

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Revision Case No.704 of 2018

Between:

Kovvuri Venkata Rama Reddy

... Petitioner

AND

1. Mandru Ganga Raju

and another.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 15.06.2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
 2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
 3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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... Respondents

! Counsel for Petitioner : Sri C.Sharan Reddy

^ Counsel for Respondents : Public Prosecutor (AP)

< Gist:

> Head Note:

? Cases referred:

¹ AIR 2007 SC 2786

² 2004 CriLJ 2175



HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.704 of 2018

ORDER:

This Criminal Revision Case is filed by the petitioner/proposed accused under Sections 397 and 401 Cr.P.C, aggrieved by the order dt.04.01.2017 in CrI.M.P.No.366/2016 in SC ST SC No.5/2013 on the file of Special Judge for Trial of Cases under SCs & STs (POA) Act-cum-VIII Additional District and Sessions Judge, West Godavari, Eluru, whereby and whereunder the learned Judge allowed the petition filed by the complainant under Section 319 Cr.P.C seeking to add the proposed accused.

2) The complainant filed CrI.M.P.No.366/2016 on the submission that the instant case was registered basing on the report of PW.1, wherein he mentioned the names of A.1 and his son by name Venu as offenders and after due investigation, charge sheet was filed against A.1 and A.2 by deleting the name of the son of A.1 i.e, Venu, stating that he was not present at the time of occurrence. It is further submitted that the *defacto* complainant and two other witnesses i.e, LWs.1 to 3 were examined as PWs.1 to 3 and in their evidence, they deposed that A.1 and his son Venu committed the offences under Sections 447, 506 IPC and Section 3(1)(x) of SCs & STs (POA) Act. Therefore, since *prima facie* evidence was found against the son of A.1, it is a fit case to add the said Venu as accused and to issue summons/warrants to him.

3) The petitioner/proposed accused filed counter and opposed the petition contending that PWs.1 to 3 are close relatives and the son of A.1 was never called as Venu and his name was Kovvuri Venkata Rama Reddy and he joined in Millennium Software Solutions and he did many computer courses from 22.07.2010 to 04.02.2011. On the date of alleged incident, he was looking after the accounts of the Millennium Software Solutions Company at Visakhapatnam, whereas Pangidigudem is at a distance of 375 KMs and hence, there was no possibility for him to be present at the scene of offence. It is further submitted that as civil dispute was pending between A.1 and PW.1, the proposed accused was falsely involved by PW.1. He thus prayed to dismiss the petition.

4) The Trial Court allowed the said petition on the observation that it was surfaced from the evidence of PWs.1 to 3 and also from the record i.e. report lodged by PW.1 and 161 Cr.P.C statements of the witnesses, that the proposed accused also participated in offence and the defence put-forth by respondents/accused that the proposed accused is never called as Venu and that he was not at all present at the time of alleged incident can be availed during the course of trial but not at the premature stage and accordingly, ordered to issue summons to the proposed accused.

Hence, the instant CrI.R.C.

5) Heard Sri C.Sharan Reddy, learned counsel for petitioner and learned Additional Public Prosecutor for the State (Andhra Pradesh).

6) Severely fulminating the impugned order, learned counsel for petitioner would argue that the power under Section 319 Cr.P.C vested in a Court is an extraordinary power, which should be used sparingly and cautiously to add a person as an accused. In the instant case, he would point out, the police after a thorough investigation having found from the statements of the witnesses that the proposed accused was not present at the scene of offence, rightly omitted him from the charge sheet. Learned counsel would submit that the name of the proposed accused is Kovvuri Venkata Rama Reddy, who is the son of A.1 and he was never called as Venu and therefore, even if PWs.1 to 3 referred the name—Venu, it cannot be attributed to the proposed accused and therefore, the Trial Court ought not to have been carried away by the evidence of LWs.1 to 3 to summon him.

Nextly, he would argue that the proposed accused is a B.Com Degree Holder and immediately after completion of degree, he migrated to Visakhapatnam and joined in Millennium Software Solutions and did many computer courses between 22.07.2010 and 04.02.2011. On the date of alleged offence, he was looking after the accounts of Millennium Software Solutions at Visakhapatnam, which is at a distance of 375 kms from Pangidigudem and to this effect a certificate was issued by Manager, HR of Millennium Software Solutions. Therefore, the presence and participation of the proposed accused in the alleged offence at the given time and place is highly inconceivable. Besides, there are civil disputes between the family of accused and complainant, with regard to land in RS No.501/2 in an extent of 2 Acres situated in Pangidigudem village in Jangareddygudam Mandal. He would

submit that the mother of PW.1—Mandru Sarojini filed O.S.No.531/2014 (old O.S.No.709/2009) against accused, whereas A.1 filed O.S.No.66/2005 against PWs.1, 2 and 4, which are pending in the Court at Kovvuru since 2004. All these would show that the *defacto* complainant, somehow determined to implicate the proposed accused inspite of the fact his name was deleted from the charge sheet.

