

HONOURABLE SRI JUSTICE P. KESHA VA RAO

CRIMINAL REVISION CASE No. 224 of 2018

ORDER:

Heard both the parties.

The present criminal revision case is filed aggrieved by the orders passed in CrI.M.P.(SR) No.7456 of 2017 dated 22.01.2018 in C.C.No. 325 of 2012 on the file of the Court of the III Metropolitan Magistrate, Ranga Reddy District, at L.B.Nagar returning the petition filed under Section 319 Cr.P.C.

The brief facts of the case are that originally the second respondent filed C.C.No.155 of 2012 against the petitioner for an offence punishable under Section 138 of the Negotiable Instruments Act stating that the petitioner obtained an amount of Rs.4 lakhs on 30.04.2009 with a promise to pay the said amount on 31.12.2011 with interest @ 24% per annum. It is also stated that the petitioner issued a cheque bearing No.543631 dt.09.01.2012 for Rs.4 lakhs drawn on State Bank of Hyderabad, Uppal Branch, Hyderabad. When the said cheque was presented, it was returned with an endorsement 'account closed'. Aggrieved by the same, the second respondent after issuance of the statutory notice, filed a complaint vide C.C.No.155 of 2012. It is the specific case of the second respondent that the statutory notice sent was returned on 19.03.2012 with an endorsement that no such person in the house. However, the petitioner contended that no such notice has been issued to him and in fact, second respondent along with the unofficial respondents i.e. the proposed A-2 to A-4 (respondents 3 to 5 herein) hatched a conspiracy to benefit the second respondent

by writing on the postal cover that 'no such person, hence return to sender' on postal article No.2990 dt.19.03.2012. However, the said postal cover comes within the delivery jurisdiction of Uppal Post Office as address mentioned on the postal cover as Om building, 43, Sinivasa Colony, Uppal, Hyderabad-39. When the petitioner made an application under R.T.I. Act dt.06.09.2012 seeking reason for return of the postal letter, it was informed that no postal letter issuing RL No.2990 was received at Uppal Post Office by Senior Superintendent of Post Offices under proceedings dated 3.10.2012. Therefore, it is clear that the second respondent in conspiracy with the proposed accused sent the letter to Boduppall Post Office, though the address and pin code of the petitioner is within the jurisdiction of Uppal Post Office. In those circumstances, the petitioner filed C.C.No.325 of 2013 against the second respondent for the offences under Sections 191 to 193, 463, 466, 467, 464, 470, 471 and 420 IPC on the file of the Court of the III Metropolitan Magistrate, Ranga Reddy District, at LB. Nagar. Since the petitioner herein, received information from the Senior Superintendent of Post Offices under proceedings dated 3.10.2012 that the postal letter issued in RL No.2990 was not received at Uppal Post Office, the petitioner collected information and noticed that there was a conspiracy by the second respondent along with the proposed A-2 to A-4 (respondents 3 to 5 herein) and filed a petition in CrI.M.P.No. 548 of 2014 under Section 319 Cr.P.C. requesting the Court to implead the respondents 3 to 5 herein as A-2 to A-4 in the main calendar case. However, the said petition was dismissed by orders dated 3.06.2016 with the following finding:

“Further the evidence is not let in by the petitioner/complainant in the present calendar case and without letting such evidence, he cannot be permitted to implead the proposed accused basing on the documents, which have not become final.”

The petitioner herein, has let in evidence by examining himself as PW-1 and marked all the relevant documents. It appears that after examining himself and marking the relevant documents, the petitioner filed petition in CrI.M.P.(SR) No.7456 of 2017 under Section 319 cr.P.C. to implead the respondents 3 to 5 herein as accused Nos.2 to 4 in the main C.C.No.325 of 2013. However, the Court below on 22.01.2018 returned the said petition by observing that already CrI.M.P.No.548 of 2014 was dismissed on 3.06.2016 and hence the application cannot be entertained. Aggrieved by the said orders, the present criminal revision case is filed.

Learned counsel appearing for the petitioner, brought to the notice of this Court that earlier CrI.M.P.No.548 of 2014, was dismissed on the ground that it was filed at a premature stage before even evidence has been let in by the petitioner. Therefore, the order under revision prima facie is not sustainable in law. However, the learned counsel appearing for the respondents supported the impugned order and attempted to take this Court to the merits of the case.

After hearing both parties, and having regard to the facts of the case, particularly, the orders passed in CrI.M.P.No.548 of 2014, it is clear that the said petition, was dismissed on the ground that by the time the petition was filed, the evidence was not let in by the petitioner in the calendar case and without leading evidence, he cannot be permitted to implead the proposed

accused basing on the documents which have not become final and the same was dismissed by observing that it is filed at a premature stage. The material on record also discloses that the petitioner have already examined himself and marked the relevant documents relating to the letter dt.03.10.2012 obtained under the Right to Information Act, the statement of Sub-Post Master, Boduppall during the course of departmental enquiry, complaint given to the Asst. Superintendent of Post Offices, dt.20.05.2013, apart from other documents. Therefore, without appreciating the above said evidence, *vis-à-vis*, the commission of offence by the proposed accused Nos.2 to 4 (respondents 3 to 5 herein), CrI.M.P.(SR) No.7456 of 2017 cannot be returned with an endorsement that already CrI.M.P.No.548 of 2014 was dismissed on 03.06.2016, more so, when it was dismissed by observing that it was filed at a premature stage. In these circumstances, this Court is of the opinion that the reason under which CrI.M.P.(SR) No.7456 of 2017 was returned is unsustainable and is liable to be set aside.

Accordingly, criminal revision case is allowed setting aside the orders passed in CrI.M.P.(SR) No.7456 of 2017 dated 22.01.2018 in C.C.No. 325 of 2012 on the file of the Court of the III Metropolitan Magistrate, Ranga Reddy District, at LB.Nagar. The Court below is directed to number the said petition and decide the same as per law.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

P. KESHA VA RAO,J

Date:18.06.2018
Ccm

HONOURABLE SRI JUSTICE P. KESHAVA RAO



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