

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2214 OF 2017

JUDGMENT:

Heard Sri Challa Dhanamjaya, learned counsel for the petitioners - accused Nos.3 and 4, Sri S. Subba Reddy, learned counsel for respondent No.2 - *de facto* complainant, and the learned Additional Public Prosecutor for the State of Andhra Pradesh - respondent No.1.

2. The petitioners are challenging the order dated 26.05.2016, in Criminal M.P. No.1060 of 2016 in C.C. No.106 of 2014, passed by the learned Additional Judicial Magistrate of First Class, Peddapuram, invoking the powers under Section 319 of the Code of Criminal Procedure, 1973 (Code), impleading the petitioners herein as accused Nos.3 and 4.

3. In fact, the prosecution filed the petition under Section 319 of the Code stating that PW.1, the *de facto* complainant, when examined in chief-examination, on 11.04.2016, deposed about presence as well as overt-acts of the petitioners herein viz., Edupuganti Rajarao and Edupuganti Ramakrishna (accused Nos.3 and 4) respectively, and the same also finds place in Ex.P-1 report, and, thereby, requested to implead them as accused Nos.3 and 4.

4. It is not in dispute that originally the petitioners - accused Nos.3 and 4 were deleted when charge sheet was filed by the investigating officer.

5. The main ground urged is that the *de facto* complainant - respondent No.2 did not avail the opportunity of filing protest petition against the charge sheet and more than two years later, he has spoken during the course of his chief-examination, and, therefore, it amounts to abuse of process of law. It is further submitted that before adding any accused under Section 319 of the Code, the Court must come to a *prima facie* conclusion that the evidence on record is sufficient to record conviction of the accused. It is also submitted that PW.1 in his chief-examination, except speaking to the presence of the petitioners, did not assert about over-acts or attribute overt-acts to them to bring the guilt of the petitioners for the charges levelled against them.

6. Though, these grounds have been canvassed by the learned counsel for the petitioners, copy of the chief-examination of PW.1 is not filed for perusal of the Court. When, in the application under Section 319 of the Code, the Assistant Public Prosecutor avers that PW.1, in his chief-examination on 11.04.2016, has spoken about presence and overt-acts of the petitioners herein, besides mentioning the said fact in Ex.P-1 report, the said ground agitated by the prosecution cannot be thrown out. It is no doubt true, no protest application was filed by respondent No.2 challenging deletion of the petitioners, when charge sheet was filed, but, that cannot be a ground

to preclude the learned Magistrate in exercising his power under Section 319 of the Code. Thus, there is no merit in the present revision.

7. Therefore, the Criminal Revision Case is dismissed, at the admission stage itself. As a sequel thereto, Miscellaneous Petitions, if any pending, in this revision stand dismissed.

8. The learned Magistrate is directed to follow the procedure prescribed by the Code.

October 31, 2017.
PV

A. SHANKAR NARAYANA, J

