

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.693 of 2016

ORDER:

This revision is maintained by the petitioner/newly impleaded and summoned additional accused of C.C.No.15 of 2009 pursuant to the order dated 01.04.2014 passed in CrI.M.P.No.470 of 2011 in C.C.No.15 of 2009 by the learned Special Judge for SPE & ACB Cases-cum-III Additional District & Sessions Judge, Vijayawada, by impugning the same.

CrI.M.P.No.470 of 2011 was in fact filed by the accused No.1 during trial after five or more witnesses of the prosecution examined, including the revision petitioner as PW.3, under Section 319 Cr.P.C. to implead him as co-accused on the ground that he was initially shown as 2nd accused in the FIR and there was material against him, but he was not arrayed as an accused in the charge sheet and he has to face trial as co-accused.

The grounds of revision vis-à-vis oral submissions of the learned counsel for the revision petitioner impugning his impleadment as accused No.3 are that the order of the lower Court is contrary to law and adding him as accused after examination of almost all the witnesses of prosecution including by cross-examination is bad in law and the petition filed by the accused No.1 under Section 319 Cr.P.C. is not at all maintainable either on facts or on law, that the lower Court ought to have seen that name of the petitioner shown in FIR as A.2 was already deleted from the investigation while filing the charge sheet against 2 others basing on the material available with the investigating agency and thereafter the lower Court took cognizance only

against those two accused. It is further submitted that the lower Court without considering the facts of the case and the counter filed by the petitioner, added him as accused No.3 pending trial which is against the law and the order passed by the learned Sessions Judge is thereby liable to be set aside and sought for allowing the revision.

It is submission of the learned Public Prosecutor representing the State and learned counsel for the accused Nos.1 and 2 as respondents to the revision that the order passed by the lower Court holds good and for this Court while sitting in revision within the limited scope there is nothing to interfere and hence to dismiss the revision.

Heard both sides and perused the material on record.

The evidence of PW.4 one of the mediators to the said post trap proceedings show also in support of the evidence of PWs.1,2 and 5 to 8 which includes the defacto complainant and the I.O., that when they went from the signal/indication by defacto complainant/PW.5 into the office of A.1-ACTO she was not found there and they went to the Office of CTO Ratna Raju who is the revision petitioner, additional accused No.3, covered by the impugned order and originally accused No.2 in FIR and when AO.1 found in the office of the revision petitioner Ratna Raju besides himself, it is for the phenolphthalein test conducted to AO.1, the result was negative and secured A.2 and it yielded positive result and there is also disclosure and seizure of the tainted currency from A.2 that were seized when he produced from the left side of the pocket which is Rs.6,000/- and pre-trap proceedings also show the demand by A.1 and abetted by A.2 and

the defacto complainant was unwilling from which he approached the ACB Officials in arranging the trap. The cross examination of PW.4 by A.1 also show the entire post trap proceedings were held in the Chamber of the revision petitioner-CTO which is within the 40 feet distance to the Chamber of A.1-ACTO with suggestion of the I.O. from the FIR shows the name of the said Ratna Raju as A.2, deliberately exempted him from the accusation by not showing in the charge sheet. PW.5 deposed that on 14.07.2008 he met ACTO-A.1 in the CTO's Office and applied for sales tax license for Narasimha Murthy one of the prosecution witness examined as LW.2 and while submitting the application-Ex.P1 to A.1 she informed to spend Rs.10,000/- for the license and took him to the office of CTO Ratna Raju and introduced and Ratna Raju also directed to follow the said instructions and he left by expressing his inability and on 17.07.2008 he went to the CTO Office and met A.1 and requested her to agree for Rs.5,000/- and she told that CTO Ratna Raju demanded Rs.10,000/- previously in his presence and he won't agree for Rs.5,000/-, then he persuaded for Rs.6,000/- and it is latter on contact when stated the work is over to pay, the trap was so arranged. PW.5 in his cross examination by A.1 and A.2, deposed that he mentioned in Ex.P9 report of CTO Ratna Raju informed him that he has to pay Rs.10,000/- for giving VAT license and directed to do as suggested by ACTO-A.1 and A.1 when he bargained for Rs.5,000/- stated of CTO Ratna Raju won't accept and he also deposed the same in his chief examination. PW.7 the I.O. since retired also deposed in same line including from pre registration of crime verification and enquiry. The revision petitioner now

arrayed as A.3 also was examined as PW.3. His evidence whether how far to make use even not taken into consideration and once the other evidence clearly show particularly of PWs.1 and 2 and from Ex.P9 contents that was once considered by the lower Court from said evidence the power to exercise, irrespective of it is the A.1 that moved the application for makes no difference of whether by prosecution or any of the accused, for what the provision-Section 319 Cr.P.C. requires is the subject to satisfaction of the material to implead as additional accused which is something more than mere face value of the material for framing of charge and the same when made out including from the Constitution Bench expression of the Apex Court that was also referred by the lower Court of **Hardeep Singh Vs. State of Punjab**¹, there is nothing wrong in the order.

Therefore, the impugned order of the lower Court no way requires interference but for to face the trial by the revision petitioner/A.3 including by asking for re-calling of the prosecution witnesses so far examined for their cross-examination by him and from evidence to decide in trial of the case on merits.

Subject to the above observation, the criminal revision case is disposed of.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 23.03.2017
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¹ 2014 (3) SCC 93