

**THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**Criminal Revision Case No.3008 of 2017**

**JUDGMENT:**

The petitioners/Accused Nos.2 and 3 respectively arraigned in the charge-sheet in C.C.No.53 of 2009 on the file of III-Additional Judicial First Class Magistrate, Rajahmundry, got the benefit of quashment by this Court in Criminal Petition No. 3868 of 2009, dated 8.10.2013. But, for their misfortune, they became accused again, by an order, dated 17.2.2016, passed by the learned III-Additional Chief Metropolitan Magistrate, Rajahmundry, in CrI. M.P.No.372 of 2016 in C.C. No.53 of 2009 by exercising powers under Section 319 (1) of Cr.P.C., and when their son filed Criminal Revision Petition No.29 of 2016 in C.C. No.53 of 2009, an order dated 15.09.2017 was passed dismissing the petition by the Special Judge for Trial of Cases under SCs and STs (PoA) Act-cum-X Additional Sessions Judge, Rajahmundry. Aggrieved over the same, the present Criminal Revision Case is preferred by the petitioners questioning the orders in the Criminal Revision Petition No.29 of 2016 as well as original Criminal M.P. No.372 of 2016 in C.C. No.53 of 2009.

2. Heard Sri P.R.Balarami Reddy, learned counsel for the petitioners and the learned Additional Public Prosecutor for the State of Telangana.

3. Initially, after the charge-sheet was laid, accused Nos. 2 to 5 filed Criminal Petition No.3868 of 2009 requesting to quash

the proceedings in C.C. No.53 of 2009, and, this Court by an elaborate order acceded to the request of Accused Nos.2, 3 and 5, being the petitioners 1, 2 and 4 in the said Criminal Petition. This Court has elaborately dealt with the allegations against the petitioners and A-5 and acceded to the request by observing in paragraphs-5, 6 and 7, thus:

“5. It is alleged in the charge sheet that on 20.09.2007, A-2 and A-3 with an intent to kill the de facto complainant hit with a car and thereby, she sustained a bleeding injury. There are other allegations against the petitioners that they treated her as a servant-made and also used to harass her by demanding a sum of Rs.15,00,000/- towards additional dowry. There are no specific allegations against A5, the grand mother of A1.

6. As per the charge sheet, the de facto complainant never resided with the petitioners continuously. Though the accident occurred on 20.09.2007, the de facto complainant did not file any complaint against A2 and A3 immediately after the accident. The allegations against the petitioners have come to light only after receipt of a legal notice for divorce issued by A1 on 19.12.2008. Therefore, this Court is of the view that continuation of criminal proceedings against A2, A3 and A5 is an abuse of process of the Court.

7. Accordingly, the Criminal Petition is allowed and the proceedings in C.C. No.53 of 2009 on the file of the III Additional Judicial First Class Magistrate, Rajahmundry, are quashed against petitioner Nos.1, 2 & 4/A2, A3 and A5. Miscellaneous petitions, if any, filed in this criminal petition shall stand closed.”

4. Later, the learned Magistrate has proceeded with the trial, and examined P.Ws.1 to 5, who were also cross-examined, and at that stage the learned Magistrate felt that there is a case against the present petitioners. It appears in the meanwhile A-5 had expired, and thereby

taken cognizance against the petitioners herein, but, the learned Magistrate has not issued notice to the revision petitioners herein for the reason the *de facto* complainant when in Criminal M.P. No.372 of 2016 in C.C. No.53 of 2009 under Section 319 (1) of Cr.P.C. she did not arraign them as respondents therein and only shown her husband, who is already on record as A-1 alone and the State as the 2<sup>nd</sup> respondent herein. The learned Magistrate, in all probability, invariably, ought to have returned the petition and asked her to make them as respondents and ought to have issued notices and an opportunity of being heard, but giving a go-bye to all the principles of natural justice in gross violation thereof, somehow, arrived at an opinion that there is a case against them, and, accordingly, ordered the petition, despite referring to the rulings in **Hardeep Singh v. State of Punjab and others** [2014 (2) ALD CrL 52 (SC) ], and in **Guriya @ Tabassum Tanquir and others v. State of Bihar and another** (Criminal Appeal No.1305 of 2007) of course, relied on by the learned counsel for the petitioners/accused, and thereby passed the aforesaid order.

5. Aggrieved over the same, the husband, who was the 1<sup>st</sup> respondent in Criminal M.P. No.372 of 2016 in C.C. No.53 of 2009, filed Criminal Revision Petition No.29 of 2016 along with CrL.M.P. No.394 of 2016 before the Special Judge for trial of Cases under SCs and STs (PoA) Act-cum-X Additional District Judge, East Godavari at Rajahmundry. The learned X-Additional District & Sessions Judge,

by order, dated 15.09.2017, dismissed Criminal Revision Petition No.29 of 2016 and closed the Criminal M.P. No.394 of 2016 on the ground that the present petitioners were not shown as parties thereto. Thus, the learned Additional Sessions Judge dismissed the petition on mere technical ground, without either remitting the matter to the learned Magistrate to cure the defect or going through the order passed by this Court in Criminal Petition No.3868 of 2009. Therefore, there is patent defect in the said order, besides there being patent illegality in the order passed by the learned Magistrate, as referred to in the above. One fact is certain that the *de facto* complainant having allowed the order in Criminal Petition No.3868 of 2009 to attain finality, and without questioning it before the Hon'ble Supreme Court, again, making an application under Section 319 (1) of Cr.P.C. The observations made by the learned Additional Sessions Judge thereon appears to be **patently** illegal. What all the learned Magistrate ought to have done is only to proceed against the remaining accused for the offences alleged against them. This apart, it is clear from the record as well as the arguments advanced by both sides, in fact P.Ws.1 to 5 were examined and even their cross-examination was done, and at that stage such an application was filed, which is impermissible and in the meanwhile moved this Court by filing Criminal Petition (SR) No.39452 of 2017 requesting to exercise the powers under Section 482 of Cr.P.C. The learned Single Judge by his order dated 10.11.2017 rejected the said Criminal Petition at the

stage of admission, however given liberty to file an appropriate application, that is how, the present Criminal Revision Case is filed.

6. Further question that arises for consideration is, whether the petitioners/proposed accused filed Criminal Revision Case without filing an application seeking leave.

7. Leave may not be necessary for the reason that they were already arraigned as accused, though, cause title did not disclose in any of the petitions.

8. Be that as it may, absolutely, the orders passed by the Courts below, for the aforesaid reasons, do suffer from patent illegality, warranting interference.

9. Therefore, the present Criminal Revision Case is allowed setting aside the orders passed by the learned Additional Sessions Judge in Criminal Revision Petition No.29 of 2016 as well as the order passed by the learned Magistrate in CrI. M.P. No.372 of 2016 in C.C. No.53 of 2009.

As a sequel thereto, miscellaneous petitions, if any, pending in the Criminal Revision Case shall stand closed.

---

A. SHANKAR NARAYANA

Dt. 27.11.2017  
gbs