

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

**CRIMINAL PETITION No.4028 of 2018**

**ORDER:**

This petition is filed under Section 482 Cr.P.C by the petitioner/A2 challenging the order dated 19.2.2018 in CrI.R.P.No. 384 of 2017 passed by the Metropolitan Sessions Judge, Hyderabad, dismissing the revision petition filed by the petitioner/A2 questioning the order passed in CrI.M.P.No. 494 of 2015 in C.C.No. 221 of 2013 by the VI Additional Chief Metropolitan Magistrate, Hyderabad.

2. In C.C.No. 221 of 2013, the police of Panjagutta, Hyderabad, have filed charge sheet against A1 to A3 for the offences under Sections 420, 423, 468 & 120(B) IPC. While so, petitioner/A2 filed CrI.M.P.No. 494 of 2015 before VI Additional Chief Metropolitan Magistrate, Hyderabad, to discharge him from the case and on 9.10.2017, learned Magistrate passed an order to the effect that there was no representation for the counsel for A2 and hence the petition was dismissed. Challenging the said order, petitioner/A2 filed CrI.R.P.No. 384 of 2017, before the learned Metropolitan Sessions Judge, Hyderabad. In his order dated 19.2.2018, learned Metropolitan Sessions Judge, after narrating the facts of the case observed that the allegations against A1 to A3 were that they impersonated the de-facto complainant and obtained the gift deed as if executed by the de-facto complainant. The Court further observed that in fact, thumb impressions of accused Nos. 1 & 2 were taken in the Court and when compared with the document No. 1649/1999, they did not tally and hence there were clear allegations that the de-facto complainant was impersonated and it is not as though there is absolutely no material against the petitioner and the order passed by the trial Court does not require any interference.

3. Heard learned counsel for petitioner/A2 and learned Additional Public Prosecutor.

4. The grievance of the learned counsel for petitioner/A2 is two fold. The trial Court ought not to have dismissed the discharge application merely because the counsel was absent as the counsel representing A2 was in a different Court at the time when the matter was called and by the time he reached back to the Court, the petition was dismissed and virtually it was an ex-parte order. Secondly, when the matter was carried in Crl.R.P, the revisional Court instead of discussing the merits and demerits in the order passed by the trial Court, probed merits in the main case and held as if there was strong material against the petitioner/A2. Therefore, the revisional Court went beyond the scope of the revision. Learned counsel would submit that while discussing the merits of the case, the learned Metropolitan Sessions Judge fumbled in observing as if the thumb impressions of A1 & A2 were taken in the Court and when they were compared with the thumb impressions appearing in the document No. 1649/1999 they did not tally. Learned counsel would submit that the trial Court had never taken thumb impressions of A1 & A2 in the Court and reference of 'A1 and A2' in experts report, relates to the thumb impressions of the defacto complainant (Ch.Grace Victoria), therefore, the observation of the revisional Court is incorrect apart from unwarranted. On these submissions, learned counsel prayed to allow the petition.

5. Learned Additional Public Prosecutor left the matter to the discretion of the Court.

6. I find force in the submission of the learned counsel for petitioner/A2. The scope of the revision was to see whether the impugned order passed by the trial Court

was sustainable or not. Without probing into that aspect, the revisional Court probed into merits of main case. It observed as if the thumb impressions of A1 and A2 were taken in Court and when compared the same with the document No. 1649/1999, they did not tally. In my considered view that aspect should have been left for discussion at the relevant stage by the trial Court. Since the valuable right of defense of petitioner/A2 is at stake in the case, the revisional Court ought to have set aside the order of the trial Court and given an opportunity to be heard by the trial Court.

7. Therefore, in the interest of justice, this petition is allowed and the impugned order in Crl.R.P.No. 384 of 2017 passed by the Metropolitan Sessions Judge, Hyderabad is set aside and consequently the order in Crl.M.P.No. 494 of 2015 in C.C.No. 221 of 2013 passed by the VI Additional Chief Metropolitan Magistrate, Hyderabad, is also set aside and the said Court is directed to hear the petitioner/A2 and pass appropriate orders on merits. As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

Date: 17.04.2018  
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**U.DURGA PRASAD RAO, J**