

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.3189 of 2016

JUDGMENT :

The petitioners are accused in S.C.No.42 of 2015 on the file of the Special Sessions Judge for SC & ST (POA) Act Cases-cum-VII-Additional Sessions Judge, Warangal, for the offences punishable under Sections 465, 468, 471 and 447 read with 34 IPC.

2. In the course of trial, after completion of prosecution evidence and examination of the accused under Section 313 Cr.P.C., when they could have file to rely on the document irrespective of otherwise admissibility and proof, to form part of record, having not so filed in the course of the case coming for their defence evidence, filed application under Section 294 Cr.P.C. read with 65-B of Evidence Act, to receive the compact disk recorded from the original SIM of Cell Phone No.9849446636 of the conversation of the complainant disposing the prosecution case. There is also observation by the learned trial Judge, particularly at para 12, in saying the same was recorded when a Panchayat was going on in relation to the case under trial. The learned Judge observed that the Telugu translated conversation of the compact disk material, out come of original SIM of the Cell Phone supra when perused, it is found the conversation is no way relevant to the present lis. The learned trial Judge however dismissed the application referring to Section 65-B of the Evidence Act, as per which provision the application was filed by referring to

the Three Judge Bench expression of the Apex Court in **Anvar P.V. v. P.K. Basheer and others**¹. In that judgment it is the observation that the certification is mandatory to admit. A reading of Section 136 of the Evidence Act is very clear about the right of the Court to decide admissibility also entitled to ask if admitted and once proved as to how it is relevant. The consideration of relevancy without admitting not even contemplated from said reading for such observation at para 13 of the impugned order of the lower Court. In fact, after the expression in Anvar supra, the Rajasthan High Court in **J.V.v. State of Rajasthan**² and the Division Bench of Delhi High Court in **Kundan Singh v. State**³ by overruling the earlier expression of the learned Single Judge in **Ankur Chawla and another v. CBI**⁴ held that Section 65-B of the Evidence Act did not specify as to whether the certificate to be filed with the investigation material with the charge sheet. It is held that such certificate can be filed at a later stage including during trial and not necessarily with the electronic evidence collected and produced.

Once such is the case, the petitioners are entitled to produce even now a certificate as contemplated by Section 65-B (4) of Evidence Act from the above expressions. Further, irrespective of any statutory procedure not adopted in collecting evidence or even collected in secrecy, the same when otherwise admissible, cannot be

¹ 2015 3 ALT Crl. 161 SC = (2014) 10 SCC 473

² (2015) SCC Online page 8331

³ 2015 LawSuit(Del) 5843

⁴ 2014 (10) LRC 96 (Del.)

made inadmissible, much less if otherwise relevant to be irrelevant. The law is fairly settled from the Constitution Bench expressions of Apex Court in this regard. Once such is the case, even the conversation recorded without disclosing to the de facto complainant by the accused persons, the same once admissible and relevant can be admitted. Having regard to the above, the impugned order of the lower Court is liable to be set aside.

3. Accordingly and in the result, the revision is allowed setting aside the impugned order dated 30.11.2016 in Crl.M.P.No.675 of 2016 in S.C.No.42 of 2015 on the file of the Special Sessions Judge for SC & ST (POA) Act Cases-cum-VII-Additional Sessions Judge, Warangal, by restoring the application to its file to decide afresh. The petitioners shall file certificate within one month from the date of receipt of the order before the trial Court to comply the requirement of Section 65-B (4) of the Evidence Act as contemplated by law from the subsequent expressions of the Rajasthan and Delhi High Courts supra after the expression of the Apex Court in Anvar supra and then to decide admissibility and relevancy afresh.

4. Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

17th January 2017

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