

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Crl.R.C. No.646 of 2018

ORDER:

This Criminal Revision Case is filed by the petitioners/ respondent Nos.6 to 12/A.6 to A.12 aggrieved by the order dated 30.11.2017 in Crl.M.P.No.78 of 2010 in S.C.No.82 of 2008 passed by the Additional Assistant Sessions Judge, Kadapa, whereby and whereunder learned Judge allowed the petition filed by the complainant—State under Section 319 Cr.P.C and added the petitioners as accused.

2) Heard Sri P.Nagendra Reddy, learned counsel for petitioners and learned Additional Public Prosecutor for the State (AP).

3) Strenuously opposing the impugned order, learned counsel for petitioners would submit that mere statement of PW.1 in his chief-examination about the presence of the petitioners/proposed accused is not sufficient and his statement is not subjected to cross-examination and further, the other witnesses were not examined and in those circumstances, the Trial Court ought not to have allowed the petition to add the petitioners as additional accused in this case.

4) Per contra, learned Additional Public Prosecutor supported the order.

5) The point for determination is:

“Whether the impugned order in Crl.M.P.No.78 of 2010 in S.C.No.82 of 2008 is legally sustainable?”

6) **POINT**: A perusal of the impugned order would show that the complainant filed petition under Section 319 Cr.P.C to add the present petitioners as additional accused basing on the evidence of PW.1. S.C.No.82 of 2008 is in respect of the offences punishable under Sections 147, 148, 324, 326 and 307 r/w 149 IPC. The police have filed charge sheet against A.1 to A.5 while deleting the names of present petitioners/ A.6 to A.12. The cognizance was taken against A.1 to A.5 and after committal, in S.C.No.82/2008 charges were framed against A.1 to A.5 for the offences under Sections 147, 148, 324, 326 and 307 r/w 149 IPC. PW.1 was examined in chief and the matter was posted for cross-examination and at that stage CrI.M.P.No.78 of 2010 was filed and considering the evidence of PW.1, the Trial Court allowed the said petition.

a) In the chief-examination of PW.1, a copy of which is filed along with the material papers, he stated thus:

“Then Sarveswar Reddy came and caught hold of my shirt collar and then all other accused came inside the hotel, then Sarveswar Reddy, Mohan Reddy, Chandra Mohan Reddy, Sankar Reddy, Chenna Krishna Reddy, Viswanatha Reddy beat me with “BANDI LAKULU (cart pegs) and I received injuries backside of my left forearm and my two legs were fractured. The accused present in the Court hall today were also present along with the deceased.”

Then a perusal of the impugned order would show that the Trial Court having considered the above evidence of PW.1 coupled with FIR and also 161 Cr.P.C statement of PW.1, has observed that against the proposed accused i.e, Bhoomireddy Sarveswara Reddy S/o. Surya

Chandra Reddy, Bhoomireddy Mohan Reddy S/o. Surya Chandra Reddy (case against him is abated), Bhoomireddy Chenna Krishna Reddy S/o. Siva Narapu Reddy, Bhoomireddy Viswanatha Reddy S/o. Siva Narapu Reddy, Bhoomireddy Surya Narayana Reddy S/o. Surya Chandra Reddy, Kesava Reddy Siva @ Sankar Reddy S/o. Chenna Reddy and Bhoomireddy Dwarakanatha Reddy S/o. Pedda Chenna Reddy, specific acts were attributed and that there is sufficient material against them. For taking cognizance against them, the Trial Court by its elaborative order referring to various citations, has observed that the Court's power under Section 319 Cr.P.C can be exercised at the stage of completion of examination in chief and the Court need not wait till the evidence is tested on the cross-examination for arriving at the satisfaction. Thus the Trial Court allowed the petition. As stated supra, it is argued that mere satisfaction of the Court by taking into consideration the chief-examination is not sufficient and the other witnesses also not examined so far. I am unable to countenance with the above argument in view of the citations referred to by the Trial Court to the effect that the Court can arrive at its satisfaction by referring to the chief-examination of the concerned witnesses to consider adding of the new accused under Section 319 Cr.P.C.

b) It should be noted that in the chief-examination, PW.1 has not specifically stated the names of Bhoomireddy Surya Narayana Reddy S/o. Surya Chandra Reddy (petitioner No.5) and Bhoomireddy Dwarakanatha Reddy S/o. Pedda Chenna Reddy (petitioner No.7). In that

view of the matter, the inclusion of the aforesaid two petitioners cannot be sustained as their names were not specifically stated in the evidence of PW.1. So far as other petitioners are concerned, PW.1 has specifically stated about their presence and their alleged overt-acts.

7) In the result, this Criminal Revision Case is partly allowed and the names of two petitioners i.e, Bhoomireddy Surya Narayana Reddy S/o.Surya Chandra Reddy and Bhoomireddy Dwarakanatha Reddy S/o.Pedda Chenna Reddy, are directed to be deleted from the order dated 30.11.2017 in CrI.M.P.No.78 of 2010 in S.C.No.82 of 2008 on the file of the Additional Assistant Sessions Judge, Kadapa. The said order will hold good sofaras other petitioners are concerned.

As a sequel, miscellaneous petitions if any pending, shall stand closed.

Date: 06.03.2018
scs

U. DURGA PRASAD RAO, J