

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.555 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973 ('the Code') is filed by the petitioners/ accused assailing the order, dated 06.02.2017, of the learned XIII Additional District & Sessions Judge, at Gajuwaka, Visakhapatnam, passed in CrI.M.P.No.105 of 2016 in S.C.No.135 of 2013.

2. I have heard the submissions of *Sri P.A.K.Kishore*, learned counsel for the petitioners/ Accused, and of the learned Public Prosecutor appearing for the respondent/ State of Andhra Pradesh. I have perused the material record.

3. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows: 'The petitioners are the accused in the afore-stated case taken cognizance for the principal offence punishable under Section 302 of the Indian Penal Code. After conclusion of recording of evidence in the case, the petitioners/ accused were examined under Section 313 of the Code. At that stage, they filed the afore-stated miscellaneous petition under Section 294 of the Code requesting to direct the prosecution to admit the following documents, which are certified copies of the documents that are forming part of the record, and receive the said certified copies of the documents as exhibits on the side of the accused.

S. No.	Date	Description of the Documents	Remarks
01	15.05.2012 & 09.07.2012	Copy of the Petition in CrI.M.P.No. 888/2012 in Crime No.170/2012 of Gajuwaka (Duvvada Zone) Police Station along with the order thereon dated 09.07.2012	Certified copy
02	13.05.2004	"C" Book of the vehicle bearing Reg. No. AP 33 2658 shown to be belonging to Satya Ammireddy.S	Certified copy
03	23.08.2007	Motor Insurance Certificate cum Policy Schedule pertaining to the Motor Cycle bearing Reg. No.AP 33 2658 vide Policy No.432504/31/2008/1768	Certified copy

The said petition was resisted by the prosecution/ State. On merits and by the orders impugned in this revision, the trial Court dismissed the petition of the petitioners/ accused. Therefore, the petitioners/ accused are before this Court.

4. The case of the petitioners/ accused and the submissions made on their behalf, in brief, are as follows:

As per the case of the prosecution, the deceased picked up his Hero Honda Motorcycle bearing No. AP 33 2856 from the parking place at Duvvada Railway Station at about 7.30 AM on 06.04.2012 and visited the transport office of A1 and that at that place he was killed by the accused in the manner stated in the prosecution case. It is also the case of the prosecution that the afore-stated motor cycle of the deceased was recovered pursuant to the confessional statement/s of the petitioners/ accused. Be that as it may. During pre-committal stage, i.e., in Crime No.170 of 2012 of Gajuwaka Police Station (Duvvada Zone), one Sabbella Parvathi (LW 16-PW11) claiming to be the wife of the deceased, Sabbella Satya Ammireddy, filed a petition under Section 451 of the Code before the learned III Additional Chief Metropolitan Magistrate, at Gajuwaka, Visakhapatnam, seeking interim custody of the Hero Honda CD Dawn Motor Cycle bearing Registration No. AP 33 2658 alleging that her husband is the owner of the said motor cycle. Along with the said miscellaneous petition filed seeking interim custody of the said motor cycle, she filed 'C' book of the said motor cycle standing in the name of her husband and also the policy of insurance. By allowing her said application, the learned Chief Metropolitan Magistrate, by order dated 09.07.2012, granted interim custody of the afore-stated motor cycle bearing registration no.AP 33 2658 to her. One motor cycle was marked as MO4 in the evidence of PW1, who claimed to have taken release of the same by filing a petition. In view of the discrepancies not only in the registration number of the motor cycle but also in view of the conflicting claims of PWs 11 and 1 in regard to release of the motor cycle for interim custody, the petitioners/ accused obtained certified copies of the petition filed

