

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.7003 OF 2016

ORDER:

This petition is filed under Section 482 of Cr.P.C. to quash the proceedings passed in CrI.M.P.No.3329 of 2015 in C.C.No.775 of 2011 dated 9-3-2016 by the I Additional Chief Metropolitan Magistrate, Visakhapatnam wherein a petition was filed under Section 242 of Cr.P.C. permitting to file document during prosecution evidence is ordered.

1st Respondent herein who is petitioner before trial court filed petition under Section 242 Cr.P.C. when the matter was posted to 26-6-2015 for continuation of examination in chief of defacto complainant and intended to exhibit the photograph along with C.D. which were not filed earlier along with charge sheet as they were mixed up with the other files at the police station and they are traced out recently and that non-filing of this document earlier is neither willful nor wanton and requested to receive them and mark them on prosecution side.

Petitioner-accused before the court below opposed by filing counter alleging that when the matter is coming for continuation of examination in chief of P.W.1, the photographs along with C.D. which were not filed earlier cannot be received on the sole ground that they were mixed with other records and they were not traced.

It is further contended that there was no reference about the photographs either in the charge sheet or in the complaint or in the

statement recorded under Section 161 (3) Cr.P.C. and that the present petition is filed only to harass the respondent-accused on one way or the other and therefore, sought for dismissal of the petition filed before the court below.

Trial court despite the objection, passed the impugned order considering the facts and circumstances of the case.

Learned counsel for the petitioner herein during hearing contended that the documents were not referred either in the complaint or in the charge sheet or at least in the statement recorded in 161 (3) Cr.P.C. during investigation by investigating agency and that too, the case was a warrant case and that in the absence of any reference either in the charge sheet or in the complaint, they cannot be received at this stage more particularly to prove payment of dowry and they cannot be marked as exhibits.

Per contra, learned counsel for the other side contended that Section 242 (3) Cr.P.C. has wider power to receive the document produced by prosecution during trial and to support his contention he placed reliance on *G.SAROJA v. STATE OF A.P. REPRESENTED BY THE PUBLIC PROSECUTOR AND ANOTHER* ⁽¹⁾ and prays to dismiss the petition.

The present petition is filed under Section 482 of Cr.P.C. to quash the order and normally, this court would exercise its inherent power sparingly in exceptional circumstances when the complaint or charge sheet does not disclose any allegations to constitute the

¹ 2011(2) ALT (Cri.) 74 A.P.

offence. However, in the present petition, the order is challenged on the ground that the order is passed without material.

The only contention before this court by the counsel for petitioner is that when the documents are not challenged either in the complaint or in the charge sheet, or at least in the statement recorded under Section 161 (3), they cannot be received as evidence on production by exercising power under Section 242 (3) Cr.P.C. Section 242 of Cr.P.C. deals with evidence of prosecution and clause 3 says that on the dates so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution. Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined, or recall any witness for further cross-examination.

In the absence of any circumstances laid down under Section 242 (3) Cr.P.C., the law laid down in the above referred case reported in *G.SAROJA v. STATE OF A.P. REPRESENTED BY THE PUBLIC PROSECUTOR AND ANOTHER* (1st cited) at para 5, it is held as follows:

“Further, sub-section-3 of Section 242 Cr.P.C., which deals with the evidence for the prosecution, clearly states that on the date so fixed the Magistrate shall proceed to take “all such evidence” as may be produced in support of the prosecution. The said provision of law is very wide and in my considered view the Magistrate is all competent to receive any further evidence, if necessary, even if the documents are filed after filing of the charge sheet. The said provision of law i.e., Section 242 Cr.P.C. in my considered view is having an over riding effect over sub-section 5 of

Section 173 Cr.P.C. and the provisions under sub-section-5 of Section 173 Cr.P.C., does not control the Magistrate in any manner. The words "all such evidence" mentioned under sub-section-3 of Section 242 Cr.P.C. do not mean only such evidence as is referred to in sub-section 5 of Section 173 Cr.P.C. What is to be inferred by sub-section 5 of Section 173 Cr.P.C. is that before the prosecution is allowed to file any additional documents, it should furnish a copy of the same in advance to the accused so that he may not be prejudiced in his defence."

If the principle laid down is applied to the present case, Magistrate is empowered to receive evidence but failure to refer these photos and C.Ds. either in the complaint or in the statement recorded in 161 (3) Cr.P.C. including charge sheet would have its own impact at this stage, there is no bar to receive the documents during examination in chief of P.W.1 i.e., witness of prosecution. However, liberty is given to the petitioner to question the probative value of the photos and C.D. produced before the court and on raising such question, the I Additional Chief Metropolitan Magistrate, Visakhapatnam is directed to decide the probative value of the document while deciding the case.

With the above direction, this Criminal Petition is disposed of.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 11-11-2016.

Dvs.

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 11-11-2016.

Dvs