

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL REVISION CASE No.1082 OF 2013

ORDER:

This criminal revision case is filed by the petitioner/defacto complainant aggrieved by the order dated 31.05.2013 in DDR.No.3161/2013 in Crime No.31 of 2013 of Visakhapatnam IV Town Police Station, passed by the I Additional Chief Metropolitan Magistrate, Visakhapatnam, allowing the memo filed by the Investigating Officer under Section 311A Cr.P.C. requesting to secure the specimen signatures and hand-writings of the defacto complainant and the accused for the purpose of investigation.

2. The factual matrix of the case is thus:

(a) The defacto complainant purchased a vacant site of Acres 0.45 cents under registered sale deed dated 11.06.1992. In 2002, she borrowed hand loan of Rs.2,00,000/- to meet the marriage expenditure of her second daughter from A1, who is her nephew, by keeping the original documents as security for the hand loan. After sometime, she tried to clear the hand loan and take back her documents, however, A1 did not return the documents stating that they were kept in bank locker. On further insistence by the complainant, A1 told that he deposited her documents in the Bank of Baroda as security for obtaining overdraft facility for A2. On verification, the complainant

came to know that forging her signatures and styling as 'guarantor', her documents were deposited in the Bank of Baroda with the connivance of some of the bank employees, who are A3 and A4. Hence, she gave report to police.

(b) A case in crime No.31 of 2013 was registered and investigated into. Pending investigation, the Investigating Officer filed memo under Section 311A Cr.P.C. before learned Magistrate stating that he secured certain documents deposited with the Bank of Baroda and since the accused were denying the forgery of the signatures of the complainant on the loan documents, it was necessary to collect specimen signatures and hand-writings of both the defacto complainant and A1 to A4 for comparison.

(c) The defacto complainant appeared and submitted her objection for obtaining signatures under Section 311A Cr.P.C. on the ground that the arrest of the accused was a mandatory precondition before taking steps under the said section. It was further contended that the Investigating Officer under the guise of securing specimen signatures and hand-writings was trying to water-down the gravity of the case. The trial court negated the objections raised by the defacto complainant with the observation that the bar engrafted under Section 311A Cr.P.C. applies only to 'accused person' but not to defacto complainant. Therefore, the defacto complainant can appear before the court and submit her specimen signatures

and hand-writings and can accept them for the purpose of further investigation and Section 311A Cr.P.C. will not interdict such procedure.

(d) So far as the accused is concerned, the trial court observed, the arrest of the accused is no doubt a precondition before taking steps under the aforesaid section. However, in the case on hand, the accused voluntarily came before the court to cooperate with the Investigating Officer for investigation by expressing their willingness and readiness to give their specimen signatures and hand-writings before the court. The court observed, in such circumstances, even under Section 73 of Evidence Act, the court can take specimen signatures and hand-writings of accused in the open court for the purpose of comparison. The court further observed that when the accused themselves came before the court expressing their willingness to offer their specimen signatures and hand-writings, the court cannot direct the Investigating Officer to arrest them and it is the discretion of the Investigating Officer whether or not to arrest them. On these observations, the trial court negated the contentions of the defacto complainant and allowed the requisition filed by the Investigating Officer for taking specimen signatures and hand-writings of the defacto complainant as well as the accused. Hence, the instant criminal revision case.

3. Heard Sri T.Pradyumna Kumar Reddy, learned counsel appearing for the petitioner. Notice is served on the respondents. However, there is no representation on their behalf today.

4. Upon hearing the learned counsel for petitioner and on perusal of Section 311A Cr.P.C., I find the contentions raised by the defacto complainant were rightly turned down by the learned Magistrate. Section 311A Cr.P.C., which is germane for consideration in this matter, reads thus:

“311A. Power of Magistrate to order person to give specimen signatures or handwriting. – *If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting:*

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.”

5. A perusal of the proviso, no doubt, make it clear that an order under this section shall not be made unless the person has at some time been arrested in connection with such investigation or proceeding. The term ‘person’ in the context of Section 311-A Cr.P.C. can only be understood as an accused but not others. This aspect has been dealt with by this Court in CrI.P.No.7755 of 2017, dated 17.08.2018,

wherein, under similar circumstances, this Court observed thus:

“This Section upholds the power of a Magistrate to direct any person including an accused person to give specimen signatures and handwriting for the purpose of any investigation or proceedings under the Code. The proviso to Section says that no order shall be made under this section unless the person at some time been arrested in connection with such investigation or proceeding. Section 311-A has been inserted in the Cr.P.C. as per Cr.P.C. (Amendment) Act, 2005 w.e.f. 23.06.2006, on the analogy of Section 5 of the Identification of Prisoners Act, 1989. While the main Section says the Court has power to direct any person including the accused, the proviso illustrates that the order shall not be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding. Needless to emphasize that the word ‘person’ used in the proviso is with reference to accused in the main section but not others. Therefore, in a given case, the Court may have to obtain the specimen signatures and handwriting of not only accused in that case but also the complainant. Since the question of arrest of the complainant at some time in connection with such investigation or proceeding does not arise, such arrest in the proviso, in my view, shall be referred to the accused in the main case.”

6. Therefore, it is clear that the word ‘person’ refers to accused but not others. Hence, so far as defacto complainant is concerned, there can be no demur that the proviso in Section 311A Cr.P.C. will not detract the court from taking specimen signatures and hand-writings of the said defacto complainant as rightly observed by the trial court.

7. So far as the accused is concerned, I fully endorse the view of the trial court. Going by the impugned order, the accused in the instant case themselves have come forward to cooperate with the investigating agency for investigation and in that process, they made it clear that they are ready and willing to give the specimen signatures and hand-writings before the court. If that were the case, as rightly observed by the trial court, the Investigating Officer may not find it necessary to arrest them and the court also may not direct the Investigating Officer to invariably arrest the accused only for the purpose of fulfilling the condition laid down in Section 311A Cr.P.C. The procedural code shall sub-serve the ultimate end of the justice. When the proviso under Section 311A Cr.P.C. says that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding, it should be understood that the said person who is an accused was not cooperating with the investigating agency and meddling with the investigation and therefore, at one point of time, he should have been arrested by the Investigating Officer. However, that is not the case here. But for a forward arrest, the accused themselves are subjugated to the jurisdiction of court and investigative power of the police and willing to cooperate for advancement of investigation. In that view, the objective of Section 311-A Cr.P.C. can be said to be sub-served. In that view, mere non arrest of the accused

prior to the securing of their specimen signatures and hand-writings will not vitiate the order of the court. I find no illegality or irregularity in the order impugned.

8. Accordingly, this criminal revision case is dismissed, by confirming the order passed by the learned Magistrate.

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

13.11.2018
SS

U.DURGA PRASAD RAO, J

