

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL REVISION CASE No.178 of 2019

ORDER:

The present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C., questioning the order, dated 31.01.2019, passed in CrI.M.P.No.141 of 2018 in S.C.No.436 of 2015 on the file of the Chairman, LRAT-cum-II Additional District Judge, Ranga Reddy District at L.B.Nagar, wherein and whereunder an application filed by the State to receive the Samsung Model Mobile Phone of the deceased along with SIM card and send the same to F.S.L., for expert opinion, was dismissed.

A charge sheet came to be filed against respondent Nos.1 to 4/A1 to A4 (hereinafter referred to as "the accused") for the offences punishable under Sections 498-A and 304 (B) of I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The allegations in the charge sheet are that due to unbearable harassment made by the accused and as there was no change in their attitude and continuously harassing the deceased Kavitha got vexed on her life and on 22.11.2013 at about 4.00 P.M., she bolted the door of the bed room from inside and committed suicide by hanging to the ceiling fan with the help of a saree.

The said charge sheet was taken cognizance as P.R.C., later committed to the Court of Sessions and numbered as S.C.No.436 of 2015. During pendency of the said S.C., the State represented by the Public Prosecutor filed a petition under Section 231 (1) of Cr.P.C. read with 45, 45 (A) of the Indian Evidence Act and 79-A of the Information Technology Act, 2000, to receive Samsung Model Mobile Phone-GT-S5282, IMEI No.356648/05/19-7245/9 and IMEI No.356649/05/19-7245/7, bearing SIM No.9010170181 and send the same to F.S.L., for Expert's opinion and to retrieve S.M.S. available in the Sent Box. The averments in the said petition discloses that the deceased Kavitha was holding a Cell Phone Make: Samsung Model: GT-S5282, IMEI No.356648/05/197245/9 and IMEI No.356649/05/197245/7, with SIM No.9010170181 and the deceased used to send messages to her friend Gannu Kanakathara, W/o. Vijaya Reddy, regarding the harassment meted out to her and number of messages were stored in the Sent Box message. It is also stated that prior to filing of the charge sheet, the police did not seize the said cell phone in spite of several requests made by the deceased family members, which is very much supportive to the case of prosecution, as such it is just and necessary to produce the said cell phone and to send the same to F.S.L. for expert opinion and to

collect/gather the message information, for the fair adjudication of the case and it may prove the guilt of the accused beyond all reasonable doubt.

A counter came to be filed by the accused that after framing the charges against the accused, the trial Court fixed the trial schedule from 22.10.2018. All the material witnesses were already examined by the prosecution as P.Ws.1 to 3 and there is no whisper in their evidence to the effect that the deceased had the above mentioned Cell phone or about the deceased sending messages to her friend Gannu Kanakathara, W/o. Vijaya Reddy and the said Gannu Kanakathara, is not even examined or cited as a witness. It is also stated that the Cell Phone was not seized by the Police and even this aspect is not deposed by P.Ws.1 to 3, it is not known on what basis the State filed the present petition. It is further stated that the prayer in the petition virtually contemplates further investigation, which is not contemplated under Section 231 (1) of Cr.P.C. It is also submitted that a new case is sought to be set up during the course of trial through a speculative means by sending a material object, which is not before the Court, to an expert and the same cannot be permitted and that the present stage of the case cannot revert back to the stage of gathering

evidence, which shall be completed before filing a final report under Section 173 of Cr.P.C., except through the process of filing any supplementary charge sheet under Section 173 (8) of Cr.P.C.

After considering the rival submissions, the trial Court dismissed the said petition. Challenging the same, the *de facto* complainant filed the present Criminal Revision Case.

Heard learned Counsel for the Revision Petitioner/*de facto* complainant; learned Additional Public Prosecutor appearing for the 5th respondent-State and learned Counsel appearing for the accused.

Learned Counsel for the revision petitioner would submit that the trial Court ought to have seen that in order to establish the guilt of the accused, it is quite essential to send the mobile phone pertaining to the deceased to the F.S.L. only to retrieve the S.M.S. available in the sent box and even if the said petition is allowed, no prejudice would have been caused to the accused, but the real controversy involved in the case will be adjudicated with proper perspective. It is further submitted that the trial Court went wrong in holding that the prosecution has not explained in whose custody the phone is so far, till it is filed before the Court and the said finding is absurd in view of

the fact that it is quite immaterial in whose custody the phone is so far, but to find out the S.M.S. in the sent box, it is quite essential to send the Mobile to the F.S.L. It is also submitted that the revision petitioner and his family members have been requesting the police prior to filing of the charge sheet to seize the cell phone which is supportive to bring home the guilt of the accused, as there were messages sent by the deceased to her friend Gannu Kanakathara. The trial Court ought to have seen that the offence committed by the accused is very heinous and as such the prosecution has to be afforded with all reasonable opportunities to elicit the true facts and to bring home the guilt of the accused.

Learned Counsel appearing for the accused would submit that the learned Sessions Judge after hearing both the parties and perusing the material on record, came to a categorical conclusion that nothing was mentioned in the charge sheet or any document was filed regarding the existence of cell phone belongs to the deceased and no material either oral or documentary to show that the deceased sent S.M.S. messages to her friend G.Kanakathara. On the basis of the material on record, the trial Court also found that there is no explanation regarding the custody of the material object/cell phone in

whose possession it was so far till filing of the application and the said friend of the deceased is neither cited as witness nor examined on behalf of the prosecution and therefore filing of the petition for sending the cell phone to an expert after entire trial is over, without filing any proof of the ownership of the mobile phone or the owner of the SIM number, the petition filed by the prosecution was misconceived and, therefore, the trial Court on exhaustive consideration of the material on record dismissed the application, which warrants no interference by this Court.

Before proceeding further, it would be appropriate to refer to Section 231 of Cr.P.C., which reads as under:

“231. Evidence for prosecution.

(1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.

(2) The Judge may, in his discretion, permit the cross- examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.”

A perusal of the material on record would show that P.Ws.1 to 3 did not state in their evidence that the aforesaid Mobile belonged to the deceased and the deceased used to send

messages to her friend Gannu Kanakathara, W/o. Vijaya Reddy regarding the harassment meted out to her. The prosecution failed to mention the mobile number of Gannu Kanakathara, to which the deceased used to send the messages. The said Gannu Kanakathara was not examined either during the course of investigation or at the time of trial and her name was also not mentioned in the charge sheet. Though the charge sheet filed in the year 2015, the prosecution failed to take steps for seizure of the Mobile Phone of the deceased at the earliest point of time and the present application is filed only after examination of all the material witnesses and no explanation is forthcoming from the prosecution as to why the prosecution did not file the said petition at the earliest point of time. Thus, from the findings it is evident that the trial Court has not committed any illegality in dismissing the petition filed by the State. I see no grounds to interfere with the order passed by the trial Court.

Accordingly, the Criminal Revision Case is dismissed.

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

JUSTICE G. SRI DEVI

29.11.2019
Gsn/Gkv.

