

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.9929 OF 2016

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') to quash the order, dated 01.06.2016, passed in CrI.MP.No.59 of 2016 in S.C.No.364 of 2011 by the Assistant Sessions Judge, Proddatur, whereby, the trial Court received 45 documents set out in the list annexed to the aforesaid petition filed under Section 311 Cr.P.C. by the Additional Public Prosecutor, recording several reasons.

2. The main contention of the petitioners is that the Additional Public Prosecutor is not supposed to file documents after commencement of trial and that too, under Section 311 Cr.P.C., which deals with summoning of material witness or examination of person present, and that apart, the observation made by the trial Court that the Additional Public Prosecutor is competent to file a petition, based on the judgments referred therein, is not in accordance with law and therefore, prayed to set aside the order under challenge.

3. During hearing, this Court directed the learned Additional Public Prosecutor of Assistant Sessions Judge Court, Proddatur, to file an affidavit before this Court and accordingly, Sri G. Chowdu Reddy, learned Additional Public Prosecutor, filed an affidavit tendering unconditional apology for causing inconvenience to the

Court, while submitting that he filed the aforesaid petition inadvertently and there are certain mistakes that occurred due to oversight and the list of documents are also not verified properly and that those documents could not be received as evidence, as they were filed due to oversight. Thus, the Additional Public Prosecutor, who filed the petition himself, admitted by filing an affidavit before this Court that the documents in question could not have been received by the trial Court, while tendering apology.

4. Coming to the merits of the case, respondent No.2 is *de facto* complainant, whereas the petitioners are accused Nos.1 to 7, 9 and 10. The petitioners were charged for the offences punishable under Sections 147, 148, 323, 324, 326, 506 and 367 read with 149 I.P.C., the trial commenced and PW.1 was examined. At that stage, the learned Additional Public Prosecutor filed Crl.M.P.No.59 of 2016, under Section 311 Cr.P.C., to receive the documents set out in the list annexed thereto and the trial Court, by impugned order, dated 01.06.2016, allowed the petition. But, the learned Additional Public Prosecutor filed an affidavit before this Court stating that he blindly signed on the said petition prepared by the *de facto* complainant without even looking at the documents filed along with it. Therefore, it can be said that the Additional Public Prosecutor is not the author of the said petition and he committed a serious irregularity, at the instance of the *de facto* complainant.

5. Section 311 Cr.P.C. deals with the power of the Court to issue summons to the material witness or examine a person present at any stage of inquiry, trial or other proceeding under Cr.P.C., 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. The provision quoted in the petition i.e., Section 311 Cr.P.C. is wrong. However, quoting wrong provision or misquoting the provision is not a ground to dismiss the petition, if the petitioner is otherwise entitled.

6. Sri V.R. Reddy Kovvuri , learned counsel for respondent No.2 - *de facto* complainant, contended that the *de facto* complainant is entitled to come on record under Section 24 (8) Cr.P.C. and bring necessary evidence to prove the case of the prosecution, though the State is under obligation to prosecute the proceedings, and drawn the attention of this Court to the judgment of this Court in **C.S.Y. Sankara Rao v. State of Andhra Pradesh**¹, wherein it is held that it is the primary duty of the State to conduct prosecution, however, the victims are not totally barred in approaching the Court in appropriate cases and to represent their grievances. It is also contended that in view of Section 24 (8) Cr.P.C., the *de facto*

¹ 2010 (116) CrI. Law Journal 1610

complainant is entitled to file a petition. He also relied on another judgment of this Court in CrI.P.No.5911 of 2015, wherein, this Court relied on the earlier judgments of the Honourable Supreme Court in **Sanjeeva Rao v. State of Andhra Pradesh**² and **Hanuman Ram v. the State of Rajasthan**³ and **Mohanlal Shamji Soni v. Union of India**⁴, wherein it was consistently held that the *de facto* complainant is entitled to come on record and prosecute the proceedings. But, the present petition is filed by the learned Additional Public Prosecutor and not by the *de facto* complainant, annexing several documents. There is parity in the law declared by the Honourable Apex Court and this Court regarding right of the *de facto* complainant under Section 24 (8) Cr.P.C., but the present petition is not filed by the *de facto* complainant and on the other hand, the learned Additional Public Prosecutor himself has tendered apology to the Court by filing affidavit. Therefore, there is any amount of irregularity in the impugned order passed by the trial Court and the documents set out in the petition were not filed along with the charge sheet and copies were not furnished to the other side. The allegations made in the petition would itself suffice to conclude that the learned Additional Public Prosecutor was not the author of the petition and he signed on the petition prepared by the *de facto* complainant in most non-chalant manner. It is also pointed out that no prejudice would be caused, since the witnesses can be called and examined. But,

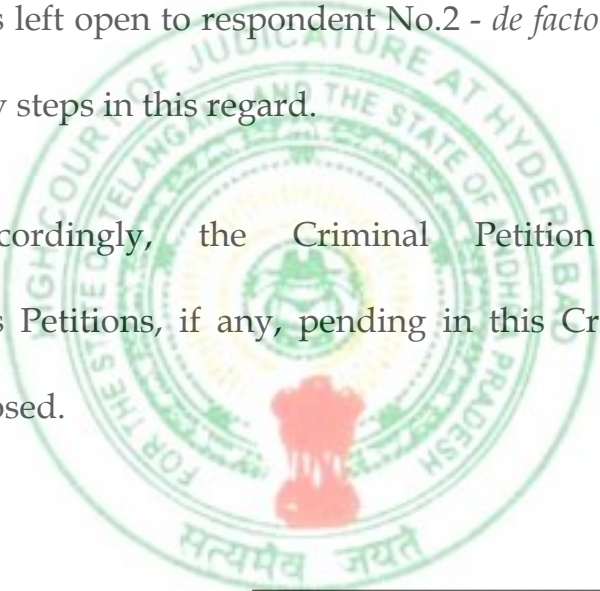
² 2012 (7) SCC 56

³ AIR 2009 SC 69

⁴ AIR 1991 SC 1346

prejudice is not a ground to allow the petition filed by the learned Additional Public Prosecutor without applying mind, in view of the admission made by him in the affidavit filed by him. Therefore, the impugned order passed by the trial Court on the petition filed by the learned Additional Public Prosecutor is illegal and such order cannot be sustained under law. Hence, the impugned order, dated 01.06.2016, passed in Crl.M.P.No.59 of 2016 in S.C.No.364 of 2011 by the Assistant Sessions Judge, Proddatur, is hereby set aside. However, it is left open to respondent No.2 - *de facto* complainant to take necessary steps in this regard.

7. Accordingly, the Criminal Petition is allowed. Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.



M. SATYANARAYANA MURTHY, J

October 25, 2016.
MD

