

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.2516 OF 2012

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of the Code of Criminal Procedure (Cr.P.C.) challenging the orders dated 27.08.2012 in SR.No.246 of 2012 on the file of the Principal Judicial First Class Magistrate, Warangal.

Learned Public Prosecutor submitted that the trial Court passed the orders without taking into consideration the scope of Sections 53-A and 54 Cr.P.C. He further submitted that the order passed by the trial Court is not sustainable under law.

Per contra, learned counsel for the respondents submitted that the trial Court rightly considered the scope of Sections 53-A and 54 Cr.P.C. and dismissed the petition. He further submitted that the respondents are only the suspects and not the accused in the main case.

A perusal of the record reveals that the Station House Officer, KUC P.S., registered a case in crime No.256 of 2011 for the offence punishable under Section 376 of the Indian Penal Code. During the course of investigation, the Investigating Officer shown accused No.1 as unknown CRPF constable, accused No.2 as one Seetharamaiah and the Investigating Officer suspected the complicity of respondent Nos.1 to 8 for the alleged offence. During the pendency of the case, the Investigating Officer filed a memo before the trial Court to send the respondents to DNA test. The trial Court, after considering the material available on record, rejected the memo. Hence, the present revision.

It is not the case of the prosecution that respondent Nos.1 to 8 involved in crime No.256 of 2011. It is an admitted fact that the respondents herein were not arrested in crime No.256 of 2011. The present memo is filed seeking permission of the Court to send the suspects to DNA test under Sections 53-A and 54 Cr.P.C. Section 53-A Cr.P.C. deals with examination of the persons accused of rape by

medical practitioner. Section 54 Cr.P.C. deals with examination of the arrested persons by medical officers. A reading of Sections 53-A and 54 Cr.P.C. demonstrates that the Court can send the persons who are arrested in that particular crime for DNA test. Admittedly, as observed earlier, respondent Nos.1 to 8 were not arrested by the Investigating Officer in this case.

Learned counsel for the respondent has drawn my attention to the judgment of the High Court of Kerala in **B.C.Radhakrishnan & Ors v. Saju Thuruthikunen & Anr.**^[1], wherein it is held in paragraph No.8 as under.

“On a careful perusal of the proviso, it can be seen that arrest of the accused in connection with the investigation or proceedings of the case is essential for invocation of power under Section 311A Cr.P.C. by the Magistrate. The proviso limits the power conferred on the Magistrate by the Section by providing a restriction that it can be exercised only in a case where the accused person had been arrested in connection with such investigation or proceeding. Admittedly, in this case the accused were not arrested and therefore, the learned Magistrate was right in disallowing the prayer of the complainant for invoking the power under Section 311A Cr.P.C. Hence there is no merit in CrI.M.C.No.2631 of 2012.”

The principle enunciated in the aforementioned case squarely applicable to the facts of the case on hand. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra and also scope of Sections 53-A and 54 Cr.P.C., I am of the considered view that the learned Magistrate rightly rejected the memo filed by the Investigating Officer. There is no illegality or irregularity in the order of the trial Court warranting interference of this Court by exercising jurisdiction under Section 397 Cr.P.C.

The Criminal Revision Case lacks merits and is, accordingly, dismissed. Miscellaneous petitions, if any, pending shall stand dismissed.

(T.SUNIL CHOWDARY, J)

8th July 2016
RRB

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