

THE HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE NO.628 OF 2018

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor.

2. Learned counsel for the respondents 1 to 3 has been accommodated on his request on 14.6.2018, 18.6.2018 and 20.6.2018. Even today also, Sri M.Shiva Prasad Reddy, learned counsel appearing for the counsel for the respondents 1 to 3 sought an adjournment. However, this Court has refused for granting an adjournment and proceeded with the matter.

3. The present Criminal Revision Case is filed questioning the docket order passed by the Principal Sessions Judge, Khammam dated 23.2.2018 rejecting the Criminal Revision Petition filed in CrI.M.P.No.983 of 2017 in CC.No.337 of 2011.

4. The facts of the case are that the petitioner herein filed a complaint against the respondents 1 to 3 for the offence Under Section 498-A IPC read with Sections 3 and 4 of Dowry Prohibition Act. Pursuant to the said complaint, a crime was registered vide FIR.No.141 of 2011 for the offence Under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act. Pursuant thereto, investigation was conducted and a

charge-sheet was filed against the respondents 1 to 3 for commission of the above said offences. The Court below has taken cognizance of the offences and registered the case as CC.No.337 of 2011. During the course of the trial, the prosecution has filed a petition in CrI.M.P.No.983 of 2017 Under Section 173 (5) read with 242 (3) Cr.P.C. requesting the Court below to receive and mark the document i.e. original report/opinion issued by FSL, Hyderabad dated 9.4.2013. The said petition was dismissed by the learned II.Additional Judicial Magistrate of First Class, Khammam with the following reason

“Heard and perused the record. At present already P.W.1 was examined and at this stage learned APP filed petition to mark the FSL report on behalf of the complainant. On perusal of the report filed by the prosecution it is clearly mentioned that FSL issued report on 9.4.2013 and the present case is related to the year 2011 and further the prosecution clearly stated that the investigating officer did not file the copy of FSL at the time of filing of charge sheet. So, it creates a doubt how it is possible to file the Xerox copy when the FSL issued opinion on 9.4.2013. Hence it creates a doubt about the document filed by the prosecution.

In the result, the petition is liable to be dismissed.”

5. Aggrieved by the above said order, the petitioner herein filed Criminal Revision Petition No.3 of 2018 on the file of the Principal Sessions Judge, Khammam. However, learned Principal Sessions Judge, Khammam, on 23.2.2018, dismissed the Criminal Revision Petition as not maintainable on the ground that the order under challenge is only an interlocutory order against which a revision is not maintainable. Aggrieved by the said orders, the present Criminal Revision Case is filed.

6. Learned counsel appearing for the petitioner would contend that though the order passed by the trial Court is in the nature of an interlocutory order, but it finally adjudicates the rights of the petitioner for bringing the FSL report on record. Once the petition filed Under Section 173 (5) read with 242 (3) Cr.P.C. is dismissed, no further course is available to the petitioner to bring on record, the FSL report, thereby the orders passed by the learned Principal Sessions Judge that the Criminal Revision Petition is not maintainable, cannot sustain in the eye of law.

7. Per contra, learned Public Prosecutor appearing for the 4th respondent would submit that the order passed by the II Additional Judicial Magistrate of First Class is not sustainable in law, more so, in the light of the law settled by this Court and the Hon'ble Apex Court. As far as the docket order which is

impugned in the present Criminal Revision Case is concerned, he would contend that the Criminal Revision Petition is maintainable since the orders passed in Criminal M.P.No.983 of 2017 finally adjudicates the rights of the parties as far as the FSL report is concerned.

8. Having regard to the facts and circumstances in this case and on perusal of the material on record, it is revealed that the FSL report/opinion dated 9.4.2013 has been handed over to the investigating officer by the Government. The said submission of the report is subsequent to filing of the charge-sheet and taking cognizance of the offences by the trial Court. That would not disentitle the prosecution to bring the additional documents on record subsequent to filing of the charge sheet. This aspect has been considered by the Hon'ble Apex Court in the case of CENTRAL BUREAU OF INVESTIGATION vs. R.S. PAI AND ANOTHER ¹, wherein at paragraph No.7, it was held as follows

“7. From the aforesaid sub-sections, it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be

¹ (2002) 5 SCC 82

produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court. In our view, considering the preliminary stage of prosecution and the context in which the police officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which the prosecution proposes to rely, the word “shall” used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173 (4) of the Code of Criminal Procedure, 1898 was considered by this Court in *Narayan Rao v. State of A.P.* (AIR 1957 SC 737) and it was held that the word “shall” occurring in sub-section (4) of Section 173 and sub-section (3) of Section 207-A is not mandatory but only directory. Further, the scheme of sub-section(8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for,

is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation. In such cases, there cannot be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained.”

9. The docket order dated 23.2.2018 passed by the Principal Sessions Judge, Khammam, cannot be sustained since the orders passed in CrI.M.P.No.983 of 2017 dated 13.11.2017 finally adjudicates the rights of the parties for filing the additional documents after the charge-sheet is filed. Therefore, the order passed in Criminal Petition No.3 of 2018 dated 23.2.2018 is set aside and consequently, learned Principal Sessions Judge, Khammam is directed to hear the matter after issuing notices to the respondents therein and pass appropriate orders in accordance with law.

10. The Criminal Revision Case is allowed.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

P. KESHA RAO,J

Date: 21.6.2018
KPM