

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2812 OF 2017

JUDGMENT:

Questioning the order, dated 26.10.2017, in CrI.M.P. No.1815 of 2016 in C.C. No.282 of 2014 of Duvvur Police Station, passed by the learned Judicial Magistrate of First Class, Mydukur, whereby and where-under, the learned Magistrate allowed the petition filed by the prosecution under Section 319 of the Code of Criminal Procedure, 1973 (for short 'Code'), impleading the revision petitioner herein as accused No.3 in the aforesaid C.C., the revision petitioner preferred the present Criminal Revision Case under Sections 397 and 401 of the Code.

2. Heard Sri Challa Siva Sankar, learned counsel for the revision petitioner, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

3. In fact, PW.1, who is the *de facto* complainant, was examined in-chief in part, besides yet another witness as PW.2 in-chief in part. While examining in-chief, PW.1 spoken to the presence and participation of the present revision petitioner, thus, at that stage, the learned Magistrate stopped the continuation of further chief-examination of both PWs.1 and 2, and allowed the application filed by the prosecution under Section 319 of the Code.

4. The learned counsel for the revision petitioner would point out the averments mentioned in the charge sheet filed by the Investigating Officer that during the course of investigation, according to the Sub-Inspector of Police, Duvvur Police Station, who laid the charge sheet, found that the evidence would point out the overt acts of accused Nos.1 and 2 in attacking PW.1 and causing injuries to him, but accused No.3 never participated in the crime and he was not present in the village at all as he was working as a doctor and pursuing further education (House Surgeon) in Government Hospital, Kurnool, and only with an intent to suffer the family of accused Nos.1 and 2, PW.1 added the name of accused No.3 in addition to the names of accused Nos.1 and 2, and accused No.3 never participated in the crime. The Investigating Officer also referred to the statement of Dr. Manikya Rao, Professor and Dr. Sunitha, Assistant Professor in Government Medical College, Kurnool, that the said Surya Sreenu alias Sreenivasulu was pursuing House Surgeon at Kurnool in Government Medical College and he attended the classes all days in the month of January, 2014 and he neither absented the classes, nor obtained leave in the said month, and a report was issued mentioning the same by them and, therefore, he opined that accused No.3 never participated or played any role in the commission of alleged offence and, therefore, deleted his name.

5. It is no doubt true, the Investigating Officer can only recommend the Court to delete the name. Be that as it may, when the cognizance was taken by the learned Magistrate, he has taken the cognizance for the offences under Sections 323 and 506 IPC against accused Nos.1 and 2 only, and ordered summons to be issued giving a date for their appearance, which would necessarily imply that the learned Magistrate did not intend to take cognizance against accused No.3. But, now impleaded accused No.3 by allowing the aforesaid application.

6. The learned Assistant Public Prosecutor supports the order passed by the learned Magistrate.

7. Perused the order under challenge and the material on record. A perusal of the record would disclose that no overt acts were attributed to accused No.3 in the statement made before the police recorded under Section 161 of the Code by PW.1 except speaking the name of revision petitioner. Even perusal of the statement of LW.2 - Kambham Siva Munaiah alias Siva and LW.3 - Kota Rajasekhar Reddy and LW.4 - Jonnavaram Kodanda Rami would clearly show the absence of the revision petitioner at the time and place of occurrence. It is no doubt true, in the latter part of their respective statements they referred to that at the time of incident, Surya Sreenu alias Sreenivasulu was not in the village. It is not known why they made such a statement. But, the fact remains is that the presence of

accused No.3 is ruled out by them. The doctors' statements would show that Mr. Sure Sreenivasulu, who is the revision petitioner herein, attended the classes from January, 2014 for 31 days and even submitted a monthly report to the Superintendent, Government General Hospital, Kurnool and attested by Dr. C. Sunitha, Assistant Professor.

8. Further, in support of his submissions, the learned counsel for the revision petitioner relied on a ruling of the Hon'ble Supreme Court in **Hardeep Singh v. State of Punjab and others**¹, to the effect that the Court should exercise power under Section 319 of the Code, conferred on it to ensure that guilty or real perpetrator of an offence does not go unpunished.

9. The sum and substance of these statements and the FIR referred to in the above, would make it clear that the presence of accused No.3 – revision petitioner at the time and place of occurrence is totally ruled out. In such an event, certainly, allowing the application in Crl.M.P. No.1815 of 2016 to implead respondent No.3 as accused No.3 is legally infirm and, therefore, the order is set aside

10. Accordingly, the Criminal Revision Case is allowed, at the stage of admission itself, setting aside the order, dated 26.10.2017, in Crl.M.P. No.1815 of 2016 in C.C. No.282 of 2014 of Duvvur Police

¹. 2014 (2) ALD (Crl.) 152 (SC)

Station, passed by the learned Judicial Magistrate of First Class,
Mydukur.

As a sequel thereto, Miscellaneous Petitions, if any, pending in
the criminal revision case, stand closed.

A. SHANKAR NARAYANA, J

December 12, 2017.
Mgr

