

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL APPEAL No.1542 of 2006

JUDGMENT:

1 This Criminal Appeal, under Section 378 (3) & (1) Cr.P.C. is filed by the State assailing the judgment dated 18.08.2005 passed in C.C.No.179 of 2002 on the file of the Court of the VIII Additional Chief Metropolitan Magistrate, Hyderabad wherein and whereby the respondent was not found guilty and acquitted of the offence punishable under Section 193 IPC r/w 340 Cr.P.C.

2 The factual matrix that lead to the filing of the present Criminal Appeal is as follows:

a) The respondent lodged a complaint with the Inspector of Police, ACB, Hyderabad Range. Basing on the said complaint, the Inspector of Police registered a case against one G.Chenna Reddy, Municipal Engineer, Rajendranagar Municipality, Ranga Reddy District and investigated into and laid charge sheet for the offences punishable under Sections 7, 13 (1) (d) Ii) (ii) r/w 13 (2) of Prevention of Corruption Act on the file of the Court of the Special Judge for SPE & ACB Cases – cum – V Additional Chief Judge, City Civil Court, Hyderabad. The learned Special Judge has taken the case on file under above sections of law and numbered the charge sheet as C.C.No.14 of 1998.

b) After full fledged trial, the learned Special Judge for SPE & ACB Cases – cum – V Additional Chief Judge, City Civil Court, Hyderabad forwarded a complaint to the VIII Additional Chief Metropolitan Magistrate, Hyderabad against the respondent herein for the offence punishable under Section 193 IPC r/w 340 Cr.P.C. After following the due procedure, the learned VIII Additional Chief

Metropolitan Magistrate, Hyderabad numbered the complaint as C.C.No.179 of 2002.

c) On appearance of the respondent, copies of all documents were furnished to him under Section 207 Cr.P.C. The learned VIII Additional Chief Metropolitan Magistrate examined the respondent under Section 239 Cr.P.C and framed charge under Section 193 IPC, read over and explained to him in Telugu, for which the respondent pleaded not guilty and claimed to be tried.

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

e) Basing on the oral and documentary evidence available on record, the trial Court came to 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 respondent for the offence punishable under Section 193 IPC and acquitted him of the offence.

3 The learned Public Prosecutor strenuously submitted that the trial court has misconstrued the scope of Section 340 Cr.P.C. and acquitted the respondent on presumptions and assumptions. He further submitted that the trial court failed to consider that the respondent resailed 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 this is a fit case to allow the appeal.

Per contra, the learned counsel for the respondent submitted that the prosecution has not followed the procedure 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 respondent. He further submitted that there are no grounds much less valid grounds to interfere with the impugned judgment.

4 Now the points that would emerge for consideration in this appeal are:

- i) Whether the prosecution has proved the guilt of the respondent for the offence punishable under Section 193 IPC?
- ii) Whether the impugned judgment is sustainable?

5 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 believing that section 340 of the Code was not applicable to the application before him.”

¹ 2002 (2) ALD (Cr1.) 213 (AP)

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.”

6 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.

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

8 A perusal of the record reveals that the statement of the respondent was recorded under Section 164 Cr.P.C by the concerned Magistrate in C.C.No.14 of 1988 on the file of the Court of the Special Judge for SPE & ACB Cases – cum – V Additional Chief Judge, City Civil Court, Hyderabad. For one reason or the other, during the course of trial in the said case, the respondent did not support the case of the prosecution. Hence the learned Special Judge forwarded the complaint to the VIII Additional Chief Metropolitan Magistrate, Hyderabad to register a case against the respondent for the offence punishable under Section 193 IPC r/w 340 Cr.P.C.

9 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

² 2004 (3) APLJ (HC) 304

perjury after conducting preliminary enquiry. Even as per the testimony of P.W.1, no show cause notice was issued to the 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 VIII Additional Chief Metropolitan Magistrate, 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 respondent itself is vitiated in this case. When there is a procedural irregularity in lodging the complaint, the accused is entitled to acquittal.

10 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 respondent for the offence under section 193 IPC.

11 The trial Court after considering the material available on record, arrived at a conclusion that the accused is not found guilty for the offence punishable under Section 193 IPC. 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.

12 In the result, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions if any pending in this appeal shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 14th February, 2018
Kvsn

