HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 798 of 2014

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CRIMINAL REVISION CASE No. 1296 of 2014

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COMMON ORDER:

Assailing the order dated 17.06.2013 in Crl.M.P.No.107 & 108 of 2013 in C.C. No.39 of 2010 passed by the learned Judicial Magistrate of I Class, Nandalur, wherein the Court directed the Sub-Registrar, Rajampet to produce the thumb impression Register pertaining to the Document No.1223/2005 dated 21.07.2005 for sending the same to Fingerprint Expert, Hyderabad for comparison with the thumb impression and signature of A-5, was allowed, the present Revision is filed.

The facts in issue are as under :

On a report given by the informant, the police registered a case for the offences punishable under Sections u120-B, 420, 416, 417, 463 and 468 IPC. During the course of investigation the thumb impression and admitted signature of the informant and A-5 were obtained in Court and the same were sent to the Director, F.S.L., A.P., Hyderabad. It appears that the same was returned by the lab with some querries. The Sub-Inspector of Police, Nandalur addressed a letter to the Sub-Registrar, Rajampet to issue original document and thumb impression register, but the Sub-Registrar is said to have written a letter dated 19.03.2010 stating that the original documents were returned to the concerned parties and the thumb impression register of A-5 cannot be given unless ordered by the Court. In view of the above, a preliminary charge-sheet was filed against the accused. It is the case of the prosecution that the signature of the informant was forged by A-5 by impersonation before the Sub-Registrar, Rajampet and as such the thumb impression register needs to be summoned from the office of the Sub-Registrar, Rajampet and the same has to be sent to Fingerprint Expert, Hyderabad to establish the case. Hence, two applications came to be filed, one under Section 311-A Cr.P.C. and another under Section 242 Cr.P.C.

The learned counsel for the petitioner mainly submits that the applications filed by the prosecution cannot be entertained for the reason that the police have already investigated and filed the charge-sheet. He further submits that at the instance of the informant herein the documents were already sent to Forensic Science Lab, Hyderabad, which were returned raising certain technical issues. Instead of taking steps of complying with the objections raised, the prosecution kept quiet for four years and thereafter the present applications are filed only with a view to dragon the proceedings. Insofar as the application under Section 311A Cr.P.C., is concerned he submits that since the petitioner was not arrested in connection with such investigation or proceeding, the question of invoking Section 311A Cr.P.C. does not arise. In support of the same, he placed on record the order granting anticipatory bail to the petitioner. He also tried to contend that no person can be compelled to produce evidence against himself.

The first question that falls for consideration is "Whether the Court was right in invoking Section 311A of Code of Criminal Procedure and directing A-5 to affix thumb impression in Court for sending the same to finger print bureau when he has released on anticipatory bail?"

It is not in dispute that the accused obtained anticipatory bail before the Sessions Court vide Crl.M.P. No.313 of 2009. Proviso to Section 311A Cr.P.C., states that no order shall be made under Section 311A Cr.P.C. unless the person has at some time been arrested in connection with such investigation or proceeding. Since the petitioner obtained anticipatory bail, it is contended by the learned counsel for the petitioner that the Court ought not to have invoked Section 311(A) Cr.P.C. It is to be noted that application seeking anticipatory bail which is made under Section 438 Cr.P.C., speaks of release of the accused on bail in the event of arrest by taking other factors into consideration. From the above, it is clear that though A-5 was granted anticipatory bail, but his release would be given effect only after arrest. This issue came up for consideration before the Apex Court in **Shri Balchand Jain v. State of Madhya Pradesh**[1]**,** wherein the Apex Court held that 'anticipatory bail' is a misnomer. It has been held that when the Court grants 'anticipatory bail' what it does is to make an order that in the event of arrest, a person shall be released on bail. Manifestly there is no question of release on bail unless a person is arrested and, therefore, it is only on arrest that the order granting 'anticipatory bail' becomes operative. The Court further held that it is a power exercisable in case of an anticipated accusation of nonbailable offence and there is no limitation as to the category of nonbailable offence in respect of which the power can be exercised by the appropriate court.

From a reading of the judgment of the Apex Court referred to above, it is clear that it is only on arrest the order granting anticipatory bail becomes operative. In view of the interpretation given by the Apex Court to the word “in the event of arrest”, the order passed by the learned Magistrate under Section 311A Cr.P.C., in directing to take the signatures or handwriting of a person including that of an accused, though he was granted anticipatory bail, cannot be found fault with. Hence, the judgment of the Calcutta High Court in **Sudip Chatterjee v. State (Laws (Cal)-2012-8-145)** relied upon by the learned counsel for the petitioner may not be of any help to him.

The second argument which was advanced by the learned counsel for the petitioner is that having filed a preliminary charge-sheet there is no point in directing the petitioner to give evidence against himself. It is to be noted that during the course of investigation the very same petitioner gave his thumb impressions before the Court, which were sent to Forensic Science Lab for investigation. Raising certain queries to the sample sent, the material was sent back. In order to fulfil the objections raised, the prosecution made an application before the Court for sending the disputed and admitted signatures/thumb impressions of A-5 with the signatures/thumb impression of the informant. It is to be noted that during the said process, the police completed investigation and filed a preliminary charge-sheet. In the preliminary charge-sheet it has been mentioned that on 08.04.2009 L.W.5 issued a requisition to Sub-Registrar, Rajampet for issuance of a certified copy of registered sale deed. In view of the above, it cannot be said that the application made by the State for summoning the document from Sub-Registrar office, is illegal and improper. It cannot also be said that the petitioner has been compelled to give evidence against himself, for the reason that on an earlier occasion he on his own gave his thumb impression which was returned with some queries. Since the petitioner is disputing the impersonation and as he has already given his thumb impression once, it cannot be said that he is compelled to give evidence against himself. For the aforesaid discussion, I see no reason to interfere with the orders passed by the Court below.

Accordingly, both the Criminal Revisions are dismissed confirming the order of the lower court. As a sequel to it, miscellaneous petitions, pending if any in these Criminal Revision Cases shall stand dismissed.

JUSTICE C. PRAVEEN KUMAR

Date: 13.04.2016
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[1] (1976)4 Supreme Court Cases 572