

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.11266 OF 2018

ORDER:

Impugning the dismissal order dated 01.10.2018 of the learned XXIII Metropolitan Magistrate, Ranga Reddy District, in CrI.MP.No.874 of 2018 in C.C.No.715 of 2015 filed under Section 311 Cr.P.C. to reopen and recall of PW.2 to adduce further evidence by receiving of five documents, viz 1. Certificate of Incorporation of de facto complainant, 2. Board of Directors resolution authorizing B.Chandrasekhar Rao for filing complaint on behalf of the company, 3. Certified copy of sale deed vide document No.1420/2012, 4. certified copy of sale deed vide document No.8830/1989 and 5. copy of complaints given to PS Narsingi, in saying those documents were not marked during chief examination of PW.2 even though they were filed at the time of filing of the private complaint.

2. The counter of accused in opposing the said petition is that whatever the documents prosecution relied marked through PW.2 as Exs.P1 to P8 and after closure of prosecution evidence, accused were examined under Section 313 Cr.P.C. and the matter was after submission of arguments of the learned counsel for the accused, it is coming for reply of the prosecution, the petition is filed belatedly and no grounds to receive.

3. The observation of the learned Magistrate in dismissal of the petition besides the fact referred in the counter in opposing supra is that having taken time, when the matter was coming for arguments from 28.06.2018 to 16.07.2018 and again to 24.07.2018 including to the conditional order, the petition was filed on 09.08.2018 and there are no grounds and even earlier filed the petition, after closure of the prosecution evidence in CrI.MP.No.1487 of 2017 that was allowed for recall of witness and some documents already marked and there are laches, which cannot be allowed to be filled. The same is impugned.

4. Notice sent to respondents 1 to 6/accused from the tract record shows item delivered on 22.11.2018 but they called absent with no representation and hence taken as heard. Heard the learned counsel for the petitioner and learned Public Prosecutor representing the State.

5. Definitely there are laches on the part of the petitioner, having filed earlier CrI.MP.No.1487 of 2017 on 03.08.2017 through the learned Public Prosecutor to receive those documents and those were cause marked from allowing of the petition by recall of PW.2 pursuant to the order in CrI.MP.No.1487 of 2017. No doubt, a perusal of the private complaint shows five documents referred therein and the documents allowed by petition in CrI.MP.No.1487 of 2017 supra covers some of those. No doubt, the documents filed

are only Photostat copies of the private complaint and now, by the present petition, filed with some of the originals. Among five documents, certified copy of sale deed No.8830/ 1989 already marked as document No.1 pursuant to the orders in CrI.MP.No.1487 of 2017 but for the other documents. Once those were referred in the private complaint, they were referred to police investigation for which crime registered and investigated and taken cognizance. The learned Public Prosecutor already could diligent besides the de facto complainant including in the earlier time having filed a petition and sought for recall of one or the other prosecution witnesses in 2017. However, from reading of Section 311 Cr.P.C. where it is necessary for the just decision of the case, it is the duty of the Court to consider recall and further examination by Court and permit a party is practically on behalf of the Court.

6. Once these documents filed with the private complaint and it refers to the Board Resolution and Certificate of Incorporation of the de facto complainant/ entity and one of the sale deeds of 2012, those are material documents, for the laches on the part of the de facto complainant or prosecution agency, the trial Court should have been imposed heavy costs in allowing the petition rather than dismissal to serve the ends of justice.

7. Having regard to the above, the Criminal Petition is allowed by setting aside the order dated 01.10.2018 in CrI.MP.No.874 of 2018 in C.C.No.715 of 2015 passed by the learned XXIII Metropolitan Magistrate, Ranga Reddy District and directing the trial Court to receive the documents and permit further examination of PW.2 with right of cross examination to the accused, which is subject to costs of Rs.6,000/- (Rupees Six thousand only) payable to the six accused by the complainant before the trial Court within one week from the date of receipt of copy of this order, failing which the order of the trial Court holds good without any further reference to this Court. If any of the accused failed to receive the amount, the same shall be send to the Army Welfare Fund.

8. Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 27.11.2018
pab