

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.2172 of 2017

ORDER:

The revision case, filed under Sections 397 and 401 of Cr.P.C., by the petitioner/A-2, is directed against the order, dated 06-06-2017 in Cr1.M.P.No.971 of 2017 in C.C.No.300 of 2012 on the file of the Court of the learned Judicial Magistrate of First Class, Anaparthi.

2. I have heard the submissions of learned counsel for the petitioner/A-2 and learned Public Prosecutor representing State of Andhra Pradesh.

3. I have perused the material record. The facts in nutshell are as follows:

The petitioner/accused is facing trial in the aforesaid C.C.No.300 of 2012 for the offences punishable under Sections 117, 403, 408, 409, 415, 463 and 477-A read with 34 of IPC.

During the course of trial the prosecution/complainant filed the aforestated M.P., under Section 311 of Cr.P.C., requesting for permission to examine one Vuta Trimurthulu, who worked as Deputy Registrar in the office of District Co-operative Office, Kakinada, as additional witness on the ground that the said officer enquired into the mis-appropriation of amounts deposited by the depositors in various accounts of Varahi Primary Agricultural Co-operative Credit Society and that the said officer verified the

account books and records and that his report revealed the complicity of various persons and that in view of the statutory enquiry conducted under Section 51 of the Andhra Pradesh Co-operative Societies Act, 1964, and the report submitted by him under the provisions of the said Act, it is necessary to examine him as a witness in Calendar Case to substantiate the prosecution case.

The petitioner/A-2 having filed a counter resisted the said application. In the counter it is stated that the proposed witness was not examined by the Investigating Officer during the course of investigation and that his statement, if any, recorded is not filed with the charge sheet and that such a witness, therefore, cannot be permitted to be examined as an additional witness, and that such a course of examining a witness not listed and not previously examined causes prejudice to the defence of the accused and that the prosecution is intending to examine the said witness to get over the laches, fill up the lacunae and to cover-up the defects in the prosecution case and that therefore, it is impermissible to examine the proposed witness as additional witness. However, having regard to the facts and the legal position, the trial Court allowed the petition by *inter alia* observing that the examination of the said official witness is essential for arriving at a just decision in the case. Aggrieved thereof, the petitioner/A-2 is before this Court.

4. Learned counsel for the petitioner/A-2 while reiterating his contentions, which are stated in the counter *inter alia* contends as follows:

Admittedly, the proposed witness was not examined during the course of investigation and his previous statement is not filed into Court. The present attempt to examine the said witness, who is not earlier cited as a witness, is only intended to cover-up the defects in the prosecution case and fill up the lacunae in the evidence and that if such request of the prosecution is granted, the same causes great prejudice to the petitioner/A-2.

5. Learned Public Prosecutor supported the order of the Court below, inter alia, contending that the proposed witness is an officer of the Co-operative Department and that as per the provisions of law and procedure, he conducted a detailed enquiry into the allegations of mis-appropriation of the amounts of the depositors and that therefore, the proposed evidence of the said proposed witness who is a responsible officer would only be based on records and hence, no prejudice would be caused to the petitioner/accused if he is permitted to be examined and that, therefore, in the facts and circumstances of the case, the trial Court is justified in passing the impugned order in the revision. He would also submit that the examination of the said witness is essential for the Court to arrive at a just decision in the matter.

6. I have bestowed my attention to the facts and submissions. In view of the detailed narration of the facts of the case and the contentions of the parties, there is no need to dilate the facts and submissions once again. The proposed witness, as borne out by record is a responsible officer of the District Cooperative Office,

Kakinada. One of the allegations against the accused in the crime is that they have misappropriated the amounts of the depositors in various accounts of Varahi Primary Agricultural Co-operative Credit Society. The case of the prosecution is that the proposed witness, who is a responsible officer, enquired into the matter as per law and procedure and that during the course of such enquiry he verified the account books & records and that he found the complicity of the accused in the matter of mis-appropriation of amounts of the depositors and that he submitted a report after such detailed enquiry. Therefore, the prosecution now intends to examine the said official witness as one of the additional witnesses in the present case. Though the Investigating Officer has not examined this witness during the course of investigation, that by itself is not a ground to deny an opportunity to the prosecution to examine the said witness as Section 311 of the Cr.P.C., clearly empowers a Court to examine any witness, at any stage of any inquiry, trial or other proceeding under this Code, if his evidence appears to it to be essential to the just decision of the case. Thus, 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. Be that as it may, therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be examined has to be ascertained. It is

needless to state that exercise of such power should be made judiciously and also with extreme care and caution. The Court has to keep in mind not only the aspect of giving a fair opportunity to the complainant but also the need for ensuring that the accused of the crime is not unduly harassed on account of the delay in disposal of the case.

7. The trial Court having adverted to the legal position and the facts of the case held that the examination of this witness by according permission to the prosecution is essential for a just decision in the case. On the above analysis, this Court finds that there is no merit in the revision and the revision deserves to be dismissed.

8. Accordingly, Criminal Revision Case is dismissed.

Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

M. SEETHARAMA MURTI, J

July 28, 2017

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HON'BLE SRI JUSTICE M. SEETHARAMA MURTI



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