

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL REVISION CASE No.935 of 2017**

**ORDER:**

This revision is filed under Sections 397 and 401 of Code of Criminal Procedure (for short "Cr.P.C.") questioning the propriety and legality of the order dated 07.03.2017 passed in CrI.M.P.No.331 of 2017 in S.C.No.181 of 2014 by the I Additional Metropolitan Sessions Judge, Hyderabad, whereby the application filed by the State, Bahadurpura Police Station represented by Additional Public Prosecutor under Section 230 of Cr.P.C. to add some witnesses in the list of witnesses for adducing evidence on behalf of prosecution was dismissed.

Petitioner filed an application with a request to add witnesses shown in the list to examine them on behalf of prosecution as they are eyewitnesses to the offence of murder. The reason for such request is that the witnesses shown in the additional list were not examined during investigation, but they are acquainted with the facts of the case and examination of such witnesses is necessary to decide the complicity of the accused. The witnesses sought to be added are eyewitnesses to the occurrence of murder, but due to oversight they were not cited as witnesses.

Respondents/accused filed counter contending that the prosecution is incompetent to file a petition at particular stage of trial and the Court cannot permit the prosecution to add any of the witnesses, who were not cited in the list of

witnesses in the charge sheet. In the absence of any explanation as to why such witnesses were not examined during investigation, they cannot be added as witnesses for prosecution and prayed to dismiss the petition.

Upon hearing the argument of both counsel, the Court below dismissed the petition holding that the prosecution did not assign any reason to file additional list of witnesses to add them as additional witnesses in the charge sheet and that they were not examined as witnesses during investigation and their statements were not recorded under Section 161 of Cr.P.C.

Aggrieved by the impugned order, the present revision is filed raising a specific plea that the respondent Nos.2 to 5 allegedly committed a grave offence punishable under Section 302 of I.P.C. and the investigating agency did not examine the proposed witnesses though they are eyewitnesses to the occurrence of incident. When the complainant lost her elder brother approached the Public Prosecutor and got filed a petition to include eyewitnesses, the Court ought to have accepted such list of witnesses as additional witnesses, but the trial Court committed error in dismissing the petition. It is also contended that the reason assigned by the Court below for dismissing the petition is not correct and finally requested this Court to permit the prosecution to file additional list of witnesses and examine them as witnesses on behalf of the prosecution.

During hearing, learned counsel for the petitioner contended that the Court cannot refuse to record evidence of any witness when the witnesses were proposed to be examined by the prosecution and rejection of application filed under Section 230 of Cr.P.C. on the ground that they were not examined during investigation and their statements under Section 161 of Cr.P.C. were not recorded, is not tenable and placed reliance on “**Jamuna Rani v. S.Krishna Kumar**”<sup>1</sup> “**M.Yadaiah v. State of Andhra Pradesh**”<sup>2</sup> and “**Gude Bhavani Sujatha v. Muggulla Srinivasa Rao**”<sup>3</sup>, basing on the law declared in the above judgments learned counsel for the petitioner requested to allow the petition by setting aside the order passed by the court below.

Sri I.Gopal Reddy, learned counsel for respondent Nos.2 to 5, contended that the petitioner is incompetent to file this revision and he has no locus standi to file the same, at best the State is competent to file revision against the orders under challenge. On this ground, the revision is liable to be dismissed. It is also contended that the additional witnesses now sought to be added were not examined during investigation and the Court cannot permit to add additional witnesses since the respondents/accused will have no opportunity to contradict the witnesses confronting with the previous statements recorded under Section 161 (2) of Cr.P.C.

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<sup>1</sup> 1993 Cri.L.J. 1405

<sup>2</sup> 1996 A.P.L.J. (Crl) 53 (HC)

<sup>3</sup> 2015 (2) ALD (Crl.) 516

and the principles laid down in the above judgments will have no application to the Sessions procedure and prayed for dismissal of the revision.

In view of the rival contentions, the points that arise for consideration are as follows:

- (1) Whether the petitioner – Rashed Khan is competent to challenge the order passed in Crl.M.P.No.331 of 2017 in S.C.No.181 of 2014 dated 07.03.2017 by the I Additional Metropolitan Sessions Judge, Hyderabad?
- (2) Whether the proposed list of witnesses can be taken as additional list of witnesses when they were not examined during investigation?

**P O I N T No.1:**

Public Prosecutor of I Additional Metropolitan Sessions Judge, Hyderabad who is prosecuting officers before the Court filed an application under Section 230 of Cr.P.C. to receive additional list of witnesses viz. (1) Mohd.Hamed Hussain Ali Khan (2) Shaik Fayaz and (3) Bibi Sultana, who allegedly directly witnessed the alleged occurrence of incident. Admittedly, they were not examined during investigation by the investigating agency, but it is the contention of the prosecution that they are eyewitnesses to the commission of offence, but due to oversight they were not cited as witnesses and to prove the complicity of the accused, their testimony is necessary. The Court below did not accept this contention

and on the ground that no reason was assigned for their non-examination by the investigating agency and recording their statement under Section 161 (2) of Cr.P.C. In the absence of any reason for failure to cite them as witnesses, the Court cannot permit the prosecution to add them as additional witnesses.

