HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.2778 of 2013

ORDER:

In this petition filed under Sec.482 Cr.P.C, the petitioner/A.7 seeks to quash the proceedings against him in S.C.No.308 of 2011 on the file of Assistant Sessions Judge, Allagadda.

2) The prosecution case is that A.1 to A.6 are close friends and they hatched a plan to traffic counterfeit / forged currency notes. In that process, they purchased a colour Xerox machine at Nandyal and took room No.212 in A.V Lodge, Allagadda on rent for preparation of counterfeit currency notes. After trafficking counterfeit currency notes at one cell point, Mydhukur, they came back to Allagadda. On 07.09.2010, A.1 at the behest of A.2 to A.6 went to Siddi Vinayaka cell world shop of PW.4 at 2:30pm and contacted PW.4 for purchasing 100 memory cards. PW.4 informed that he had only 65 memory cards. So A.1 purchased 65 memory cards for Rs.13,975/- and paid cash.

a) The further case of prosecution is that on 08.09.2010 at about 3:30pm, PW.4 went to SBI, Allagadda to deposit cash of Rs.50,000/-. He paid cash in the counter to the account No.31199574535 of M/s.Rahamath Ragiya Chennaiah for purchase of cell phones. He paid the amount in the denomination of Rs.500/- notes. At that time, PW.2, who was the cashier in the SBI bank, found that out of the notes tendered by PW.4, 27 currency notes were fake notes as the fake notes detector machine detected 27 notes to be the fake notes. Thereafter the complaint was made to Police of Allagadda Town P.S. The police registered a case in Crime No.89 of 2010 under Sec.489 (A) to 489 (E) IPC and after investigation laid charge sheet against A.1 to A.6. The case was committed to Sessions Court and was made over to Assistant Sessions Judge, Allagadda. During trial, PWs.1 to 13 were examined. The petitioner was initially shown as LW.4 and during trial he was examined as PW.4. It appears, after the evidence was completed, the trial Court considering the evidence on record added the petitioner as Accused No.7 as per its order dt.26.02.2013.

Aggrieved by the said order, the instant petition is filed by the petitioner/A.7.

3) Heard arguments of Sri Challa Siva Sankar, learned counsel for petitioner and learned Additional Public Prosecutor for the State.

4) Learned counsel for petitioner would argue that the Court can add a person as accused within its powers under Sec.319 Cr.P.C only when the evidence before it spells out the complicity of such person but in the instant case the petitioner was not shown as accused in the FIR or charge-sheet and on the other hand, he was shown as one of the witnesses and even during trial he was examined as PW.4 and without there being any incriminating material, the Court erroneously exercised its jurisdiction under Sec.319 Cr.P.C and added him as accused at the fag-end of the trial

which is nothing but abuse of process of the Court and therefore, the case is liable to be quashed against him.

5) Per contra, learned Additional Public Prosecutor would argue that the evidence on record including that of the petitioner would clinchingly show that from out of the amount deposited by the petitioner in SBI, Allagadda, 27 currency notes were found to be fake notes and therefore, the trial Court rightly exercised its power under Sec.319 Cr.P.C and added him as an accused and merely because at one stage of the case he was shown as a witness, that by itself the Court is not debarred from adding him as accused. He thus prayed to dismiss the petition.

6) In the light of above rival arguments, the point for determination is:

"Whether there are merits in this petition to allow?"

7) **POINT**: On perusal of the record, I find force in the submission of learned Additional Public Prosecutor. Under Sec.319 Cr.P.C, a Court is empowered to proceed against any person who was hitherto not an accused if from the evidence before it, it appeared that he had committed an offence. Sec.319 Cr.P.C reads thus:

> ***"Section 319 -Power to proceed against other persons appearing to be guilty of offence:***
>
> *(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.*

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section(1) then—

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

So from the above Section, it is clear that the *sine qua non* for a Court to add any person as accused is that from the evidence before it, it appeared that such person has committed an offence. In that context, when the deposition of PW.2—D.Rama Krishnaiah, cashier in SBI, Allagadda, a copy of which is filed along with the material papers is perused, it would reveal that on 08.09.2010 at about 3:30pm, when he was at cash counter, the petitioner/A.7 approached and tendered Rs.50,000/- cash to adjust in his two accounts @ Rs.25,000/- each and also gave two pay slip vouchers. PW.2 checked the currency notes through the fake notes detector machine and found 27 fake notes in the currency notes given by petitioner/A.7. He then immediately reported the matter to the cash officer. It should be noted that the petitioner was examined as PW.4

and his evidence is also in the same lines. It appears that having found that the 27 fake currency notes were found from out of the currency notes tendered by the petitioner in the bank, the trial Court came to a *prima facie* conclusion that the petitioner was also a privy to the offence and accordingly ordered him to be added as A.7. Ofcourse, the guilt or innocence of the petitioner/A.7 can be determined only on completion of the trial. At this stage, it cannot be said that there is no *prima facie* material against him. Therefore, it is not apt to quash the proceedings against petitioner/A.7. The petitioner is at liberty to establish his innocence before the trial Court.

8) Accordingly, this Criminal Petition is dismissed, however, with an observation that the trial Court shall proceed with the case without being influenced by the observations made in this order.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 02.09.2016
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