

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.17191 OF 2016

ORDER:

Questioning the order, dated 30.11.2016, in Criminal Revision Petition No.17 of 2016, passed by the learned I Additional Sessions Judge, Srikakulam, the revision petitioner - *de facto* complainant filed the present Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code').

2. Heard Sri Tarlada Rajasekhar Rao, learned counsel for the petitioner and Sri Taddi Nageswara Rao, learned counsel for respondent Nos.2, 4 and 5. The notice sent to respondent No.3 returned un-served on the ground that he died.

3. The learned Judicial Magistrate of First Class, Palakonda, passed an order, dated 23.03.2016, while dealing with a petition filed by the *de facto* complainant in Criminal M.P. No.405 of 2016 in C.C. No.2 of 2012 under Sections 244 and 311 of the Code. The sum and substance of the order has been that, when the *de facto* complainant intended to examine certain listed witnesses, the learned Magistrate on the grounds that: (i) names of the list of witnesses were not shown as witnesses in the list filed along with the complaint; (ii) the witnesses are not described as eye-witnesses in the complaint; (iii) the purpose for which the *de facto* complainant intended to examine them is not mentioned; and (iv) the Calendar Case pertains to the year 2012, but is

still pending; and thereby while rejecting to examine the witnesses, allowed only to the extent of examining the Investigating Officer - Sri S. Kesava Rao, on payment of process, and directed to post the matter on 12.04.2016.

4. The aforesaid order was challenged before the revisional Court in Criminal Revision Petition No.17 of 2016. The learned revisional Court while appreciating the submissions made by rival parties, has partly allowed the revision on 30.11.2016, giving a choice to the *de facto* complainant to summon two more relevant witnesses, besides the Investigating Officer.

5. The aforesaid order of the revisional Court is questioned in the present petition requesting to permit the *de facto* complainant to examine all the witnesses shown in the list annexed to Criminal M.P.

6. The learned counsel for the petitioner places reliance on a decision in **Jamuna Rani v. S. Krishna Kumar and others**¹ rendered by a learned Single Judge of this Court in the context of Section 244 (1) of the Code explaining the meaning of expression “all such evidence” occurring therein holding that the complainant has a right to get examined the witnesses mentioned in the supplemental list.

¹. 1993 CrL.L. J. 32

i) He has also relied on yet another decision of the Hon'ble Supreme Court in **Sayeeda Farhana Shamim v. State of Bihar**², on which, the learned counsel for respondents - accused relied upon.

7. The learned counsel for the respondents - accused would submit that the Calendar Case relates to the year 2012 and the accused, who are no other than the wife and close relations of the *de facto* complainant, are being made to wander to the Courts without there-being any sustainable accusation and the present petition is yet another attempt to cause great inconvenience and harassment to them by prolonging the disposal of Calendar Case. It is his submission that the *de facto* complainant is not competent to make an application independently as the report under Section 173 of the Code was filed by the police having investigated into, and the State is the appropriate party to exercise that right.

8. Though, the *de facto* complainant, in his individual capacity, came forward with the said Criminal M.P. the other submission is based on the decision in **Sayeeda Farhana Shamim's Case** (Supra 2) for the proposition that the Magistrate under Section 244 (2) of the Code should use the power conferred in appropriate cases for reasons to be recorded, and the discretion should not be used fancifully and for a *mala fide* purpose to harass the accused; it is quite possible that sometimes when the complainant fails to substantiate the allegation,

². (2008) 8 SCC 218

he may resort to dilatory tactics and thereby harass the accused by giving supplementary list to prolong the continuance of the case; the same should be checked; but in case it is found that in fact the application for summoning the additional witnesses is made for *bona fide* purpose and to substantiate the allegations made in the complaint, then the Magistrate may exercise such power in appropriate cases.

9. Now, turning to the controversy herein, admittedly, the respondents - accused have not challenged the said order. Therefore, to the extent of order of the revisional Court, giving choice to the *de facto* complainant to examine two more relevant witnesses, besides the Investigating Officer, attains finality and there should not be any grievance to the respondents - accused.

10. Adverting to the submission made by the learned counsel for the petitioner herein, the learned Magistrate was not right in observing that the *de facto* complainant has not specified the purpose for which he intends to examine each of the witnesses mentioned in the list, and even the other observation made by the learned Magistrate that the names of the proposed witnesses were not finding place either in the complaint or in the list of witnesses cannot at all be commented. The very fact that the *de facto* complainant is no other than a legal practitioner and the Calendar Case is of 2012 year and not ended even by the end of 2016 itself would reflect that the *de facto* complainant is not actively cooperating for disposal of the case, as the

respondents - accused would not get a chance till they are examined under Section 313 of the Code. Even, in the present petition, the petitioner is not clear in coming out with relevant facts, with which each of the witnesses are connected and will have to speak or the purpose for which he intends to examine each of them. Therefore, the present petition is without any merit and the same deserves to be dismissed.

11. Therefore, the Criminal Petition is dismissed confirming the order, dated 30.11.2016, passed by the learned Sessions Judge in Criminal Revision Petition No.17 of 2016. However, since the Calendar Case relates to the year 2012, the learned Magistrate is directed to dispose of the Calendar Case No.2 of 2012 within a period of six (6) months from the date of receipt of a copy of the order. The *de facto* complainant is also directed to co-operate with the Court for disposal of the Calendar Case within the timeline specified above.

As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand closed.

A. SHANKAR NARAYANA, J

February 23, 2017.

Mgr