

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY
CRIMINAL APPEAL No.1375 OF 2006

JUDGMENT:

This Criminal Appeal is filed under Section 378(3) and (1) of Cr.P.C. by the State assailing the judgment dated 31.03.2005 in C.C.No.197 of 2002 on the file of the XVI Metropolitan Magistrate at Hyderabad, wherein and whereby the first respondent-accused No.1 was found not guilty for the offence punishable under Section 193 I.P.C. and consequently, acquitted him of the said charge.

2. The facts leading to filing of the present appeal are briefly as follows: The first respondent is a *de facto* complainant in C.C.No.11 of 1997 on the file of the Special Judge for SPE and ACB Cases. During the course investigation, the statement of the first respondent was recorded under Section 164 Cr.P.C. For one reason or other, he resiled his earlier statement recorded under Section 164 Cr.P.C. The learned Additional Special Judge for SPE and ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad, forwarded the complaint to the learned XVI Metropolitan Magistrate at Hyderabad to initiate criminal proceedings against the first respondent under Section 193 I.P.C. The learned Magistrate has taken the case on file against the first respondent for the offence punishable under Section 193 I.P.C. After following the due procedure, the learned XVI Metropolitan Magistrate at Hyderabad numbered the complaint as C.C.No.197 of 2002.

3. On appearance of the first respondent, copies of all documents were furnished to him under Section 207 Cr.P.C. The learned XVI Metropolitan Magistrate framed charge under Section

193 I.P.C, read over and explained to the first respondent in Telugu, for which he pleaded not guilty and claimed to be tried.

4. During the course of trial, on behalf of the prosecution, PW.1 was examined and Exs.P.1 to P.6 were marked. After completion of the prosecution evidence, the first respondent was examined under Section 313 Cr.P.C. with reference to the incriminating evidence deposed against him by the prosecution witnesses, which he denied. No oral or documentary evidence was adduced on behalf of the first respondent.

5. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that there is a procedural irregularity in forwarding the complaint by the Special Court and hence, the prosecution failed to prove the guilt of the first respondent for the offence punishable under Section 193 I.P.C. and consequently, acquitted him of the said charge. Hence, the present appeal is filed by the State.

6. The learned Public Prosecutor submitted that the trial Court has misconstrued the scope of Section 340 Cr.P.C. and acquitted the first respondent on presumptions and assumptions. He further submitted that the trial Court failed to consider that the first respondent resiled his earlier statement recorded under Section 164 Cr.P.C. He further submitted that the findings recorded by the trial Court are not sustainable either on facts or in law and hence it is a fit case to allow the appeal.

7. *Per contra*, the learned counsel for the first respondent submitted that the prosecution has not followed the procedure as

contemplated under Section 340 Cr.P.C. He further submitted that the complaint itself is not maintainable under law and the same was considered by the trial Court in right perspective and acquitted the first respondent. He further submitted that there are no grounds much less valid grounds to interfere with the impugned judgment.

8. Now the points that arise for consideration in this appeal are:

1. Whether the prosecution has proved the guilt of the first respondent for the offence punishable under Section 193 I.P.C.? and
2. Whether the impugned judgment is sustainable?

9. Point Nos.1 and 2 are intertwined with each other; hence, this Court is inclined to address both the points simultaneously in order to avoid recapitulation of facts and evidence.

10. In order to appreciate the rival contentions, this Court is placing reliance on the following judgments:

K.Rajagopala Rao vs. P. Radhakrishna Murthy¹ wherein

this court held at para No.2 as follows:

“From bare perusal of this provision in [the Code](#) it is abundantly clear that if an offence mentioned in [section 195](#) appears to have been committed in relation to proceedings in a Court that Court has the power under [section 340](#) to hold an enquiry and after enquiry (a) record a finding to that effect (b) make a complaint thereof in writing and (c) send it to Magistrate of First Class having jurisdiction. The word "Court" used in the provision is important and it is not important whether the matter, with regard to which there is a complaint of commission of an offence mentioned under [section 195](#), was of civil nature or criminal nature. The word "Court", as is well settled, indicates that there must be power to record evidence and to come to a judicial determination on the evidence so recorded. When an offence in the nature of offence found in [section 195](#) is committed in proceedings in a Court, the Court, irrespective of the nature of the proceedings, is entitled to hold an enquiry under [section 340](#). Therefore, the learned Judge was clearly in error in

¹ 2002 (2) ALD (CrI.) 213 (AP)

believing that [section 340](#) of the Code was not applicable to the application before him.”

Sadi Srinivasa Reddy vs. Sadi Rama Devi² wherein this court held at para No.7 as follows:

“It is explicit from the above referred provision that the Court must conduct a preliminary inquiry and thereafter, if the Court thinks it necessary, record a finding to that effect and forward the complaint to the concerned Magistrate of First Class having jurisdiction, for necessary action. In the case on hand, no such preliminary inquiry has been conducted by the Judge of the Family Court before forwarding the complaint to the V Metropolitan Magistrate, Vijayawada for taking necessary action.”

11. As per the principle enunciated in the cases cited supra, conducting of preliminary enquiry under Section 340 Cr.P.C. is *sine qua non* to forward the complaint to the concerned Magistrate to take necessary action.

12. Let me consider the facts of the case on hand in the light of the above legal principle.

13. It is not in dispute that the first respondent is the *de facto* complainant in C.C.No.11 of 1997 on the file of the Additional Special Judge for SPE and ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad. During the course of investigation, the statement of the first respondent was recorded under Section 164 Cr.P.C. At the time of trial, the first respondent resiled his earlier statement recorded under Section 164 Cr.P.C. In the judgment dated 31.12.2001 in C.C.No.11 of 1997, the learned Special Judge made the following observations:

“that the conduct of the accused is highly objectionable and therefore they are liable for the offence perjury.”

² 2004 (3) APLJ (HC) 304

Hence, the learned Special Judge forwarded the complaint to the XVI Metropolitan Magistrate at Hyderabad to register a case against the first respondent for the offence punishable under Section 193 IPC r/w 340 Cr.P.C.

14. A perusal of Section 340 Cr.P.C. at a glance indicates that the court has to record a specific finding that the accused committed perjury after conducting preliminary enquiry. Even as per the testimony of P.W.1, no show cause notice was issued to the first respondent. His testimony further reveals that no preliminary enquiry was conducted by the Special Judge for SPE & ACB cases before forwarding the complaint to the learned XVI Metropolitan Magistrate at Hyderabad. If the testimony of P.W.1 is taken into consideration, the learned Special Judge has not followed the procedure as contemplated under Section 340 Cr.P.C, such as, issuance of show cause notice or conducting of preliminary enquiry before forwarding the complaint to the Magistrate. Hence lodging of complaint against the first respondent itself is vitiated in this case. When there is a procedural irregularity in lodging the complaint, the accused is entitled to acquittal.

15. Having regard to the facts and circumstances of the case and also in view of the principle enunciated in the cases cited supra, I am of the considered view that the prosecution failed to prove the guilt of the first respondent for the offence under section 193 I.P.C.

16. The trial Court after considering the material available on record, arrived at a conclusion that the first respondent was found not guilty for the offence punishable under Section 193 I.P.C.. The trial Court has assigned reasons much less valid reasons to its

findings. There is no flaw much less legal flaw in the findings of the trial Court, which warrant interference of this court. I am in complete agreement with the findings recorded by the trial Court in all aspects. I see no merits in this Criminal Appeal and hence the same is liable to be dismissed.

17. In the result, the Criminal Appeal is dismissed. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 15.02.2018

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