

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.1982 of 2016

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ORDER:

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The present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. aggrieved by the order dated 21.06.2016 passed in CrI.M.P.No.877 of 2016 in C.C.No.2119 of 2014 on the file of the III Additional Chief Metropolitan Magistrate, Hyderabad, wherein an application filed by the State for receiving certain documents was allowed.

As seen from the record, the State represented by Public Prosecutor filed CrI.M.P.No.877 of 2016 under Section 242 (2) of Cr.P.C. to take on file certain documents and then got marked through relevant witnesses.

The averments in the said petition discloses that the accused, who are having interior designing in the name and style of CITI Square Design Interiors Private Limited, approached LW.1 stating that they are the pioneers in execution of interior works like kitchen, wardrobes, wall papers, curtains, lightings and roof ceiling etc. They also informed that their company is certified as ISO 9000. Believing them, LW.1 recommended his customers, who purchased villas in Water Ford Project located at Mokila Village, Shankarpally Mandal, Ranga Reddy District and also to some of his customers, who settled in U.S.A. On that accused Nos.1 and 2 introduced themselves to all the clientele of LW.1, approached them and got works on turnkey basis. The accused after giving quotations, entered into an agreements with LW.1 and three other persons. Pursuant there to LW.1 and some others paid an amount

of Rs.90.00 lakhs to the accused as per the agreement, but however the accused failed to execute any work. On enquiry they came to know that the accused are habitual offenders and they have cheated many persons in this city.

The averments in the said petition show that LW.1 is having in possession of documents, vouchers and agreements signed, issued and sent through e-mail to him and his clients and other villa owners. It the case of the prosecution that these documents are relevant and necessary to prove the online payments made from U.S.A. to the account of accused company.

A counter came to be filed opposing the same. Relying upon the judgment of the Bombay High Court in **Vasant Arjun Rachh v. Nirmalal Ramniklal**^[1] it is urged that the Court cannot go beyond the Section 173 Cr.P.C. and as such cannot accept the documents filed under Section 242 (2) Cr.P.C.

After considering the rival submissions, the learned Judge allowed the application. Challenging the same the present revision is filed.

Reiterating the defence taken in the counter filed before the trial Court, learned counsel for the petitioners mainly submits that the Court erred in entertaining the application filed under Section 242 (2) Cr.P.C. It has been further urged that the Court has no jurisdiction to receive the documents at this stage.

Two main issues that arise for consideration before this Court are 1) the maintainability of the revision against an interlocutory order passed; and (2) Whether the order under challenge warrants interference.

It is to be noted that originally a private complaint was filed

before the Court which was referred to the police under Section 156 (3) Cr.P.C. In the said private complaint all the documents which are now sought to be produced before the Court have been filed. Since the police failed to collect copies of those documents from the Court and filed along with the charge sheet in court, the present application is filed by the Public Prosecutor to present these documents as additional material to be considered at the time of trial. It is not in dispute that all the documents which are now sought to be marked are only subject to their proof and relevancy.

As seen from the record, the trial has not yet commenced and no prejudice would be caused to the accused if the said documents are kept and tagged along with the charge sheet. As observed earlier the accused would have all the opportunity during trial to test the veracity, truthfulness or otherwise of these documents when they are put to witnesses during their examination.

Though the learned counsel for the petitioner submits that the trial Court erroneously invoked Section 242 (2) Cr.P.C., but as held by this Court in number of cases that number of charge sheets can be filed depending on the material collected during the course of investigation, filing of the petition though may be under wrong provision would not warrant interference.

In ***Kumar Oberai v. State of Madhya Pradesh***^[2] wherein a learned Single Judge of Madhya Pradesh High Court held that “there appears to be no bar for the prosecution to tender evidence, both oral or documentary. The provision of Section 242 of Cr.P.C. specifically provides for such an eventuality. It was further held that under Section 173 Cr.P.C., it is imperative to furnish copies of

the documents to the accused before commencement of the trial but it cannot be read to mean disabling provisions to make the Courts powerless and prevent the prosecution to file fresh documents. It was further held that merely because a document is taken on record, it does not *ipso facto* become admissible in evidence. The admissibility of the said documents is a matter to be considered by the trial Court.

In ***State of Andhra Pradesh v. A.S.Peter***^[3], the Apex Court held as under:

“In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of Cr.P.C., the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the Court by seeking its formal permission to make further investigation.”

That being the position filing of some documents to be marked subject to the relevancy and admissibility during trial cannot be found fault with even accepting the plea that the police have wrongly invoked Section 242 (2) Cr.P.C.

Having regard to the circumstances stated above and since no prejudice would be caused to the accused by bringing the documents on record subject to their proof and relevancy to be established during trial, I see no merits in the revision.

Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

01.08.2016

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[\[1\]](#) (1989) 1 MhLR 320
[\[2\]](#) Crimes 1985 (1) 227
[\[3\]](#) AD (CR) 2008 (4) 468