

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

Criminal Revision Case No.209 of 2016

JUDGMENT:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., challenging the order dated 09.10.2015 passed in CrI.M.P.No.583 of 2015 in CC No.414 of 2014 on the file of the XIV Metropolitan Magistrate, Cyberabad at L.B. Nagar.

2. Heard the learned counsel for the petitioner and the learned counsel for the 2nd respondent.

3. Learned counsel for the petitioner submits that the order passed by the trial court is beyond the scope of Section 45 of the Indian Evidence Act. He further submits that the findings of the trial court that in order to prove the ingredients of Section 506 IPC, it is necessary to send the cell phones to the expert is not legally sustainable.

4. Per contra, learned counsel for the 2nd respondent submits that the findings recorded by the court below are sustainable either in law or on facts. He further submits that in order to prove the ingredients of Section 506 of IPC, it is just and necessary to send the cell phones of the petitioner as well as the 2nd respondent to the expert.

5. A perusal of the record reveals that the 1st respondent is none other than the wife of the petitioner. The petitioner is facing trial in CC No.1894 of 2014 on the file of the XIV Metropolitan Magistrate, Cyberabad at L.B.Nagar, for the offences punishable under Sections 498-A and 506 of IPC and Sections 4 and 6 of the Dowry Prohibition Act. During the pendency of the trial, the 2nd respondent-*de-facto* complainant filed a petition under Section 45 of the Indian Evidence Act, with a request to send the mobile

phone bearing No.7702788116 belonging to the 2nd respondent herein to the Central Forensic Science Laboratory, Ramanthapur, Hyderabad or Forensic Science Laboratory, Redhills, to retrieve the SMS data stored in her mobile phone. The record further reveals that the 2nd respondent herein also filed Crl.M.P.No.584 of 2015 to summon the Vodafone Ltd., the Manager Legal and Regulatory-Alternative Nodal Officer, Hyderabad, to produce the data of messages sent by the accused/ petitioner through his phone 9885494542 to the 2nd respondent/ *de-facto* complainant's Airtel mobile bearing No.7702788116 during the period from September, 2013 to January, 2014 and also to issue summons to Airtel Ltd., the Manager Legal and Regulatory/ Alternative Nodal Officer, Hyderabad. The trial court allowed both the petitions. The petitioner herein filed Crl.R.C.Nos.205 & 206 of 2016 challenging the orders passed therein and this court dismissed the two revision cases today on merits.

6. In order to appreciate the rival contentions, this court carefully scanned the impugned order. The trial court allowed the petition on the sole ground that "to prove the ingredients of Section 506 of IPC and the harassment made by the accused it is just and necessary the phones should be sent to the Forensic Science Laboratory, Red Hills, Hyderabad."

7. It is settled law that the duty is cast on the prosecution to prove the ingredients of the offences alleged to have committed by the accused. It is needless to say that the court has to consider and scrutinize the allegations made in the charge sheet as well as the oral testimony of the prosecution witnesses in order to arrive at a conclusion whether the accused has committed the alleged offence or not. It is also settled law that an expert opinion is not substantial piece of evidence. When the court is not in a position to decide a particular aspect without the assistance and

help of the expert, the court can send the disputed documents to the expert for comparison and opinion.

8. It is not the case of the petitioner that the mobile phone bearing number 9885494542 does not belongs to him. Already, the investigating officer collected phone data of the petitioner as well as the *de-facto* complainant. In such circumstances, there is no necessity to send the mobile phones to the expert for opinion. The trial court allowed the petition on the sole ground that no prejudice will be caused to the accused even if the mobile phones were sent to the expert for opinion. That is not a valid ground to send the mobile phones for expert opinion. Therefore, the order passed by the court below is not sustainable either on facts or in law. Viewed from any angle, I am of the considered view that the order passed by the court below is not sustainable.

9. Having regard to the facts and circumstances of the case, I am of the considered view that this is a fit case to interfere with the order dated 09.10.2015 passed by the trial court in CrI.M.P.No.583 of 2015 in CC No.414 of 2014, while exercising the jurisdiction under Section 397 Cr.P.C.

10. In the result, the criminal revision case allowed, at the stage of admission, by setting aside the order dated 09.10.2015 passed by the trial court in CrI.M.P.No.583 of 2015 in CC No.414 of 2014. Miscellaneous petitions, if any pending in this case, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 25.10.2016.
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