by PW11 for interim custody of the motor cycle and its 'C' book & insurance policy, which are available on the record of the sessions case being part of the case record. Now, to bring the certified copies of the said documents on record as exhibits and make them part and parcel of the record of the sessions case, the accused filed the subject petition requesting the Court of Session to direct the prosecution to admit the certified copies of the said documents and exhibit the same on the side of the accused and formally receive them on file. The discrepancies are admitted by the prosecution. The formal proof of the same can be dispensed with and the documents can be received on file after exhibiting the same for consideration at the appropriate stage by the Court of Session. In the counter filed, the prosecution neither admitted nor denied the documents, which are part of the record of the Sessions case. The Public Prosecutor is not expected to show a thirst to reach the case in the conviction of accused somehow or other irrespective of true facts involved in the case. If the accused are entitled to any legitimate benefit during trial, Public Prosecutor should not scuttle or conceal it. Further, it is the duty of the Public Prosecutor to winch it to fore and make it available to accused. The Supreme Court in *Shiva Kumar v. Hukam Chand*¹ referred to a Full Bench decision of the Allahabad High Court in *Queen-Empress v. Durga* [ILR 1894 Allahabad 84], wherein the role of the Public Prosecutor was pinpointed. As per the ratio in the said decision, it is the duty of a Public Prosecutor to conduct the case for the Crown fairly. His object should be, not to obtain an unrighteous conviction, but, as representing the Crown, to see that justice is vindicated. Therefore, the Additional Public Prosecutor ought to have been directed by the Sessions Court to admit the certified copies, which are copies of undisputed documents forming part of the record of the case before the Court of Session. But, the trial Court erroneously dismissed the petition of the petitioners/ accused on untenable grounds. The trial Court noted that there is a

¹ 1999 (7) Supreme 606

discrepancy with regard to the person who obtained the interim custody of the motor cycle, in view of the testimonies of PWs 1 and 11 and that there is also a discrepancy with regard to the registration number of the motor cycle, which was seized/recovered and which was given interim custody. Having so observed, the Court below erroneously held that for such reasons, the Court cannot direct the prosecution to admit the documents. The findings of the Court below that there are discrepancies by themselves are sufficient reasons to consider the request of the petitioners/ accused rather than disallowing their request. Further, the observations of the Court below that if the petitioners/ accused intend to rely on those documents, they ought to have taken steps either for marking the documents in their evidence or they ought to have produced the said documents at the time of their examination under Section 313 of the Code are also erroneous as the original documents are already part of the record of the Court and as the petitioners/ accused had only obtained certified copies of the said original documents and are making a request to exhibit the same after directing the prosecution to admit the same as they are undisputedly part of the record of the Sessions Case. Further, the petitioners/ accused are not served with notice in the miscellaneous petition before orders granting interim custody of the motor cycle to the petitioner were passed. They are not aware of the orders of interim custody till recently and till the certified copies of the subject documents were obtained from the Court record.'

5. Per contra, the case of the prosecution and the submissions of the learned Public Prosecutor, in brief, are as follows: 'The copy of the petition filed by the petitioners/ accused was brought to the notice of the Investigating Officer. The Sessions Case is pending since more than four years. Even arguments were heard and the case was posted for judgment by a former Presiding Officer of the Court. On his transfer, the case was re-opened. The Sessions Case is not a civil case and it cannot be decided summarily. The

offence with which the petitioners/ accused are charged is punishable with capital punishment and the prosecution is required to prove the charges beyond all reasonable doubt. There is a discrepancy in the number of the miscellaneous petition said to have been filed for interim custody of the motor cycle. In the petition of the accused, the number of the said miscellaneous petition was mentioned as 888/ 2012 whereas in the certified copies, the number of the said miscellaneous petition was mentioned as 880/ 2012. Thus, there is a discrepancy even in the number of the criminal petition. The petitioners/ accused have no right to pressurize the prosecution to admit the documents with which the prosecution is in no way concerned though they are forming part of the record of the Sessions case. If the petitioners/ accused intend to avail the benefit of the discrepancy in the registration number of the motor cycle, they have to take steps in accordance with law. They ought to have taken necessary steps at the relevant stage of the matter. At this belated stage, the petition filed by the petitioners/ accused is misconceived and is not maintainable and is, therefore, liable for dismissal. The Court below rightly dismissed the petition of the accused by giving valid and sustainable reasons. The grounds urged in this case by the petitioners/ accused are untenable and are of no avail. The well reasoned order of the Court below does not brook interference in the facts and circumstances of the case. Hence, the revision case may be dismissed confirming the orders of the Court below.