When State filed an application in Crl.M.P.No.331 of 2017, the trial Court dismissed the application, State alone is competent to challenge such order but not defacto complainant. But the counsel for the petitioner placed reliance on a judgment of this Court rendered in “**Gude Bhavani Sujatha v. Muggulla Srinivasa Rao**” (referred supra), where this Court held that dismissal of application filed by defacto complainant on ground of locus standi, is not proper.

In the facts of the above judgment, defacto complainant filed an application for various reliefs and the defacto complainant therein is a victim within the meaning of Section 2 (w) (a) of the amended Cr.P.C. with effect from 31.12.2009 and as per Section 24 (8) proviso, amended with effect from the same day by the same Act 25 of 2009, the victim got a right to ask the Court and the Court may permit the victim to engage an advocate of his or her choice to assist the prosecution irrespective of there is any Assistant Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor as the case may be. In the said judgment it is

further held that even from the existing provision under Section 302 Cr.P.C. in the proceedings before Magistrate the prosecution can be conducted by any person other than police officer not below the rank of Inspector, if not the Investigating Officer of the case and such conducting of the prosecution is to be permitted either in person or through pleader.

Though there is no quarrel with regard to the law laid down by this Court in the judgment referred supra with regard to competency of defacto complainant to engage advocate as a victim as defined under Section 2 (w) (a) of Cr.P.C. with effect from 31.12.2009 and as per Section 24 (8) proviso amended with effect from the same day by the same Act 25 of 2009.

Even if this principle is applied to the present facts of the case, the petitioner being a defacto complainant is entitled to file an application under Section 230 of Cr.P.C. irrespective of conducting prosecution by Public Prosecutor before the Court below. When the Public Prosecutor filed petition under Section 230 of Cr.P.C. and suffered an order of dismissal, the State alone is competent to challenge the said order and this petitioner, who is alleged defacto complainant is incompetent to challenge the said order taking advantage of definition of victim under Section 2 (w) (a) of Cr.P.C. and as per Section 24 (8) Cr.P.C. as amended by Act 25 of 2009. When the petitioner is not a party to the petition before the Court below

without seeking leave of this Court, he cannot challenge the order passed by the Court below. Though he is person aggrieved, no such leave was obtained from this Court by the petitioner to file revision against the order passed by the Court below in Crl.M.P.No.331 of 2017 in S.C.No.181 of 2014 filed by the State represented by Public Prosecutor.

If the petitioner herein was the petitioner before the Court below by engaging independent advocate irrespective of conducting prosecution by Public Prosecutor, certainly, the petitioner is entitled to file revision in view of the law declared by this Court in “**Gude Bhavani Sujatha v. Muggulla Srinivasa Rao**” (referred supra), but here the petition filed by the Public Prosecutor before the Court below is silent as to whether such petition was filed at the request of the petitioner herein, who is the alleged defacto complainant. In the absence of any application filed before the Court below and leave obtained from this Court to challenge the order being aggrieved person, the petitioner is incompetent to challenge the order as he has no locul standi.

Learned counsel for the petitioner relied on the judgment of this Court in **Gude Bhavani Sujatha v. Muggulla Srinivasa Rao** (referred supra). But, this judgment will have no application, since the facts of the case are based on private complaint and before discharge of the accused or framing of charge against the accused, the complainant wanted to examine persons who are not listed witnesses. But,

here, it is a totally different situation and the charges were already framed against the respondent for serious offences and the trial is yet to be commenced. In such a case, the principle laid down in the above judgment is not applicable.

When the petitioner is not the petitioner before the Trial Court, but only a listed witness in the charge sheet, has no *locus standi* to file revision. The position of law is now far too well settled that a private informant has a right to invoke the revisional jurisdiction of this Court in appropriate cases where an order of the court has occasioned grave failure of justice (vide **Gopal Chandra Sahu And Gopal Sahu vs Choudhury Behera And Ors.**<sup>4</sup>).

But, ordinarily, a private party or defacto complainant has no *locus standi*, to move the High Court or Sessions Court in police case, in a revision. But, if, attention of the High Court is drawn by such party, the High Court in revision can set-aside that order (vide **Smt. V. Ranganayaki and Anr. v. V.J. Srinath and State of A.P.**<sup>5</sup>).

State having prerogative to initiate criminal proceedings and private parties are not entitled to seek relief independent of trial initiated by State. Courts have discretion to allow private party to approach higher forum for relief in exceptional case.

Even if the principle laid down is applied, the petitioner is not entitled to claim any relief in the present revision.

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<sup>4</sup> 1989 CriLJ 1616

<sup>5</sup> 2001 (2) ALT 428

In the present case, a private individual who is a listed witness filed this revision against the order in petition filed by the State i.e. through Additional Public Prosecutor, Hyderabad. Therefore, he has no *locus standi* and this Court found no miscarriage of justice, or is in flagrant violation of law. Therefore, I find that the petitioner herein has no *locus standi* and, this revision is not maintainable, as the petitioner is incompetent to challenge the order passed by the Court below.

Hence, the revision is liable to be dismissed on this ground alone. Accordingly, point No.1 is held against the petitioner.

**P O I N T No.2:**

In view of my finding on point No.1, no further adjudication is necessary to decide whether the additional list of witnesses can be accepted on behalf of the prosecution.

In the result, the criminal revision case is dismissed.

The miscellaneous petitions pending, if any, shall also stand closed.

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**JUSTICE M. SATYANARAYANA MURTHY**

15.09.2017  
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