

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.714 OF 2018
AND
Crl.P. No.1340 OF 2018

COMMON ORDER:

These criminal petitions are filed under Section 482 CR.P.C. questioning the order dated 10.01.2018 passed in Crl.M.P.No.193 of 2017 and Crl.M.P.No.177 of 2017 in S.C.No.390 of 2016 by the Principal Assistant Sessions Judge, Kurnool.

The petitioner/complainant filed Crl.M.P.No.193 of 2017 under Sections 231 and 242 Cr.P.C. alleging that the sessions case was posted for trial and the prosecution would like to file certain documents to show the callous attitude towards LW.1 even after the above case filed and such instances are to be taken into consideration (1) Order copy in Criminal Petition No.6467 of 2015 of this Court, (2) certified copy of Information furnished by Department of Posts, India (Sub-post Master, Chowk Bazaar, Kurnool); (3) certified copy of deposition of A1 (T.Balakonda Reddy) in F.C.M.C.No.10/2014; (4) certified copy of Ex.A.3 marked through PW.1 on 27.2.2017 (F.C.M.C.No.10/2014); (5) certified copy of deposition of A2 (T.Venkatarami Reddy) in F.C.M.C.No.10/2014; (6) certified copy of order passed by the Judge, Family Court, Kurnool in G.O.P.No.32/2015.

The petitioner/complainant filed Crl.M.P.No.177 of 2017 under Sections 231 and 242 Cr.P.C. alleging that the sessions case was posted for trial and the prosecution would like to file certain documents to show the callous attitude towards LW.1 even after the above case filed and such instances are to be taken into consideration (1) C.C.No.892/2015 on the file of Kurnool II Town P.S. for the offence punishable under Section 66(A)(b) of I.T.Act was filed against A1 in the case. (2) The return of property filed by LW.1 Radhika and their no objection in the petition and later they objected

for the same by filing frivolous counter and order thereon in CrI.M.P.No.1274 of 2013 in Crime No.129 of 2013 of Kurnool Taluk P.S.; (3) The petition and Chief examination in O.P.No.32 of 2015 on the file of IV A.D.J. Court-cum-Family Court, Kurnool; (4) The bills issued by D.V.R.Diamonds in the name of A1 and the endorsement given by Commercial Tax Department, O/o D.C. (C.T) Kurnool and the notice issued by the LW.1 and her parents to prove the case of the prosecution.

The main reason for filing petitions is only to introduce those documents as additional evidence, which is subsequent to alleged commission of offence for various offences and requested to receive the documents.

The respondent/accused filed counter before the Court below alleging that the documents are pertaining to the period subsequent to the alleged commission of offence and they cannot be looked into since they are recorded in some other proceedings and that they are not relevant and that it is in the nature of testimonial compulsion. Similarly the order passed by the Family Court also cannot be looked into to decide the complicity of the petitioner.

Upon hearing arguments of both counsel, the trial Court dismissed the petitions holding that Section 231 Cr.P.C. has no application and it is also held that the judgment of the Apex Court i.e. **Bipin Shantilal Panchal v State of Gujarat and another**¹ has no application. In so far Section 242(2) Cr.P.C. is concerned, the Magistrate may, on the application of the prosecution, issue summons to any of its witnesses, to direct him to attend or to produce any document or other things. Learned Magistrate took the case on file on the basis of documents and on the basis of statements under Sections 161 Cr.P.C. and thereafter, the Magistrate committed the

¹ 2001CrI.L.J 1254

case to the Sessions Division, Kurnool as the offence is under Section 307 IPC is made out and exclusively triable by Court of Sessions and that the question of receiving documents does not arise and dismissed the petition.

Aggrieved by the common order passed by the Court below, these criminal petitions are filed mainly on the ground that the Court cannot decide the admissibility of the documents placing reliance of the Apex Court in **Bipin Shantilal Panchal's** case referred supra on the observation of the Court that the Court has no jurisdiction to receive the document is nothing but depriving the petitioner to prove guilt of the accused and further the documents sought to be introduced as additional evidence are just and necessary for deciding the real controversy between the parties. Therefore, denial of opportunity is against the principles of natural justice and prayed to set aside the common order.

Learned counsel for the petitioner, during argument contended that the documents sought to be received as additional evidence having direct bearing on the issue to decide the complicity of the accused, since the subsequent conduct is also necessary to decide the accusation made against the accused and therefore, dismissal of the two application under Sections 231 and 242(2) CR.P.C. is erroneous.

Learned counsel for the respondent supported the common order in all respects.

As seen from the allegations made in the petitions, the petitioner intend to introduce certain documents, which are subsequent to the alleged offences, but the offences allegedly took place in the year 2013 i.e. prior to 25.04.2013, panchanama was also prepared in the presence of panchayatdars. Therefore, the Court is required to decide the complicity of the accused based on the evidence collected during investigation and relevant to the date of offence. The documents are not relevant to the issue

involved in the matter. Moreover, Section 231 Cr.P.C. has no application as it pertains to pre-cognizance stage as observed by the Sessions Court. So far as Section 242(2) Cr.P.C. is concerned, only the Magistrate is competent to issue summons on the application of the prosecution to any of its witnesses directing him to attend or to produce any document or other thing. But it is not the case of the prosecution in the present Sessions Case. Clause 3 of Section 242 Cr.P.,C. permits the Magistrate to take all such evidence as may be produced in support of the prosecution. Sections 238 to 247 deals with trial of warrant cases by Magistrates. But here it is a case where the Magistrate committed the case to the Sessions Division since the case is exclusively triable by Court of Session. Therefore, the Sessions Judge rightly refused to receive documents filed by the petitioner as they pertain to the period subsequent to the commission of offence and the bad conduct of the accused in criminal cases is not relevant, but good conduct is relevant. As such the documents produced before the Sessions Court and making request to receive under Sections 231 and 242(2) Cr.P.C. is contrary to the procedure and apart from that the Sessions Court cannot receive those documents. Hence, the finding of the trial Court cannot be found fault and the criminal petitions are deserves to be dismissed.

Accordingly, the criminal petitions are dismissed.

Pending miscellaneous petitions in the petitions, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

27.07.2018
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