6. I have given detailed and thoughtful consideration to the facts and submissions.

7. The petitioners/ accused are admittedly facing trial in a sessions case, where one of the charges leveled against them is punishable with capital punishment being an offence punishable under Section 302 IPC. As could be seen from the material record, according to the version of the prosecution, the deceased went on a motor cycle bearing registration No.AP 33 2856 to the

transport office of the 1st accused and that he was killed at that place by the petitioners/ accused in the manner stated in the prosecution case. It is also not in dispute that during the course of investigation, the aforesaid motorcycle with the aforesaid registration number, on which the deceased was stated to have gone to the office of the 1st accused was recovered pursuant to the confessional/ recovery statement/ s of the petitioners/ accused. The said motor cycle is therefore one of the case properties. The record of the Court of Session discloses that one motor cycle was also exhibited as MO4 during the evidence of PW1. It was pointed out that PW1, did not at all mention in his deposition, the registration number of the motor cycle, though he stated that he filed a petition for release of the motor cycle and that the motor cycle of the deceased was released after furnishing sufficient solvencies and that the said motor cycle, which he has taken through Court, is MO4. Be that as it may, the certified copies of the documents produced by the petitioners/ accused along with the subject petition would show that the wife of the deceased (LW16=PW11) filed a miscellaneous petition no.888 of 2012 in the above crime seeking interim custody of the motor cycle bearing registration No.AP 33 2658 and the learned III Additional Chief Metropolitan Magistrate, Gajuwaka, by orders dated 09.07.2012, ordered release of the vehicle and granted interim custody of the said vehicle with the said number to the said petitioner-PW11, who is said to be the wife of the deceased. In the said application and in the registration certificate & the insurance policy of the said motor cycle, which was given interim custody to PW11-the wife of the deceased, the registration number of the motor cycle was mentioned as AP 33 2658. Thus, there is a discrepancy in the registration number of the motor cycle, which was said to have been recovered by the police during the course of investigation and the one which was given to PW11, as per the orders of the learned Magistrate, for interim custody. As already noted, the evidence brought on record during the trial of the sessions case would reflect that PW1 has taken return of motor

cycle by filing a petition; whereas the certified copies of the documents produced by the petitioners/ accused would disclose that the property/ motor cycle bearing registration No.AP 33 2658 was given to PW1, the wife of the deceased, for interim custody. Thus, as observed in the orders of the Court below, it is not clear as to who between PWs 1 and 11 interim custody of the motor cycle was given. It is also not clear from the evidence recorded by the Court below as to whether the motor cycle, which was given for interim custody, was produced before the Court below when it was marked as MO4 in the evidence of PW1. In the deposition of PW1, it is simply recorded that MO4 is the motor cycle of the deceased, which was taken through the Court. There is no whisper of its registration number in his deposition. These discrepancies were also noted in the orders of the Court below, which are impugned. A perusal of the order passed by the learned III Additional Chief Metropolitan Magistrate, Gajuwaka, granting release/ interim custody of the motor cycle to PW11, the wife of the deceased, discloses that the learned APP is served with notice on the petition seeking interim custody of the motor cycle and that he submitted that the petition may be allowed subject to proof of ownership of the property and that eventually, the said learned Magistrate released the property, viz., Hero Honda Motor Cycle bearing Registration No.AP 33 2658 to the petitioner, i.e., Sabbella Parvathi (PW11), subject to certain conditions. Now, the accused wants to rely upon these discrepancies in support of their defence that they are innocent. Therefore, they filed the instant application before the Court below requesting to direct the prosecution to admit the documents, namely, (i) certified copy of the petition filed by the wife of the deceased, PW11, for interim custody of the motor cycle along with order, dated 09.07.2012, thereon; (ii) certified copy of the 'C' book of the vehicle bearing no.AP 33 2658; and, (iii) certified copy of the motor insurance certificate-cum-policy schedule pertaining to the motor cycle bearing registration no.AP 33 2658, vide policy no.432504/ 31/ 2008/ 1768. The said

documents are admittedly certified copies of corresponding original documents, which are forming part of the record of the Sessions Case pending before the Court of Session. Since they are not documents produced by the Investigating Officer along with the charge sheet/final report, the trial Court was of the view that the prosecution cannot be compelled to admit those documents and that the accused ought to have examined either any one of them or a competent witness on their side for exhibiting the same in support of their defence. The trial Court is also of the view that the accused ought to have filed these documents during their examination under Section 313 of the Code. However, the accused submit that when this petition seeking interim custody of the motor cycle was ordered, the accused were not put on notice and that they are not aware of these proceedings till the last stage of the trial of the case. Be that as it may.

