

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.1959 of 2018

ORDER:

Heard the learned counsel for the petitioners and the learned Public Prosecutor appearing for the respondent State.

The present revision case is filed questioning the orders passed in CrI.M.P.No.287 of 2018 in S.C.No.27 of 2013 dated 11.04.2018 on the file of the Special Judge for trial of cases under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989-cum-VII Additional District and Sessions Judge, Ongole, dismissing the petition filed under Section 233(3) Cr.P.C., seeking to summon LW.14 as defence witness.

The facts of the case are that the petitioners are accused Nos.1 to 4 in S.C.No.27 of 2013 for the offence under Sections 324 and 506 read with Section 34 IPC and Section 3(1)(v)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. In the said case, the prosecution evidence is completed and Section 313 Cr.P.C., examination is also over. Immediately after the same, the petitioners filed petition in CrI.M.P.No.287 of 2018 under Section 233(3) Cr.P.C., seeking issuance of summons to Sri M.Venkateswarlu i.e., LW.14 as a defence witness since his evidence is very much crucial and necessary to come to the just decision in the matter. To support their contention, they relied on Section 161 Cr.P.C., statement given before the Sub-Divisional Police Officer. The said petition is dismissed by orders dated 11.04.2018. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioners would contend that the evidence of LW.14, as a defence witness, is very much relevant and necessary for the just decision of the case, as LW.14 in his statement categorically stated that on 21.10.2005, there was an altercation between the complainant and the accused. However, the petitioners never abused the de facto complainant and his family members taking their caste name. Therefore, the evidence of LW.14 would clinch the issue involved in the sessions case.

Per contra, the learned Public Prosecutor appearing for the respondent State would contend that the petitioners have filed the petition belatedly when the matter is coming up for arguments. He also submitted that PW.7 has stated that no such incident has happened. However, a perusal of the said statement would indicate that there was a galata behind him and when he was starting from the scene of offence on a motor bike, the complainant came rushing to him with bleeding injuries.

Having heard both the counsel and from a perusal of the material on record, it is revealed that the prosecution has completed its evidence. At that stage, the petitioners relying on Section 161 Cr.P.C., statement given by LW.14 before the Sub-Divisional Police Officer, Ongole, filed a petition under Section 233(3) Cr.P.c. to summon LW.14 since his evidence is crucial and if the same is considered, it will tilt the decision other way.

Section 233(3) Cr.P.C., reads as under:

“If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.”

From a perusal of the said provision, if the accused applies for issuance of any process seeking attendance of any witness, the Judge shall issue the process for the reasons to be recorded, but at the same time, the said application should be refused on the ground that if it is made for the purpose of vexation or delay or for defeating the ends of justice.

In the case on hand, it is represented that immediately after Section 313 Cr.P.C., examination is completed the present application is filed seeking issuance of summons to LW.14 as a defence witness. From the statement of LW.14 filed in the material papers, it is crystal clear that the petitioner never abused the de facto complainant or his family members taking their caste name. In the light of the same, the evidence of LW.14 is relevant material for the just decision of the case. If he is summoned, the prosecution has got every right to cross-examine the said witness in which event no prejudice would be caused. In these circumstances, this Court deems it appropriate to summon LW.14 as a defence witness.

Accordingly, the revision case is allowed, setting aside the orders passed in CrI.M.P.No.287 of 2018 in S.C.No.27 of 2013 dated 11.04.2018 on the file of the VII Additional District and Sessions Judge, Ongole. It is needless to observe that the learned District and Sessions Judge, Ongole, is directed to summon LW.14 and fix a date for his examination. On such date, the petitioners should examine him without fail.

Miscellaneous petitions, if any, shall stand closed.

P. KESHAVA RAO, J

Date: 26.07.2018.
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