

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL REVISION CASE No.44 of 2019

ORDER:

The present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. aggrieved by the order, dated 24.12.2018, passed in CrI.M.P.No.2257 of 2018 in C.C.No.388 of 2018 on the file of the Special Magistrate Court-II at Rajendranagar, Ranga Reddy District, wherein an application filed by the State for receiving certain documents was dismissed.

2. As seen from the record, the State represented by Public Prosecutor filed CrI.M.P.No.2257 of 2018 under Section 242 of Cr.P.C. seeking to receive certain documents annexed to the petition. The averments in the said petition discloses that some of the important material documents were not filed by the Investigating Officer at the time of filing of charge sheet though investigation was done in that respect. It was also stated that now the said documents were available with the complainant, as such the prosecution intends to produce the said documents before the Court. Therefore, prayed to permit the prosecution to file the said documents so as to enable the prosecution to mark the same on its behalf.

3. A counter came to be filed by the 2nd respondent/accused stating that the documents which are now sought to be introduced in evidence are not relevant to the facts of the case and prayed to dismiss the petition.

4. After considering the rival submissions, the learned Magistrate dismissed the said petition. Challenging the same, the present Criminal Revision Case is filed by the *de facto* complainant.

5. Heard learned Counsel for the revision petitioner; learned Additional Public Prosecutor for the 1st respondent and learned Counsel appearing for the 2nd respondent.

6. It has been submitted on behalf of the revision petitioner/complainant that the trial Court failed to exercise the jurisdiction vested under Section 242 (2) Cr.P.C. and erroneously dismissed the application. The learned Judge failed to appreciate the documents, which are filed along with the petition, are very much relevant and the same could not be filed along with the charge sheet as they were not available on the date of filing of the charge sheet. The learned trial Court erred in saying that the other documents filed along with the petition are Xerox copies said to be attested by the Executive Officer, Endowment Department and even it is not mentioned

in those documents that they are true copies of original public documents.

7. On the other hand, learned Counsel for the 2nd respondent/accused contended that there is no illegality or irregularity in the order passed by the trial Court and hence there is no need to interfere with the impugned order.

8. The Karnataka High Court in *B.L.Udaykumar and others v. State of Karnataka*¹ observed as under:

“12. As could be seen from the above sub-section (3), mandates the Magistrate to take all such evidence as may be produced in support of the prosecution. The use of the language “all such evidence” in the sub-section means that the court is required to take or receive all such evidence which the prosecution may produce in support of its case. Having regard to the wide language used in the section, the expression “all such evidence” cannot be given a restrictive meaning so as to hold that only such evidence as relates to those of persons who have been examined by the police or only the documents collected during investigation could be produced before the Court. To read the section, in such a restricted manner would amount to reading into the sub-section something which is not there. Even otherwise “evidence” in strict sense means oral and documentary evidence. As defined in Section 3 of the Evidence Act “Evidence means and includes (1) all statements which the Court permits or requires to be

¹ 2018 CrL.J. 3925

made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence; (2) (all documents including electronic records produced for the inspection of the Court) such documents are called documentary evidence.”

13. Thus it is clear that sub-section (3) of Section 242 casts a mandatory duty on the Magistrate to take all such evidence as may be produced in support of the prosecution. The word “produced” in sub-section (3) also cannot be given a restrictive meaning to hold that only the materials collected during investigation could be permitted to be produced in evidence. Such a construction would defeat the very purpose of trial. If the main object of criminal trial is to discover truth, necessarily all and every piece of evidence which could help the Court to arrive at a just decision should be allowed to come on record. Therefore, it is immaterial whether the “evidence” sought to be produced during trial was either collected in the course of investigation or subsequent thereto. Section 91 Cr.P.C. no doubt empowers the court or the officer in-charge of the Police Station to ensure the production of any ‘document or other thing’ ‘necessary or desirable’ for the purpose of any investigation, enquiry or other proceedings by issuing summons or written order to the person in whose possession or power such document or thing is; but Section 242 (3), Cr.P.C. requires the court to take all such evidence which the prosecution desires to produce including the documents which are not mentioned in sub-section (5) of section 173 Cr.P.C. subject of course furnishing to the accused a copy thereof and providing him a reasonable opportunity to meet the same. The

only safeguard or restriction that could be thought of in view of the provisions of the Evidence Act is that such evidence must relate to the matters of fact in enquiry. In other words, as long as the proposed evidence, either oral or documentary, is relevant and in support of the prosecution case, the Magistrate cannot refuse to receive it."

