to purchase an agricultural land in Survey No.50 situated at Kothur village, Nyalkal Mandal, Medak District. To prove his case, the revision petitioner wants to mark some important documents and those documents are known to the accused. The object underlying Section 311 Cr.P.C is to prevent failure of justice on account of mistake of either party to bring the valuable evidence on record. According to the revision petitioner/*de facto* complainant, the documents to be marked are important documents to prove his case. Therefore, if PW.1 is recalled, no prejudice will be caused to the accused, it will be helpful to arrive at a just decision of the case, and an opportunity will also be given to the accused to further cross-examine PW.1 on the said documents. When the order in CrI.M.P.No2451 of 2007 was allowed to frame additional charge under Section 420 I.P.C, the learned Magistrate gave a finding that the accused has ample opportunity to cross-examine the witnesses, who are to be examined by the prosecution or recall the prosecution witnesses, who are already examined by the prosecution. Therefore, I am of the view that the petition shall be allowed for recalling PW.1 and for marking the documents subject to relevancy and admissibility of the documents.

11. Accordingly, the Criminal Revision Case is allowed setting aside the order dated 11.02.2010, passed by the II Additional Chief Metropolitan Magistrate, Hyderabad, in CrI.M.P.No.3951 of 2009 in C.C.No.288 of 2002.

12. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 01.04.2015

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