7) Per contra, learned Addl. P.P in support of the impugned order, would argue that the I.O erroneously omitted the name of proposed accused from the charge sheet but the Trial Court having found the presence of the proposed accused and his participation from the evidence of PWs.1 to 3, rightly issued summons against him. Whether the proposed accused is also having an alias name as Venu and the plea of *alibi* put-forth by him, were all matters of facts which have to be established during trial. Plea of *alibi* is concerned, as per Section 103 of Indian Evidence Act, the burden heavily rests on the proposed accused to establish and the enquiry under Section 319 Cr.P.C was not the right occasion to decide the said aspect. He thus prayed to dismiss the revision.

8) The point for determination is:

“Whether there are merits in the Crl.R.C to allow?”

9) **POINT:** As per charge sheet in Crime No.214/2010 of Jangareddygudam PS, the offence took place on 20.11.2010 at about 5:00PM in the fields of Tirumalapuram Revenue Village of Jangareddygudam Mandal. As per the version of PW.1—the complainant, when he went to the land in

R.S.No.501/2 in an extent of 2 Acres, at that time, he noticed the cattle of A.1 were grazing in his fields and so he tried to drive them out. A.1 and the proposed accused, who is his son disputed with PW.1 and abused him in filthy language in the public view and thereby insulted him in the presence of LW.2. A.1 threatened PW.1 that he would see how PW.1 would continue his cultivation in the disputed land. On that night, it is alleged, A.1 and A.2—the tractor driver ploughed the land and caused damage to the cotton crop of PW.1.

a) The police after investigation, basing on the statements of LWs.1 to 18, observed that a *prima facie* case was established against A.1 and A.2. LWs.9 and 10, who are the farm servants of A.1 stated that Venu, the son of A.1 was not in the habit of visiting the fields to observe the agricultural works and he might be studying at other place. Similarly, LWs.14 to 16, who are the residents of Pangidigudem village, who are owning the agricultural lands in and around the lands of A.1 also stated that Venu, the son of A.1 was not in the habit of visiting the fields and he might be studying somewhere else. Basing on the statements of aforesaid witnesses, the I.O deleted the name of the petitioner from the array of the accused and charge sheeted only A.1 and A.2.

b) However, during trial PWs.1 to 3 have revealed about the complicity of the petitioner in the offence. PW.1—the complainant stated that on 20.11.2010 at about 4:30 or 5:00pm, when he went to cotton field along with PW.2, he found cattle were grazing cotton leaves and so he had driven them out. Then Venu—the petitioner and A.1 abused him in filthy language by

touching his caste and they beat him by catching his tuft. PW.2 pulled him back and rescued. Again the petitioner and A.1 abused him in filthy language and warned that they would plough the crop in his field and challenged him to do whatever he like. On that night they ploughed his crop. PW.2—A. Rama Rao, also deposed in similar fashion, stating that when PW.1 questioned the petitioner about their cattle grazing the cotton crop, the petitioner abused PW.1 in the name of his caste in a filthy language and both petitioner and A.1 went upon PW.1. Then PW.2 separated them and brought him back. Later he came to know that the fields of PW.1 were ploughed. PW.3—A.Mohan Rao, is the hearsay witness. PW.1 informed him about the incident and he advised PW.1 to come on the next day as it was already late in the night. On the next day PW.1 informed that the accused ploughed the land of PW.1.

c) Basing on the evidence of above witnesses, the Trial Court allowed the petition filed by the prosecution under Section 319 Cr.P.C and issued summons to petitioner.

