

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THURSDAY THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND SEVENTEEN

P R E S E N T
HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 2460 OF 2017

Between:

Gajulaparapu Yashoda & Ors. ... Petitioners/Accused

 $V/s.$

The State of Telangana
Represented by its Public Prosecutor
High Court of Judicature for the State of
Telangana & Andhra Pradesh
Hyderabad & Anr. ... Respondents/Complainant

Counsel for the Petitioners : Sri P. Vishnuvardhana Reddy

Counsel for the Respondents : Public Prosecutor

The court made the following : [Order follows]

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 2460 OF 2017

ORDER :

This Criminal Revision Case is filed under section 397 and 401 of Cr.P.C., challenging the order dated 22/02/2017 passed in Crl.MP.No. 47 of 2017 in CC.No. 531 of 2013 by the II-Additional Judicial Magistrate of First Class, Khammam, whereby the order dated 28/07/2017 passed in Crl.RP.No. 23 of 2017 was allowed by the Principal District and Sessions Judge, Khammam, permitting the Public Prosecutor to file the list of documents along with the petition are

(i) certified copy of EC in regard to the survey No. 94 to an extent of 100 sq.yards executed by Shareefunnisa Begum issued by the Sub-Registrar, RO dated 23/11/2016; (ii) certified copy of survey report dated 24/02/2013 issued by the Tahsildar, Khammam Urban Mandal, vide RC.No.B/SPL/2013; (iii) certified copy of registered sale deed vide document No. 1545/1999, dated 07/5/1999 of Joint Sub-Registrar-II, Khammam, executed by Shareefunnisa Begum; and (iv) certified copy of

order passed by Principal Civil Judge, Khammam, dated 28/10/2013 in I.A.No. 492 of 2013 in OS.No. 249 of 2013 on the sole ground that the complainant submitted all original documents to the Investigating Officer during investigation but he has taken xerox copies and returned back the original to the defacto complainant. At the time of filing charge sheet the Investigating Officer did not file xerox copies and at the stage of trial the Investigating Officer noticed the lapse on his part and filed the petition to receive the documents.

2. The objection raised by the petitioners is that document Nos. (i) to (iv) are subsequent to the filing of charge sheet and document No. (ii) is after lodging the complaint and before filing charge sheet but document No. (iii) is the registered sale deed which is the basis for claim of the accused. The trial court accepting the objections, dismissed the petition but in the revision relying on the judgment of the Apex Court in **CENTRAL BUREAU OF INVESTIGATION V/s. R.S. PAI AND ANR.**, in Criminal Appeal No. 1045 of 2000, reported in [2002] 5 SCC-82 allowed the revision on the ground that the documents can be filed if

the police inadvertently fail to file such documents along with charge sheet and such power even traceable under section 173 Cr.P.C. On the strength of the said judgment, Principal District and Sessions Judge, Khammam, allowed the revision.

3. Aggrieved by the said order, the present criminal revision is filed on various grounds reiterating the contentions raised by the revision petitioners before the Magistrate. During hearing, the learned counsel for the revision petitioners contended that when the said documents are not referred in the evidence collected by the Investigating agency from any other source they cannot be received at this stage and such power is not conferred to file the documents as and when they wish and therefore, the appellate revisional court committed an error.

Even if the principles laid down by the Apex Court in **CENTRAL BUREAU OF INVESTIGATION V/s. R.S. PAI AND ANR.**, are applied filing of additional documents will arise only when they are collected during the investigation or any evidence collected by the prosecution agency they have to come up with the supplementary charge sheet by exercising

powers under section 178 [3] Cr.P.C., therefore, the list of documents cannot be received at this stage and prayed for dismissal of the order in Criminal Revision Petition No.23 of 2017 passed by the Principal Sessions Judge, Khammam and allow the present criminal revision case.

4. The Public Prosecutor supported the order of the Revisional Court basing on the principles laid down by the Apex Court in **CENTRAL BUREAU OF INVESTIGATION V/s. R.S. PAI AND ANR.** referred supra.

5. Indisputably the charge sheet against the revision petitioners is filed on 29/06/2013 before the Magistrate and cognizance was taken by the Magistrate for the offences punishable under section 447 and 427 of IPC read with section 34 of IPC and registered the same as CC.No. 531 of 2013.

6. Coming to the documents produced along with the petition they are: (i) certified copy of EC in regard to the survey No. 94 to an extent of 100 sq.yards executed by Shareefunnisa Begum issued by the Sub-Registrar, RO dated 23/11/2016; (ii) certified copy of survey report dated 24/02/2013 issued by the Tahsildar, Khammam Urban Mandal,

vide RC.No.B/SPL/2013; (iii) certified copy of registered sale deed vide document No. 1545/1999, dated 07/5/1999 of Joint Sub-Registrar-II, Khammam, executed by Shareefunnisa Begum; and (iv) certified copy of order passed by Principal Civil Judge, Khammam, dated 28/10/2013 in I.A.No. 492 of 2013 in OS.No. 249 of 2013 are subsequent to filing of charge sheet. The question of collecting those documents during investigation does not arise. Therefore, the question of failing to file such documents inadvertently does not arise and admittedly no further investigation was done by exercising powers under section 173 [8] of Cr.P.C., thereby the question of filing those documents before this Court without any further investigation and collecting those documents from the defacto complainant does not arise. Those two documents cannot be received by exercising powers under section 242 [3] of Cr.P.C. The second document dated 24/2/2013 i.e., certified copy of survey report issued by the Tahsildar, Khammam Urban Mandal, vide RC.No.B/SPL/2013 was not collected from the material available on record and the statement of any of the witnesses does not disclose about

handing over document No. (ii) to the Investigating Officer. But there is reference about third document i.e., certified copy of registered sale deed vide document No. 1545/1999, dated 07/5/1999 of Joint Sub-Registrar-II, Khammam executed by Shareefunnisa Begum regarding purchase of property in Para No.2 at Page No.2, seventh line.

