

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Revision Case No.160 of 2017

ORDER:

This revision is preferred by the defacto-complainant in C.C.No.2721 of 2010 impugning the dismissal common order dated 09.01.2017 passed by the learned III Addl.Chief Metropolitan Magistrate, Hyderabad, in CrI.M.P.Nos.3953 and 3954 of 2016 both filed by the State of Telangana through SHO, S.R.Nagar P.S., Hyderabad, one u/ sec.311 CrPC, seeking to recall Dr.Ramakrishna(P.W.8) and Sri Ajaykumar, the Sub Inspector of Police S.R.Nagar Police Station and the other u/ sec.242(2) CrPC, to receive documents viz; certified copy of the letter dated 09.09.2015 addressed by Dr.Ramakrishna(P.W.8) to the Sub-Inspector of Police, S.R.Nagar Police Station, 2) Photostat copy of the injury certificate issued by Dr.Ramakrishna(P.W.8), as grievous in nature and 3) the original prescription issued by Dr. B.S.V.Raju who treated the injured-P.W.1, as they are relevant and necessary to prove the case against the accused. The learned Magistrate, after hearing both sides, held that after completion of trial, on the application of prosecution when summons were issued to the Medical Superintendent, Prime Hospital to produce the Medico Legal Case record of the injured, the Superintendent, Prime Hospital, reported that the same was lost and could not be traced out. One of the documents sought to be received supra is certified copy of the letter dated 09.09.2015 addressed by Dr.Ramakrishna whose evidence is sought to be recalled in one of the above petitions, to the Sub Inspector of Police, S.R.Nagar Police Station in which it is mentioned that, in the certificate dated 08.04.2010, he mentioned the injuries sustained by the injured as minor and simple but later after seeing the documents fully, he thought that those facial injuries might lead to disfigurement in future and he felt it better to give the certificate as grievous injury for giving benefit of doubt to the victim. From this the trial Court held that in the above letter Dr.Ramakrishna not

conclusively opined the injury is grievous in nature, but simply mentioned that facial injury may lead to disfigurement in future and when the Court examined the injured-P.W.1, there no disfigurement on the face was found. Further the other documents that a prescription dated 26.04.2010 issued by Dr.B.S.V.Raju of Prime Hospital, showing the injured sustained pain on the left side of the face held as not at all helpful to prove the case and another document injury certificate dated 08.04.2010 showing the injury as grievous in nature cannot be received as uncertified Photostat copy and held that those documents sought to be received are not at all relevant and helpful to the prosecution to establish that the injury sustained by the defacto-complainant is grievous in nature and Dr.Ramakrishna whom the State wanted to recall, was examined as P.W.8 and also was cross-examined at length who deposed as he has not examined and treated the defacto-complainant, but only issued medical certificate Ex.P.5 basing on the MLC on record, the original of which, is stated missing and no useful purpose would be served in summoning P.W.8.

2. The contentions in the grounds of revision of the defacto-complainant vis-à-vis submission of the learned counsel for the revision petitioner are that the order of the learned Magistrate is erroneous, unsustainable and suffers from material irregularity, that the trial Court failed to see and believe that the certified copy of the letter dated 09.09.2015 addressed by Dr.Ramakrishna to the Sub Inspector of Police, S.R.Nagar Police Station, was highly essential for adjudication of the case as to grievous injury, that the trial Court ought to have seen that Dr.Raju treated the defacto-complainant, and his evidence and the original prescription issued by him was relevant and necessary for just adjudication of the case. The trial Court erred in holding that summoning of witness to prove the document was unnecessary and it was waste of time of the Court, and that no purpose would be served in summoning the witnesses.

3. Whereas, it is the submission of the learned Public Prosecutor for the 1st and 2nd respondents and learned counsel for the 3rd respondent/accused in the revision that the impugned order of the lower Court is supported by reasons to the conclusion and it no way requires interference while sitting in revision within the limited scope and thereby sought for dismissal of the revision.

4. Heard and perused the material on record.

5. In the course of hearing the revision, the petition filed with memo to receive documents which are the Photostat copies of the injury certificate and scanning report etc. This Court feels it just to covert the revision one into application u/ sec.482CrPC from the hearing to subserve the ends of justice and following the latest expression of the three judge Bench in Prabhu Chawla Vs. State of Rajasthan¹. Thus the revision is converted as one under Section 482CrPC.

6. Section 165 of the Indian Evidence Act (for short, 'the IE Act'), apart from Section 311 of CrPC, enables the Court in the voyage of trial where the truth is the quest in the endeavour to arrive the truth, to recall or summon any witness including for production of a document or the like. In fact a perusal of the documents show that the certificate was issued by Dr. Ramakrishna (P.W.8) by examination and treatment of P.W.1. His evidence as P.W.8 before Court was somewhat different. Thus receiving of the documents is essential for confronting him as what he alleges that the original MLC of the hospital was lost. When the medical record issued for attending treatment to the injured/ complainant is available with him even shown lost at hospital the MLC record, the Court is not powerless simply to rely on the so called version of lost at hospital. In fact, it is the duty of the Court under Section 165 of the IE Act, and the 2nd part of Section 311 CrPC

¹ AIR 2016 SC 4245

to permit receiving of the documents to be filed by defacto-complainant and to recall the Doctor-P.W.8 to confront him and also to call back P.W.1 for further examination with reference to it when it is the allegation of the defacto-complainant that the hospital record is suppressed and claims as lost to claim as if it is a simply injury. Thus no Court can perpetrate such attempt to cause injustice to victim but for to allow to file available record and prove to ascertain truth. It is in fact to subserve the ends of justice and to prevent abuse of process, the above referred provisions are made enabling the trial judge to exercise the power. Thus for said purpose despite the applications filed by the prosecution, dismissal of the same by the Court below is thereby unsustainable.

7. Accordingly and in the result, the revision is allowed by setting aside the impugned dismissal orders dated 09.01.2017 of the Court below in both the CrI.M.P.Nos.3953 and 3954 of 2016 and by allowing the petitions by directing the lower Court to receive the records which are submitted in this Court and also those to be filed and to permit by recall of P.W.8 Sri D.Ramakrishna and Sri Ajay Kumar, the Sub Inspector of Police, S.R.Nagar Police Station, for their examination further on behalf of the prosecution including if at all with any right of cross-examination by permitting u/ Sec.154 of the IE Act, in arriving the truth with reference thereto besides recall of P.W.1 for further examination with reference to the documents to exhibit. The Registry is directed to return the documents to the revision petitioner/ defacto-complainant filed in USR No.1109 of 2017 so that he can submit the same before the trial Magistrate pursuant to this order to receive to its file so to exhibit out of those relevant in the course of further examination of P.W.1 and P.W.8 and the Sub Inspector of Police with reference thereto.

Consequently, pending miscellaneous petitions, if any, in this revision shall stand closed.

JUSTICE B.SIVA SANKARA RAO

Dt.24.04.2017.
vvr.