

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.3240 OF 2015

ORDER:

The Criminal Revision Case is filed against the order dated 18.11.2015 passed in CrI.R.P. No.38 of 2015 by the Sessions Court, Krishna Division, Machilipatnam

2) Heard both sides and perused the material on record.

3) The only issue involved is whether the lower Court in exercising the powers of the revision under Section 397 Cr.P.C got jurisdiction to sit against the interlocutory order by virtue of the bar under Section 397 (2) Cr.P.C for not having any inherent power to convert otherwise under Section 482 Cr.P.C? No doubt, the order is interlocutory in nature filed under Section 91 Cr.P.C by the learned Public Prosecutor representing the State to summon a private doctor, who obtained X-Ray of the defacto complainant and opined that he sustained grievous injury of fracture. It is to say does not apply Section 324 IPC but apply either Sections 325 or 326 IPC. For that purpose to prove the X-ray and opinion, when sought for summoning the private doctor, the lower Court dismissed the same by saying Section 91 Cr.P.C cannot be used against the accused and does not show as relevant for the disposal of the case. No doubt, the view of the trial Court is not correct, leave about the mere wrong quoting of provision is no way fatal apart from the power of the Court under Second limb of 311 Cr.P.C and Section 165 of Indian

Evidence Act to exercise even to suo-motto summon. From the facts, when it shows that he was once treated before private doctor, even statement of the private doctor not recorded by the Investigating Agency, that is not the be all and end all much less it is required to direct any further investigation for that purpose under Section 173 (8) Cr.P.C. However, against the impugned order of the lower Court, though otherwise not correct, when the very revision is not maintainable before the lower appellate Court, the entertaining and allowing of the same is no way sustainable.

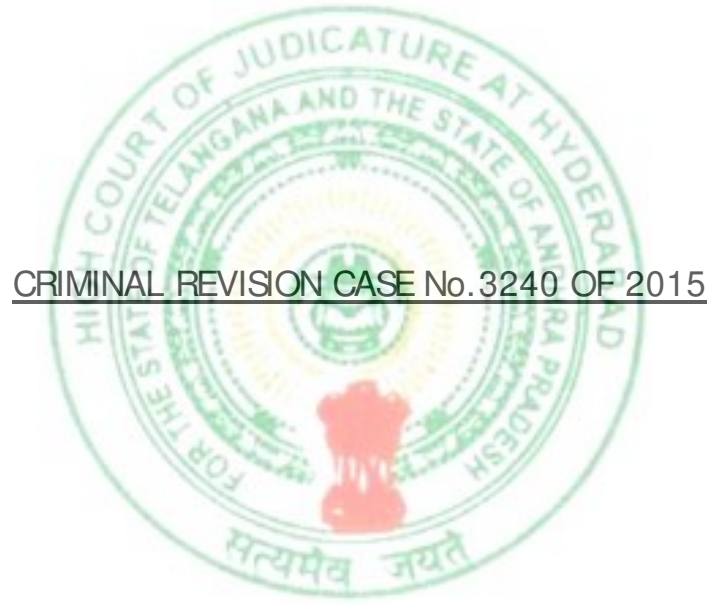
4) Having regard to the above, the revision is allowed setting aside the impugned order dated 18.11.2015 passed in CrI.R.P. No.38 of 2015 by the Sessions Court, Krishna Division, Machilipatnam. However, liberty is given to the defacto complainant vis-à-vis prosecution agency to file a fresh application under Section 311 Cr.P.C read with Section 165 of the Indian evidence Act before the trial Court to consider on merits. It is made clear that the earlier dismissal of the application will not come in the way but for deciding on merits in disposal of the application on such being filed.

5) As a sequel, miscellaneous petitions if any pending shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.13.03.2017
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Date:13.03.2017

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