

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE Nos.311 and 214 of 2017

ORDER :

These two revisions are maintained against the dismissal orders of the learned Assistant Sessions Judge, Proddatur, Y.S.R.District, dated 02.12.2016 in CrI.MP.Nos.378 of 2016 and 226 of 2016 respectively in S.C.No.57 of 2010, for the offence punishable under Sections 324 and 307 r/ w 34 I.P.C. against as many as four accused, which is outcome of the report of the de facto complainant in registering crime No.51 of 2009 and from the investigation filed final report that was taken cognizance and charges framed and accused are put to trial.

2. CrI.MP.No.378 of 2016 is filed under Sections 231 and 311 r/ w 2(wa) of Cr.P.C. seeking to receive the documents filed along with the petition. CrI.MP.No.226 of 2016 is filed under Section 24(8) proviso r/ w 2(wa) of Cr.P.C. to permit the de facto complainant to assist the prosecution. Since both were ended in dismissal, these two revisions are maintained.

3. So far as the scope of Section 24(8) proviso r/ w 2(wa) of the amended Cr.P.C. concerned, this Court dealt with in Delta Car Pvt. Ltd. v. Sanjiv Shah and another¹ and the same is also quoted with the approval in several expressions including in CrI.P.No.5674 of 2015. It was by considering the aims and objects

¹ 2015(2) ALT (CrI.) 216 AP

of the amendment and the purpose to be achieved and to meet the requirements even before the Court of Sessions for Section 302 Cr.P.C. has no application to the Court of Sessions but for before trial Magistrate concerned, it is necessary to permit the de facto complainant or other victim as the case may be, to assist the prosecution agency and not merely the prosecutor under Section 301 Cr.P.C. It also drawn the distinction with reference to Section 302 Cr.P.C. of conducting prosecution even through a private person before the Magistrate Court on permission by Court. Having regard to the above, it cannot be missed consideration of the fact that it is not mere assisting the prosecutor but assisting the prosecution including any permission to conduct prosecution practically from the above.

4. Once such is the case, what is required to be shown is Public Prosecutor conducting is not diligently conducting the prosecution and interest of the victim is not safeguarding in conducting the prosecution, where, in such case the Court is not powerless, for the Court can permit to conduct the prosecution by the victim including through private advocate, that is the sum and substance of the expression in Delta Car Pvt. Ltd. (supra).

5. From this, now coming to the facts, a perusal of the applications no way makes out a case as to what is the requirement to permit the prosecution and whether the Public Prosecutor is properly conducting the prosecution or not, which is a prerequisite. Once it is shown the Public Prosecutor is not

conducting the prosecution diligently, Court has to invariably consider the application under Section 24(8) proviso of the Cr.P.C. to permit the victim to conduct the prosecution or assist the prosecution including through private advocate.

6. In fact, coming to the applications concerned, covered by the impugned orders, the prosecution already filed the application similar to the one presented to receive the documents that were ended in dismissal. Undisputedly, once such is the case, there is no even a little whisper in the application to seek permission to conduct or assist the prosecution by the de facto complainant to dispense the normal course of conducting prosecution through Public Prosecutor. Once such is the case, against the impugned order dismissing the application under Section 24(8) proviso r/w Section 2(wa) of the amended Cr.P.C. in CrI.MP.No.226 of 2016 concerned, there is nothing to interfere.

7. However, where at any stage if it is shown the Public Prosecutor is not diligently conducting prosecution, the victim's right is always available.

8. So far as CrI.MP.No.378 of 2016 to receive the documents concerned, as referred supra, earlier the prosecution moved similar application in CrI.MP.No.54 of 2015 that was after hearing ended in dismissal on 06.07.2015, that is also reflected in the impugned order of the lower Court. Though earlier it could not be explained of the purpose for which the documents are to be

received, for there is no *resjudicata* or *obitor* or waiver but for on showing any cogent reasons for receiving.

9. Here, the documents sought to be filed are as many as nine in number. The first one comprises of two D.V.Ds as rightly observed by the impugned order of the lower Court, there is no compliance with the requirement of Section 65(b)(4) of the Indian Evidence Act of certification to admit the electronic secondary evidence, equally the same apply to document No.9, downloaded contents from web. Thus, the lower Court is right in dismissing the application, irrespective of relevancy.

10. Without going into that, so far as electronic evidence concerned, if at all of such certification is obtained and is shown relevant, it can be sought for by filing fresh application.

11. Coming to the other documents seven in number concerned, so far as petition and counter in O.P.No.63 of 2007 and I.A.No.576 of 2009, order in O.P.No.63 of 2007 including docket proceedings, deposition of the husband as PW.1 in O.P.No.63 of 2007 including docket proceedings, deposition of the husband as PW.1 in O.P.No.63 of 2007 and deposition of RW.1 in MC.No.31 of 2007, which are no way shown relevant to the present case, much less, to establish the case of the prosecution, as the case of the prosecution is to be built by the F.I.R. and the investigation material including Part-II Case Diary and not by any additional material, that too, even to seek the indulgence of the

Court under Section 165 of the Indian Evidence Act on showing the necessary to receive such evidence, which is lacking herein.

12. Coming to the other documents, which are document Nos.5, 7 and 8, FIR in crime No.122 of 2007, FIR in crime No.146 of 2012, calendar and judgment in C.C.No.117 of 2010, these can be received being the public documents, hence allowed the revision to that extent by setting aside the order of dismissal. No doubt, as contemplated by Section 136 of the Indian Evidence Act, the Court can consider admissibility while marking any of these documents, leave about any objection of the accused while marking that can be marked subject to relevancy, proof and admissibility to ultimately decide, as laid down by the expression of the Apex Court in Bipin Shantilal Panchal v. State of Gujarat².

13. Accordingly CrI.RC.No.311 of 2017 is allowed in part and CrI.RC.No.214 of 2017 is dismissed.

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

Date:23-03-2017
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Dr. B. SIVA SANKARA RAO, J

² AIR 2001 SC 1158