

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

+ CRIMINAL PETITION No.5220 of 2014

% Dated 10.12.2018

Amoda Publications Private Limited,
Rep. by its Managing Director,
Vemuri Radhakrishna, Road No.8,
Banjara Hills, Hyderabad and three others

....Petitioners

VERSUS

\$ Government of Andhra Pradesh
Represented by Special Public Prosecutor,
Sri S. Satyanarayana Prasad

... Respondent

! Counsel for Petitioners : Sri B. Nalin Kumar

^ Counsel for Respondent : Spl. Public Prosecutor

< GIST:

> HEAD NOTE:

? CITATIONS:



HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**CRIMINAL PETITION No.5220 of 2014****ORDER :**

The petitioners are A.1 to A.4 in C.C.No.13 of 2006 on the file of the learned III Additional Metropolitan Sessions Judge, Hyderabad. The case was taken cognizance under Sections 500, 501 and 502 IPC having been moved by the Special Public Prosecutor by private complaint for the offences supra as per Section 199 Cr.P.C. It is a private warrant case for the punishment provided under Sections 500, 501 and 502 IPC respectively, though upto two years or fine or both and defined as summons case, for warrant case is one punishable above two years from combined reading of Sections 2(w) and 2(x) Cr.P.C. from the specific subsequent provision under Section 237 read with 199(2) Cr.P.C. of a Court of Session taken cognizance of the offences shall try the case in accordance with the procedure for the trial or warrant-case instituted otherwise than on a police report before a court of Magistrate. As per the said procedure contemplated by Sections 244 to 250 Cr.P.C., Section 244 Cr.P.C. mandates at the post-cognizance stage pre-charge recording of evidence and Section 245(2) Cr.P.C. speaks even before that the Court may discharge and otherwise under Section 245(1) Cr.P.C. after recording of evidence if no grounds to frame charge, the Court may discharge and what Section 246 therefrom says is if not discharged as contemplated by Section 245(1) Cr.P.C. after recording the prosecution evidence under the pre-charge enquiry under Section 244 Cr.P.C. and once charge framed under Section 246(1) Cr.P.C., the same as per

Section 246(2) Cr.P.C. to be read over and explained to the accused and he shall be asked to plead guilty or any defence to make and if he pleads guilty by recording the plea, he may be convicted at the discretion of the Magistrate under Section 246(3) Cr.P.C and under Section 246(4) Cr.P.C., if the accused refuses to plead, or does not plead, or claims to be tried or if the accused is not convicted under sub-section (3) supra, he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken. The wording of Section 246(4) Cr.P.C. is very clear where the accused pleaded not guilty and claims to be tried from the charges framed under the private warrant case procedure, the accused shall be required to state whether he wishes to cross-examine any and if so which of the witness for the prosecution whose evidence has been taken. What sub-sections 5 and 6 of Section 246 Cr.P.C. speak are if the accused does so wish the witnesses named by him shall be recalled and after cross-examination and re-examination the witnesses shall be discharged and the evidence of remaining witnesses for prosecution shall next be taken and after cross-examination and re-examination they shall also be discharged. It is in relation to the prosecution evidence and after that under Section 313 Cr.P.C. examination contemplated and after that the defence evidence if any under Section 247 Cr.P.C. is contemplated to pronounce the

judgment either for acquittal or conviction under Section 248 Cr.P.C., for the offence proved supra, if any.

2. From this coming to the facts, the Xerox copy of the original docket order secured from the trial Court is crystal clear that on 29.10.2013 after recording evidence of PWs.1 and 2 including their cross-examination done by accused for consideration, when the matter was coming, the Special Public Prosecutor for the complainant and A.1 to A.4 by Special Vakalat Holder present and they submitted written submissions and posted for consideration to 05.11.2013 under the caption for orders and on 05.11.2013 orders pronounced by holding there is a prima facie case to frame charges for the offences under Sections 500, 501 and 502 IPC against the accused and for framing of charges posted to 12.11.2013 again to 19.11.2013 and again to 20.11.2013 when charges framed, read over and explained to the accused represented by Special Vakalat holder/advocate and on behalf of the accused/Special Vakalat holder denied the truth of the charges and claimed to be tried. It is thereby posted for evidence.

