

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE NO.3230 OF 2018

ORDER:

This revision is arising out of order, dated 14.11.2018 passed in CrI.M.P.No.632 of 2018 (Cr.No.192 of 2018 of P.S. Jagtial Town) by the I Addl. Judl. Magistrate of I Class, Jagtial.

2. The brief facts of the case are that the learned I Addl. Judl. Magistrate of I Class, Jagtial, has issued a search warrant for the purpose of search and seizure of Mobile Phones of A3 and A5 to A12 from the Popular Front of India Office at Jagtial, on requisition of the police. The learned Magistrate has passed the order stating that search and seizure of Mobile Phones from the possession of the accused might help the Investigating Agency for collecting evidence pertaining to the offence alleged in this case, which is Section 419 r/w 109 IPC.

3. Originally, A3 to A5 are the accused in Cr.No.11 of 2016 in C.C.No.30 of 2016 registered for the offences punishable under Sections 341 and 290 r/w 149 IPC. As per the contents of the Remand Case Diary Part I on 17.01.2018 at 14.00 hours, A2 and other PFI activists involved in Cr.No.11 of 2016 under Sections 448 and 186 IPC of P.S. Jagtial town and criminally trespassed into police station and obstructed duties of public servants. After completion of investigation, charge sheet was filed before the Court on 23.01.2016, vide C.C.No.30 of 2016 on the file of the Court at Jagtial against A1 to A18. The accused are facing trial. During the trial, A4 in Cr.No.11 of 2016 i.e., Azmath Khan i.e., A2 in this case went to Hyderabad. In stead of A4, A1 in this case i.e., Asif Khan was representing A2 in this case as Azmath Khan cheating by impersonation

in the Court. L.Ws. 2 and 3 identified that A1 (Asif Khan) cheated by impersonation to the Court by representing as A2.

4. In view of the allegations made in the remand case diary, the offence under Section 419 IPC is registered against the accused as one accused has stated that A1 was representing other accused stating that he is A2. Therefore, the police have registered a case under impersonation.

5. The counsel for the petitioners argued that the procedure under Section 91 Cr.P.C. has not followed. The investigation conducted by the police officers and the issuance of search warrant by the learned Magistrate is not in accordance with law by following the procedure under Section 91 Cr.P.C. Section 91 (1) Cr.P.C. reads thus:

“Summons to produce document or other thing:- Whenever any Court or any other officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession, or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.”

6. The present search warrant was issued under Section 93 Cr.P.C. by the learned Magistrate. Section 93 (1) Cr.P.C. reads thus:

“When search warrant may be issued:- Where any Court has reason to believe that a person to whom a summons or order under section 91 or a requisition under sub-section (1) of section 92 has been, or might be, addressed will not or would not produce the document or thing as required by such summons or requisition, then only search warrant be issued.”

7. As rightly contended by the counsel for the petitioners, there is no material on record to show that the

provision under Section 91 (1) Cr.P.C. has been complied with. Therefore, the order passed by the learned Magistrate issuing permission for search of the building is not in accordance with law.

8. Learned Public Prosecutor submits that the order passed by the learned Magistrate is an interlocutory order and therefore, this revision is not maintainable.

9. In view of gross abuse of process of law by the Investigating Agency in not following the procedure as contemplated under Cr.P.C., this search warrant is final order and therefore, the order passed by the learned Magistrate is liable to be set aside.

10. Accordingly, the Criminal Revision Case is allowed setting aside the order, dated 14.11.2018 passed in CrI.M.P.No.632 of 2018 (Cr.No.192 of 2018 of P.S. Jagtial Town) by the I Addl. Judl. Magistrate of I Class, Jagtial. Miscellaneous petitions, if any pending in this revision shall stand closed.

GUDISEVA SHYAM PRASAD, J

DATED: 30-11-2018

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