Therefore, the said document can be received as there is a possibility of failing to file document inadvertently or other wise. The reason for allowing the revision petition is the principles laid down by the Hon'ble Supreme Court in **CENTRAL BUREAU OF INVESTIGATION V/s. R.S. PAI AND ANR.** referred supra, where the Supreme Court made it clear that the Investigating Officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If mistake is committed in not producing the relevant documents at the time of submitting the report or charge-sheet, it is always open to the Investigating Officer to produce the same with the permission of the Court. Even according to

the prosecution, if the documents are collected by the Investigating agency before filing the charge sheet or during further investigation those documents were not produced by mistake or inadvertently, they can be received. But in the present case, no further investigation was undertaken after filing of the charge sheet as contemplated under section 173 {8} Cr.P.C. Collecting documents after filing of the charge sheet does not arise, those documents (i) and (iv) cannot be received since they were not collected either during investigation or before filing of charge sheet or after filing of charge sheet by exercising powers under section 173 [8] Cr.P.C. The second document was also not filed. No where in the charge sheet and none of the statements recorded by the Police under section 161 Cr.P.C. does not disclose collection of the documents from the Investigating agency or any other person, therefore, these three documents cannot be received by the court. In **JAMUNA RANI V/s. S. KRISHNA KUMAR AND ORS** ¹, while deciding similar issue of production of documents, this Court considered the scope and ambit of section 244 Cr.P.C., held as follows :

¹) 1993 CRL. LAW JOURNAL - 1405

“ The Court has got ample power, before the order of discharge is passed, to entertain the application of the complainant with regard to the examination of the witnesses sought to be examined in support of the charge. Not only the persons listed in the complaint but also any other person who has got knowledge or who has got something to say about the complaint alleged therein, can be examined if such an application is made by the complainant before the order of discharge is passed. So, the Magistrate at the earliest point of time has no discretion to dismiss the application to examine some more witnesses other than the persons mentioned in the list. To make it more clear, the complainant has got absolute right to produce the evidence in support of the charge at any time before the discharge order is passed, and for that purpose he can make an application to examine some more witnesses apart from the witnesses mentioned in the list appended to the complaint. While considering [S. 244, Cr.P.C.](#) the Allahabad High Court in [Nawal Kishore Shukla v. State of U.P.](#) 1992 Cri L J 1554 held that the Court can permit examination of the witnesses not mentioned in the list and that it is not necessary that all the witnesses named in the list of witnesses should have been examined before such a permission is granted.”

7. While considering Section 244 of Cr.P.C., the Rajasthan High Court in [RAHUL @ BABU LAL V/s. STATE OF RAJASTHAN](#) ²., the same question came up for consideration and slightly distinct from the facts and circumstances where additional witnesses are proposed to be examined. The same analogy can be applied even to the present case and permit the petitioner to produce document No.(iii) only since it was referred in para No.2 of page No.2 of the charge sheet and therefore, the trial court can receive document No. (iii) certified

²) 1996 CRL. LAW JOURNAL = 1998 CRL. LAW JOURNAL-3644.

copy of registered sale deed vide document No. 1545/1999 dated 07/5/1999 of Joint Sub-Registrar-II, Khammam executed by Shareefunnisa Begum, only and reject the application for receiving the documents (i) (ii) and (iv) and accordingly the order of the Principal Sessions Judge, Khammam, is modified, allowing the Criminal Revision in-part.

8. In the result, the Criminal Revision is allowed in-part, permitting the Magistrate only to receive document No. (iii) certified copy of registered sale deed vide document No. 1545/1999 dated 07/5/1999 of Joint Sub-Registrar-II, Khammam executed by Shareefunnisa Begum.

9. Accordingly, the Criminal Revision Case is disposed of.

10. As a sequel, miscellaneous petitions if any, pending in this Criminal Revision Case shall stand closed.

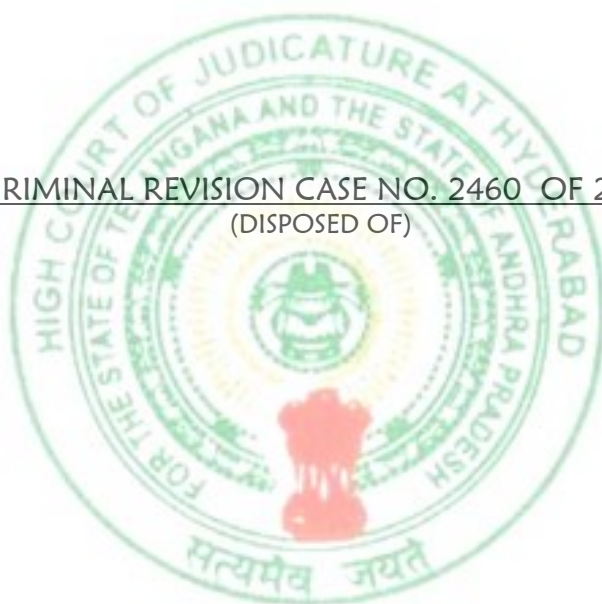
JUSTICE M. SATYANARAYANA MURTHY

14/09/2017
IsL

NB : Furnish CC today
B/o. IsL.

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 2460 OF 2017
(DISPOSED OF)



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