"It was further observed that, it is also relevant to note that a duty is cast on the Public Prosecutor conducting the trial to produce all evidence relevant to the determination of the guilt or innocence of the accused. Therefore, it goes without saying that even the Public Prosecutor conducting the trial owes a duty to produce before the court all evidence in support of the prosecution. The Public Prosecutor therefore cannot withhold any relevant piece of evidence which he finds it necessary for fair trial of the case. That being the position of law and the mandate contained in Section 242 (3) of Cr.P.C., I do not have any hesitation to hold that the criminal court conducting the trial is bound to receive all the evidence produced by the prosecution irrespective of the fact whether the said evidence or documents were part of the charge sheet placed before the Court or not. It was also observed that "this Section, therefore, cannot be construed to mean that prosecution is debarred from producing additional evidence in support of its case during trial as canvassed by the petitioners. The language of section 242 (3) of the

Cr.P.C. is wide enough to invest power in the Magistrate to take all the evidence produced by the prosecution in support of its case.”

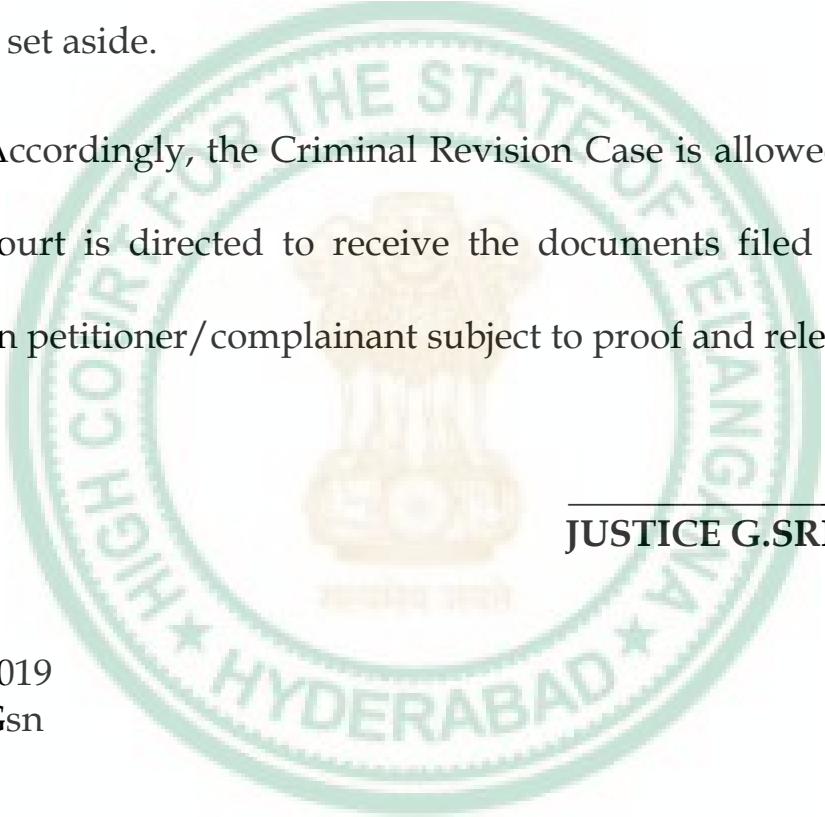
9. In the present case, the learned Magistrate has dismissed the application filed by the prosecution on the ground that in the absence of any date on the photographs it cannot be said that those were taken as on the date of offence or earlier to that. Thus, the learned Magistrate opined that the photographs and CD which are filed along with petition cannot be received in evidence. Regarding two other documents filed along with the petition are Xerox copies said to have been attested by the Executive Officer, Endowment Department. The learned Magistrate further observed that “even it is not mentioned in those documents that they are true copies of original public documents and without following the requisite procedure to receive the documents by way of secondary evidence, present petition was simply filed under Section 242 of Cr.P.C.”

10. Considering the position of law laid down in the aforesaid decision of Karnataka High Court and having regard to the facts and circumstances of the case, I am of the considered view that no party to the trial can be denied an opportunity to produce relevant documents which were not

brought on record due to inadvertence and if the said documents are received, no prejudice would be caused to the defence as adequate opportunity would be available to the accused to cross-examine the witnesses and to lead rebuttal evidence.

11. In the light of the aforesaid observations, the impugned order passed by the trial Court is liable to be set aside and is hereby set aside.

12. Accordingly, the Criminal Revision Case is allowed. The trial Court is directed to receive the documents filed by the revision petitioner/complainant subject to proof and relevancy.



JUSTICE G.SRI DEVI

20.09.2019
Gkv/Gsn

