

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.3874 of 2016

ORDER :

The present criminal petition is filed aggrieved by the order in CrI.M.P.No.2970 of 2015 of the learned XVII Additional Chief Metropolitan Magistrate, Hyderabad, dated 23.02.2016, in pending C.C.No.419 of 2011, where charges framed from the police final report filed under Section 420, 467, 468, 471 and 120-B IPC, outcome of Crime No.200 of 2009 of Jubilee Hills Police Station, which is outcome of the private complaint referred to police for investigation, after completion of trial while it is coming for the evidence of Investigating Officer, an application is filed under Section 173(8) Cr.P.C. in seeking further investigation.

2. The scope of the further investigation sought was to obtain specimen signatures and to refer the disputed document signatures to the handwriting expert for opinion. The same was disputed on maintainability with the contentions by the petitioner/accused that it is only to drag on the proceedings and it is not permissible. The learned Magistrate passed the order referring to the Apex Court's judgment in **Hasanbhai Valibhai Qureshi v. State of Gujarat**¹ of there is no time limit and mere delay is not a ground for further investigation. The contentions in the petition now impugning that order are that though Hasanbhai is the principle of where it is required further investigation, mere delay is not a ground for refusal, whereas there are no grounds

¹ (2004) 5 SCC 347

for further investigation, much less with any new material to be investigated and thereby the order is unsustainable.

3. Learned counsel for the petitioner/accused placed reliance on the expression of the Apex Court in **Chandra Babu @ Moses v. State Through Inspector of Police and others**², where referring to *Hasanbhai and Vinay Thagi v. Irshad Ali* {(2013) 5 SCC 762} and several other expressions in between, it is observed that reinvestigation is the prerogative of the superior Courts wherever necessary and further investigation can be undertaken by the trial Magistrate though he has no right of reinvestigation, provided there must be some material for the further investigation. Same is also the analogy laid down by the another expression of the Apex Court in **Daya Ram and others v. State of Haryana**³. Once such is the case, it is not any further new material to be established by further investigation by collection of oral evidence, but the simple issue is to send the disputed signatures by taking specimen signatures of the witnesses and accused if any to the handwriting expert, that recourse can be taken without even need of for further investigation or reinvestigation by examination of the expert by sending the disputed signatures and writings by taking specimen signatures to the handwriting expert by invoking Section 311 Cr.P.C. read with 165 of the Indian Evidence Act vis-a-vis Section 311-A Cr.P.C. read with

² 2015 AIAR (Criminal) 822

³ 2015 AIAR (Criminal) 830

Sections 45 and 73 of the Indian Evidence Act. Once such is the enabling provision specifically by Section 311-A Cr.P.C., the criminal petition can be disposed of, while holding the order of the learned Magistrate is not sustainable, by directing the learned Magistrate, by virtue of this order passed under Section 311-A Cr.P.C., to obtain specimen signatures of the accused and the witnesses, if any, required and send the documents to the Government Handwriting Expert and obtain opinion and proceed with the case.

4. With the above direction, the criminal petition is disposed of, rather than dismissal. It is made clear that as the petitioner stated suffering from cancer, her presence can be dispensed with, by virtue of this order, by ordering specifically whenever required after receiving of the expert opinion and in the meantime if at all any specimen signatures required.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

23rd October 2018.

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