

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.2071 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code', for brevity), by the petitioner/ Accused no.1, is directed against the order, dated 07.06.2017, of the learned IX Additional Chief Metropolitan Magistrate, Hyderabad, passed in CrI.M.P.No.762 of 2017 in C.C.No.31 of 2010.

2. I have heard the submissions of *Sri K.Surender*, learned counsel for the petitioner/ Accused no.1, and of the learned Public Prosecutor for the State of Telangana representing the sole respondent. I have perused the material record.

3. The facts of the case, in a nutshell, are as follows:-

The petitioner is Accused no.1 in C.C.No.31 of 2010. He is facing trial for the offences punishable under Sections 448, 506, 471, 468 read with 418 of the Indian Penal Code, 1860. After the completion of trial and examination of the petitioner/ Accused no.1 under Section 313 of the Code, he filed the afore-stated miscellaneous petition under Section 311 of the Code requesting to recall PW 1 for further cross-examination by his counsel by confronting to him the documents related to civil suits in O.S.No.757 of 2009 and O.S.No.2952 of 2009 on the file of the civil Courts. The reasons assigned in the petition for recalling PW1 for further cross-examination by confronting the said documents are as follows: 'PW1 was cross-examined about the said pending civil suits. However, at that time, the certified copies of the documents related to said civil suits are not available with the petitioner/ accused. Therefore, the said documents could not be filed at the earliest opportunity and could not be confronted to PW1 in his cross examination. The filing of the said documents and recalling of PW1 for

further cross-examination by confronting the copies of the said documents is necessary for effective adjudication of the issue involved in the criminal case.’ However, the learned Assistant Public Prosecutor, having filed counter before the Court below, opposed the application stating that the trial is concluded and even the examination of the accused under Section 311 of the Code is also completed and that the petition filed at the belated stage cannot be entertained and that in the cross-examination of PW1, he was already questioned about the civil suits and, therefore, the petitioner ought to have filed the necessary documents, if any, at the earliest opportunity, however, the petitioner did not do so; and hence, there are no merits in the request of the petitioner/ Accused no.1 and that the trial Court had rightly rejected the petition filed by the petitioner/ accused.

4. The learned counsel for the petitioner/ Accused no.1, while reiterating the case of the petitioner, would submit as follows: ‘The necessity of recalling PW1 would not have arisen but for the fact that the questions regarding the pending civil suits were posed to him without confronting the certified copies of the documents related to civil suits. The copies of the documents related to civil suits could not be confronted to PW1 at the time of his cross-examination on the aspects covered by the civil suits, as the certified copies of the documents related to civil suits were not available with the accused at that relevant time. In that view of the matter, it has become necessary to file the copies of the documents related to the said civil suits and recall PW1 for further cross-examination by duly confronting the said documents. The filing of the documents and cross-examination of PW1 with reference to the documents by showing the same to him is essential not only to establish the defence but also for effective adjudication of the criminal case by the learned Metropolitan Magistrate.’

5. The learned Public Prosecutor, while reiterating the case of the State, which is stated supra, supported the orders of the trial Court. He asserted that PW1 was already cross-examined with reference to the civil suits and that therefore, there is no need to recall him for further cross-examination.

6. I have given earnest consideration to the facts and submissions.

7. Admittedly, civil suits are pending and PW1 was cross-examined on the aspects related to pending civil suits. Now, the petitioner/accused wants to file the documents related to civil suits and further cross-examine PW1 with reference to the documents related to the civil suits by recalling him. The trial Court, in its orders, observed that it carefully examined the record and that it is of the opinion that in view of the earlier cross-examination of the PW1, there is no need to recall the PW1 for further cross-examination, as he was already subjected to cross-examination in regard to the said civil suits. But the fact of the matter is that the documents related to civil suits are not brought on record and were not confronted to PW1 during his cross-examination as according to the petitioner/accused, the copies of the said documents were not available with him when PW1 was cross-examined earlier. Now the intention of the petitioner/ Accused no.1 is to bring on the file of the criminal case, the said record related to the civil suits for effective adjudication of the */is*. Admittedly, PW1 was already permitted to be cross-examined with regard to civil suits. Hence, the learned counsel for the petitioner submits that the documents related to the civil suits are relevant for adjudication of the criminal case. It is well settled that fair trial is a constitutional right. Further, when the documents are relevant for effective adjudication of the */is*, merely on the ground of delay, the request of the petitioner/accused need not be rejected. On the above analysis, this Court finds that it is a fit case to accord permission to file the copies related to the civil suits and confront them to PW1 and

further cross-examine him with reference to the said documents after according permission to recall him as the documents related to the civil suits, if allowed to be brought on record, would help in effective adjudication of the matter before the trial Court.

8. Now, it is apt to refer to the ratio in the decision of the Supreme Court in *Rajaram Prasad Yadav v. State of Bihar*¹, wherein while considering the scope of Section 311 of the Code, the following propositions are postulated:

The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution.”

Having regard to the facts and the legal position obtaining this Court finds that this Criminal Revision Case is having acceptable merit and, therefore, the impugned order brooks interference.

9. In the result, the Criminal Revision Case is allowed and the impugned order is set aside. As a sequel, Crl.M.P.No.762 of 2017 in C.C.No.31 of 2010

¹ AIR 2013 SC 3081

on the file of the Court of the learned IX Additional Chief Metropolitan Magistrate, Hyderabad, stands allowed and PW1 is recalled for the desired purpose.

Pending miscellaneous petitions, if any, in this Criminal Revision Case, shall stand closed.

M.Seetharama Murthi, J

21st July, 2017
Bvv