8. The law is fairly well settled that the Public Prosecutor should be scrupulously fair to the accused and present the case with detachment and without evincing any anxiety to secure a conviction. The said principle is based upon high policy and as such courts should be astute to suffer no inroad upon its integrity. Otherwise, there will be no guarantee that the trial will be as fair to the accused as a criminal trial ought to be. The State and the Public Prosecutor acting for it are only supposed to be putting all the facts of the case before the Court to obtain its decision thereon and not to obtain a conviction by any means fair or foul. (See: Shiva Kumar v. Hukam Chand (1st supra)]. In the above said decision in Shiva Kumar v. Hukam Chand the Supreme Court referred to a Full Bench decision of the Allahabad High Court in Queen-Empress v. Durga [ILR 1894 Allahabad 84], wherein the role of the Public Prosecutor was pinpointed as follows:

“It is the duty of a Public Prosecutor to conduct the case for the Crown fairly. His object should be, not to obtain an unrighteous conviction, but, as representing the Crown, to see that justice is vindicated: and, in exercising his discretion as to the witnesses his discretion as to the

witnesses whom he should or should not call, he should bear that in mind. In our opinion, a Public Prosecutor should not refuse to call or put into the witness-box for cross-examination a truthful witness returned in the calendar case a witness for the Crown, merely because the evidence of such witness might in some respects be favourable to the defence. If a Public Prosecutor is of opinion that a witness is a false witness or is likely to give false testimony if put into the witness-box, he is not bound, in our opinion, to call that witness or to tender him for cross-examination.”

The Supreme Court also referred to with approval, the observations in the Division Bench decision of this Court in *Medichetty Ramakistiah v. State of Andhra Pradesh*², which are as follows:

A prosecution, to use a familiar phrase, ought not to be a persecution. The principle that the Public Prosecutor should be scrupulously fair to the accused and present his case with detachment and without evincing any anxiety to secure a conviction, is based upon high policy and as such Courts should be astute to suffer no inroad upon its integrity. Otherwise there will be no guarantee that the trial will be as fair to the accused as a criminal trial ought to be. The State and the Public Prosecutor acting for it are only supposed to be putting all the facts of the case before the Court to obtain its decision thereon and not to obtain a conviction by any means fair or foul.

Therefore, to make the trial fair as fair to the accused as a criminal trial ought to be, it is just and necessary to bring on record the documents filed by the accused as part and parcel of the record for appropriate consideration at an appropriate stage of the matter by the learned Sessions Judge. As per the settled legal position, no fact borne out by the record or a document forming part of the record, shall be suppressed and the accused cannot be denied the benefit of any such fact or document merely because it may be unfavourable to the case of the prosecution. On the other hand, it is the duty of the Public Prosecutor as well as the Court to winch such facts and documents to the fore and make them available to the accused. Having regard to the facts and the legal position obtaining, this Court finds that the request of the petitioners/ accused deserves to be considered appropriately.

² AIR 1959 AP 659

9. On the above analysis, this Court holds that if a direction is given to the trial Court to exhibit the certified copies of the documents produced by the petitioners/ accused or the corresponding original documents already on record in exhibit 'C' series for consideration of the same along with the other oral and documentary evidence already brought on record, such a course, would meet the ends of justice.

10. In the result, the Criminal Revision Case is disposed of directing the learned XIII Additional District & Sessions Judge, at Gajuwaka, Visakhapatnam, to take on record the certified copies of the documents, namely, (i) certified copy of the petition in Crl.M.P.No.888 of 2012 in Crime No.170 of 2012 of Gajuwaka (Duvvada Zone) Police Station along with order dated 09.07.2012, thereon; (ii) certified copy of "C" Book of the vehicle bearing Reg. No.AP 33 2658; and, (iii) certified copy of the Motor Insurance Certificate cum Policy Schedule pertaining to the Motor Cycle bearing Reg. No.AP 33 2658 *vide* Policy No.432504/ 31/ 2008/ 1768, and exhibit either the originals of the said documents already available on record or in the alternative the above said certified copies in 'C' series for appropriate consideration at an appropriate stage of the case. As a sequel to the above direction the prosecution, if it so desires, may be permitted to recall and examine any witness(s) already examined to explain or clarify the discrepancies, if any and if necessary. It is needless to state that in such a case, the petitioners/ accused shall be given an opportunity to cross-examine such witness(s), if any, recalled at the instance of the prosecution.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

12th June 2017
RAR