

HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL REVISION CASE No.2362 of 2018

ORDER:

This Criminal Revision Case is filed aggrieved by the order in Criminal M.P. No.796 of 2018 in S.T.C.No.3062 of 2018, dated:29.6.2018 in dismissing the application filed by the petitioner under section 91 of Cr.P.C.

2. The contention of the petitioner is that the machine (breath analyzer) which is being used is not approved by the Central Government; that when once the tube is used on a person who consumed alcohol and gives positive result, and if the same straw is used once again on the next person who did not consume alcohol, it shows positive result as the said straw contains traces of alcohol and that repeated using of same straw may cause various diseases.

3. Learned Public Prosecutor contends that the said machine is approved by the Central Government and thereafter, it is being used by the police.

4. I.A.No.1/2018 is filed to stay all further proceedings in order dated:29.6.2018 passed in Criminal M.P. No.796 of 2018 in S.T.C.No.3062 of 2018 on the ground that S.T.C.No.3062 of 2018 is posted for arguments.

Contd..P.2.

5. Since the Revision is only to summon the machine which was dismissed by the Trial Court, I feel it is better to dispose of the main petition itself with the consent of both the parties.

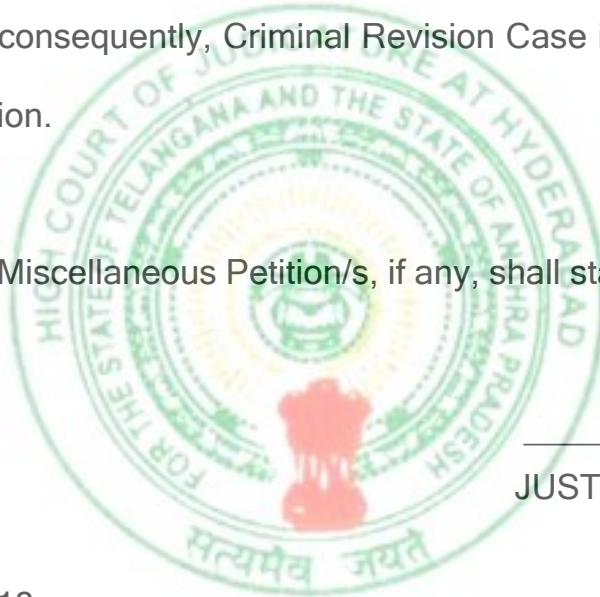
6. A perusal of the record go to suggest that the petition filed by the petitioner is that the instrument using for the purpose of BAC test, there is every possibility of showing contamination and it will show wrong results and therefore, the Court may summon BAC machine and conduct BAC test in the open Court in order to show genuineness of the said machine in the interests of justice.

7. The Trial Court in its order stated that this provision only contemplates to produce document or thing which are necessary and thus it is not enabling to conduct the test. Moreover, scientifically, Government of India approved the machine under the relevant provision of law to use the same for asserting BAC level and the same is admissible in evidence. The Trial Court also clearly found that the Court need not know the functionality of the machine as the taking of such steps by Court would amount to abuse of process of law. Moreover, the machine detects blood alcoholic content only and not gives result of in what mode such blood alcohol contents were received by a man, hence, even if the test conducted after taking machine and mouth wash which contains the alcohol, no purpose would be achieved as it gives the result of BAC level only.

Contd..P.3.

8. From the above facts and circumstances, it is very clear that the trial was completed and the case is posted for arguments. The investigating officer was effectively cross-examined. The fact that when once the tube is used on a person who consumed alcohol and gives positive result, and if the same straw is used once again on the next person who did not consume alcohol, it shows positive result as the said straw contains traces of alcohol and that repeated using of same straw may cause various diseases which has nothing to do with the positive result of the BAC machine. I therefore, find no error in the order of the Trial Court and consequently, Criminal Revision Case is dismissed at the stage of admission.

Pending Miscellaneous Petition/s, if any, shall stand closed.

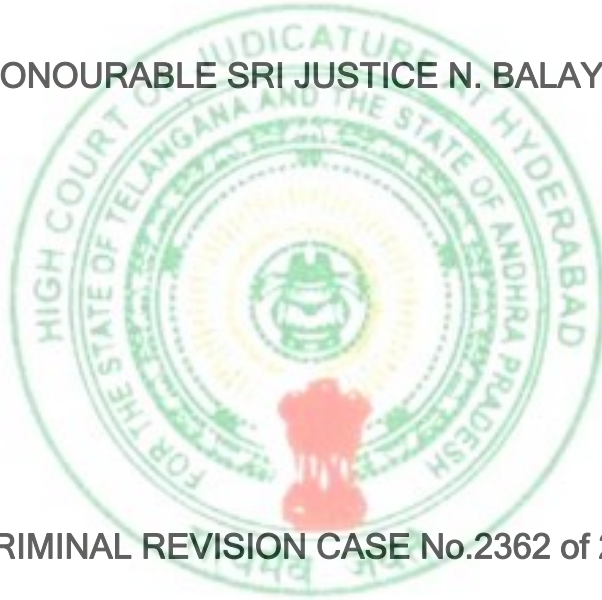


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Dated:29-08-2018

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