10) On two main grounds the petitioner challenges the impugned order. Firstly that petitioner's name is Kovvuri Venkata Rama Reddy and he was never called as Venu and therefore, the name Venu referred in the evidence of PWs.1 to 3 cannot be taken as basis to include him. The next one is the plea of *alibi*.

a) The first argument is concerned, it is true that PWs.1 to 3 referred the name of the petitioner as Venu, whereas petitioner's name is Kovvuri Venkata Rama Reddy. However, the charge sheet would show that even LWs.9, 10, 14

to 16 on the strength of whose statements, the I.O deleted the petitioner from the charge sheet, have too referred Venu as son of A.1. So at this juncture, the difference in the name cannot be taken as a ground to discard the evidence of PW.1. Then the statements of LWs.9 and 10 are concerned, they no doubt stated that they were the coolies of A.1 and they attended the work in the fields till 6:00PM and Venu had no habit of visiting the fields. However, it shall not be forgotten that they are the farm servants of A.1 and their's is only a statement and not tested by oath. Whereas PWs.1 to 3 stated about the presence of Venu by oath. Then LWs.14 to 16 are concerned, their version is that they attended the fields on 20.11.2010 and no incident had occurred and Venu, the son of A.1 was not in the habit of visiting the fields. However, their version is only in the form of 161 Cr.P.C and not tested by oath. Hence the 161 Cr.P.C statements of LWs.9, 10 and 14 to 16 cannot be given preference to the evidence of PWs.1 to 3 during the limited enquiry under Section 319 Cr.P.C to decide the existence of *prima facie* material against the petitioner.

b) What remains is the *alibi* plea. The petitioner to buttress the plea of *alibi* produced a certificate dt.03.06.2016 said to be issued by Millennium Software Solutions, stating that Kovvuri Venkatarama Reddy, has been trained as Accounts Executive from 22.07.2010 to 04.02.2011 and he worked in their institute as an Accountant on 20.11.2010 due to absence of their Accounts Executive. It must be noted that as per Section 103 of Indian Evidence Act, the burden of proving the *alibi* plea lies on the person who propounds it and the same has to be done during the trial. In similar circumstances, when the Sessions Court added an accused after an enquiry

under Section 319 Cr.P.C and the High Court quashed the said order, the Apex Court in *Rajendra Singh v. State of U.P and another*¹, reversed the said order holding thus:

“Para 7: *The High Court has basically relied upon the statements of six witnesses which had been recorded by the investigating officer under Section 161 CrPC to record a positive finding that the respondent could not have been present at the scene of commission of the crime as he was present in a meeting of Nagar Nigam at Allahabad. A statement under Section 161 CrPC is not a substantive piece of evidence. In view of the proviso to sub-section (1) of Section 162 CrPC, the statement can be used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso. Therefore, the High Court committed a manifest error of law in relying upon wholly inadmissible evidence in recording a finding that Kapil Dev Singh could not have been present at the scene of commission of the crime.*

Para 8: *That apart, the plea taken by the respondent Kapil Dev Singh in his petition under Section 482 CrPC was that of alibi. Section 103 of the Evidence Act says that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is proved by any law that the proof of that fact lie on any particular person. The second illustration to Section 103 reads as under:*

“B wishes the Court to believe that at the time in question, he was elsewhere. He must prove it.”

This provision makes it obvious that the burden of establishing the plea of alibi set up by Respondent 2 in the petition filed by him under Section 482 CrPC before the High Court lay squarely upon him. There is hardly any doubt regarding this legal proposition. (See Gurcharan Singh v. State of Punjab [AIR 1956 SC 460 : 1956 Cri LJ 827] , Chandrika Prasad Singh v. State of Bihar [(1972) 4 SCC

¹ AIR 2007 SC 2786

140 : AIR 1972 SC 109] and State of Haryana v. Sher Singh [(1981) 2 SCC 300 : 1981 SCC (Cri) 421 : AIR 1981 SC 1021] .) This could be done by leading evidence in the trial and not by filing some affidavits before the High Court. In such a case the prosecution would have got an opportunity to cross-examine those witnesses and demonstrate that their testimony was not correct.

In *State of Karnataka v. Krishnappa*², High Court of Karnataka also opined similarly and observed thus:

“Para 7: xx xx xx ... Merely because he pleaded alibi, that on the date of the alleged incident he was not present in this village, 3 days prior to the alleged incident he had been to wife’s house i.e, Beludi village of Harihara taluk as his wife gave birth to a child, is not sufficient proof. The respondent is required to appear before the Courts and then plead for alibi by cross examining the prosecution witnesses.”

11) In the light of above discussion, I find no perversity or illegality in the impugned order passed by the Trial Court. It is made clear that the contentions now raised by the petitioner can be availed and established by him during trial, in which case, the Trial Court shall consider them and pass the judgment on merits uninfluenced by the observations made by this Court in this order.

12) With the said observations, this Criminal Revision Case is dismissed.

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

U. DURGA PRASAD RAO, J

Date: 15.06.2018

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LR Copy to be marked: YES / NO

² 2004 CriLJ 2175