

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION Nos.3281, 3284, 3287, 3288 & 3289 OF 2017

COMMON ORDER:

The point involved in all these Criminal Petitions is one and the same, though, the petitioners are different and Calendar Cases are different, they are taken up for disposal together by a common order.

2. These Criminal Petitions would arise out of orders, dated 10.04.2017, passed in CrI.M.P. No.137 of 2017 in C.C. No.25 of 2016; CrI.M.P. No.140 of 2017 in C.C. No.14 of 2016; CrI.M.P. No.138 of 2017 in C.C. No.13 of 2016; CrI.M.P. No.139 of 2017 in C.C. No.41 of 2016 and CrI.M.P. No.135 of 2017 in C.C. No.26 of 2016, respectively, whereby and where-under, the learned I Metropolitan Magistrate (Municipal Court), Hyderabad, acceded to the request of the petitioners therein and respondent No.1 - the State, Food Safety Officer, represented by its Assistant Public Prosecutor, incidentally, the complainant in the said Criminal Cases, allowing the petitions filed under Section 311 of the Code of Criminal Procedure, 1973 (for short 'the Code') to issue summons to Food Analyst of State Food Laboratory, Nacharam, Hyderabad, in order to prove the Analyst Report by reopening all the aforesaid Calendar Cases.

3. Before the learned Magistrate, petitioner herein, who is respondent - accused in the said petitions, resisted the request. The learned Magistrate having referred to the procedure followed by the

Food Inspector and the submissions made by the respective learned counsel, referring to the ruling in **Nathasha Singh v. C.B.I.**¹ submitted by the learned counsel for the respondent - accused therein on record and having formulated the point for consideration, observing that cross-examination of PW.1 would show that he pleaded ignorance in answering many questions when confronted with by the learned counsel for the accused in regard to the analysis of the sample, opined that examination of Public Analyst would help the Court to come to a just decision of the case, particularly, in the light of the ignorance pleaded by PW.1 with regard to the report. The learned Magistrate having recorded that the report was exhibited as Ex.P17 through PW.1 observing that no prejudice would be caused to the accused if the analyst is examined before the Court as he would get an opportunity to cross-examine the Public Analyst on all the aspects, allowed the petitions ordering issue of summons to the Public Analyst, by name, Sri N. Ravindra.

4. The said orders are under challenge in the present petitions, mainly urging in the grounds that the report itself is self-explanatory where perusal of the document would itself disclose the contents thereof and the complainant is motivated to fill-up the lacunae occurring in the case and with the said intention, moved the petitions at the stage of tendering reply arguments. The learned Assistant Public Prosecutor has filed the petitions even after tendering the

¹. 2013 (3) ACR 2622

arguments, and, therefore, the learned Magistrate ought not to have allowed the petitions, which would be prejudicial to the interest of accused and is against the principles of fair trial leading to miscarriage of justice.

5. Heard Sri N. Naveen Kumar, learned counsel for the petitioners - accused, who argued on the lines as mentioned in the grounds, and the learned Additional Public Prosecutor for the State of Telangana.

6. The learned Additional Public Prosecutor would resist the requests supporting the order passed by the learned Magistrate contending that the learned Magistrate has not committed any mistake and ends of justice was the criteria, basing on which the learned Magistrate allowed the petitions and, therefore, to reject the requests made in the present petitions.

7. In support of the submissions made by the learned counsel for the petitioners, he has placed reliance in **State (NCT of Delhi) v. Shiv Kumar Yadav and another**². In almost similar situation, the Hon'ble Supreme Court disapproved recalling of witnesses being resorted to. The learned counsel would point out paragraph No.20, wherein the Hon'ble Supreme Court referred to its earlier ruling in **Mir. Mohd. Omar v. State of W.B.**³ thus:

²(2016) 2 SCC 402

³. (1989) 4 SCC 436

“20. In *Mir. Mohd. Omar v. State of W.B.* (1989) 4 SCC 436 after the statement of the accused Under Section 313 was recorded, the public prosecutor filed an application for his re-examination on the ground that some more questions are required to be asked. The application was rejected by the trial court but allowed by the High Court. This Court disapproved the course adopted and held:

16. ... Here again it may be noted that the prosecution has closed the evidence. The accused have been examined Under Section 313 of the Code. The prosecution did not at any stage move the trial Judge for recalling PW 34 for further examination. In these circumstances, the liberty reserved to the prosecution to recall PW 34 for re-examination is undoubtedly uncalled for.”

8. It is observed that the report is already marked as Ex.P17. Whether the report would constitute a public document or otherwise can be examined by the learned Magistrate, and in case it is held that it is a public document, the necessary presumption in accordance with the evidentiary rule can be applied which dispenses with the examination of the Analyst. Certainly, it is not a case where the application under Section 311 of the Code ought to be allowed. When the entire exercise of trial was completed, the arguments were tendered by the prosecution (Food Inspector) and arguments of the defence were also advanced and even reply appears to have been given by the prosecution, as could be gathered from what has been submitted by the learned counsel for the petitioners; as the prosecution just immediately thereafter filed the petitions which were allowed by

the learned Magistrate. The learned Magistrate, in allowing the application filed by the prosecution, rested on the concept of 'fair trial', observing that the circumstances on record do warrant examination of the Food Analyst and that no prejudice would be caused to the petitioners - accused. Certainly, such an approach is not on correct lines, for the reason, when the arguments were already concluded including the reply given by the prosecution, there was no justification in allowing an application of this nature on the mere ground that the Food Inspector - PW.1, did not properly answer the questions confronted to him in his cross-examination. Therefore, certainly, allowing the application on the aforesaid ground suffers from infirmity and the orders under challenge are, therefore, liable to be set aside.

9. Accordingly, the orders under challenge are set aside by allowing the present Criminal Petitions.

As a sequel thereto, miscellaneous petitions, if any, pending in all these petitions stand closed.

April 21, 2017.
Mgr

A. SHANKAR NARAYANA, J