3. At that state, the evidence to understood what is the evidence contemplated by Section 246(6) Cr.P.C. and not Section 246(4) Cr.P.C. for the reason what Section 246(4) Cr.P.C. speaks is if the accused required to state as to whether he wishes to cross-examine any and if so which of the witnesses for the prosecution whose evidence has been taken as per Section 246(5) Cr.P.C. also by naming the witnesses, for the

Court to recall for the cross-examination and re-examination, if any. No such memo much less any petition contemplates thereby filed nor the docket reflects any request made orally for recall of witnesses PWs.1 and 2 for any further cross-examination if at all accused chooses that too the learned Sessions Judge cannot be blamed even what Section 246(4) Cr.P.C. says if the Magistrate, for reasons to be recorded in writing thinks fit forthwith where accused wishes to cross-examine, call for the witnesses as per Section 246(5) Cr.P.C., more particularly for the reason accused already cross-examined PWs.1 and 2 admittedly at the pre-charge enquiry contemplated by Section 244 Cr.P.C. The prerogative of the accused arises if at all he exercises the option contemplated by Section 246 (4) and (5) Cr.P.C. and once not exercised the option for the Court to post for evidence instead of for further evidence as per Section 246(6) Cr.P.C., thereby cannot be find fault, not only that accused not even filed any memo atleast immediately thereafter that is subsequent to the docket order, dated 20.11.2013, much less even by 11.12.2013 to permit for cross-examination and exercises the option under Section 246(4) Cr.P.C. irrespective of earlier cross-examined at length. Now the present impugment is the learned Sessions Judge as if committed a mistake as discussed supra, the learned Sessions Judge did not commit any mistake, but for proceeded according to the spirit of Section 244 to 246 Cr.P.C. It is therefrom in fact for the prosecution failed to bring further evidence as contemplated by Section 246 (6) Cr.P.C. by closing the prosecution evidence on 04.02.2014 posted for Section 313 Cr.P.C.

examination of accused to 06.02.2014 and the Special Vakalat holder for accused present on 06.02.2014 for Section 313 Cr.P.C. examination of accused, at request of Special Vakalat Holder posted to 12.02.2014. On that day, the Special Vakalat holder for the accused was examined under Section 313 Cr.P.C. and denied the truth of the prosecution evidence of prosecution witnesses and it is posted for arguments from reporting no defence evidence. It is crystal clear that the accused did not exercise the option contemplated by Section 246(4) Cr.P.C. although including on 12.02.2014 or subsequent to that on 19.02.2014 except asking time for arguments again in posting to 26.02.2014 and again, at request, to 10.03.2014, 14.03.2014 and for further arguments to 21.03.2014 and again to 04.04.2014, 21.04.2014, 28.04.2014, 16.05.2014 and 27.06.2014 and it is meantime the present petition is filed impugning the proceedings by saying no opportunity to the accused given as contemplated by Section 246(2) Cr.P.C. and because of the stay order although the proceedings are stalled from May 2014 onwards. As discussed supra, the learned Sessions Judge committed no mistake, but for the fault of the counsel for the accused or Special Vakalat Holder for accused or accused, as the case may be, thereby, no grounds to interfere, but for that will not shun the opportunity to the accused to further if at all chosen to cross-examine PWs.1 and 2.

4. Accordingly, the criminal petition is disposed of by directing learned Sessions Judge if at all the accused choose to file any application within two days from the date of receipt of the order under Section

246(4) Cr.P.C. permit for cross-examination of PWs.1 and 2 further, if any, and the area of the further cross-examination to be given in sealed cover as already cross-examined and then if at all the learned Public Prosecutor wants to adduce any evidence for prosecution/complainant also to permit further evidence.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

10th December 2018.

L.R. Copy to be marked – Yes.

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