

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Revision Case No.301 of 2019

ORDER :

Heard before admission.

2. The counsel for the petitioners and the learned Public Prosecutor in the present revision impugning the order in CrI.M.P.No.190 of 2018 in C.C.No.754 of 2012 passed by the learned XXV Metropolitan Magistrate, Cyberabad at Ibrahimpatnam, Ranga Reddy district, to receive the documents in the application filed by the prosecution invoking Section 242 (2) Cr.P.C. in the police warrant case procedure, on behalf of the prosecution, the contentions made impugning the allowing of the petition by the order of the learned XXV Metropolitan Magistrate dated 19.03.2019 are that, there is no explanation why the prosecution did not investigate in relation to the documents filed along with the final report and if at all those are in existence, leave about any subsequent existence of the documents, remedy is under Section 173(8) Cr.P.C. that was not even adopted within the permissive limits of the investigating agency through the prosecution if at all to bring on record with permission of the Magistrate and filing of 24 or 25 documents some even subsequent to filing of final report and without even considering the relevancy and admissibility allowing to receive are unsustainable. In fact, that is the contest mostly in counter in opposing the petition raised by the accused in passing the impugned order. In the impugned order, the learned Magistrate observed that, once it is contended that so far as the allegation of the trespass and forgery for purpose of cheating constituting the offences including of cheating, these documents are necessary including with reference to the revenue entries for the

prosecution to bring on record through the *de facto* complainant (LW1) yet to be examined for trial still to commence. It is just and proper to receive the documents and accused got every right to cross-examine the prosecution witness with reference to the same also and thereby no prejudice that could be caused to the accused in allowing the petition.

3. No doubt the criteria is relevancy and admissibility to consider at the time of adducing evidence, however at least it must be specified that such documents are necessary for just decision as referred supra though not in so many words. It is observed in the impugned order particularly at page no. 4- para no.6- clauses 'a' to 'e', these documents are necessary in proof of the case of the prosecution. Once that is the case, merely because prosecution agency not chosen to further investigate and bring by invoking Section 173(8) Cr.P.C. once these documents are filed and brought to the notice of the Court, Court is not powerless for just decision of the case that too when it enables by virtue of not only Section 242(2) Cr.P.C., but also under second limb of Section 311 Cr.P.C. besides the power of the Court including during trial under Section 165 of the Indian Evidence Act.

4. Having regard to the above, there is nothing to interfere with the impugned order of the lower court, but for if at all any document is irrelevant and inadmissible or requires proof otherwise, remedy is left open to raise objection while marking to consider in marking subject to such objection besides ultimately as laid down by the Apex Court in **Bipin Shantilal Panchal Vs.State of Gujarat & another**¹.

¹ AIR 2001 SUPREME COURT 1158

5. Accordingly, before admission, the criminal revision case is disposed of.

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

Dr. B. SIVA SANKARA RAO, J

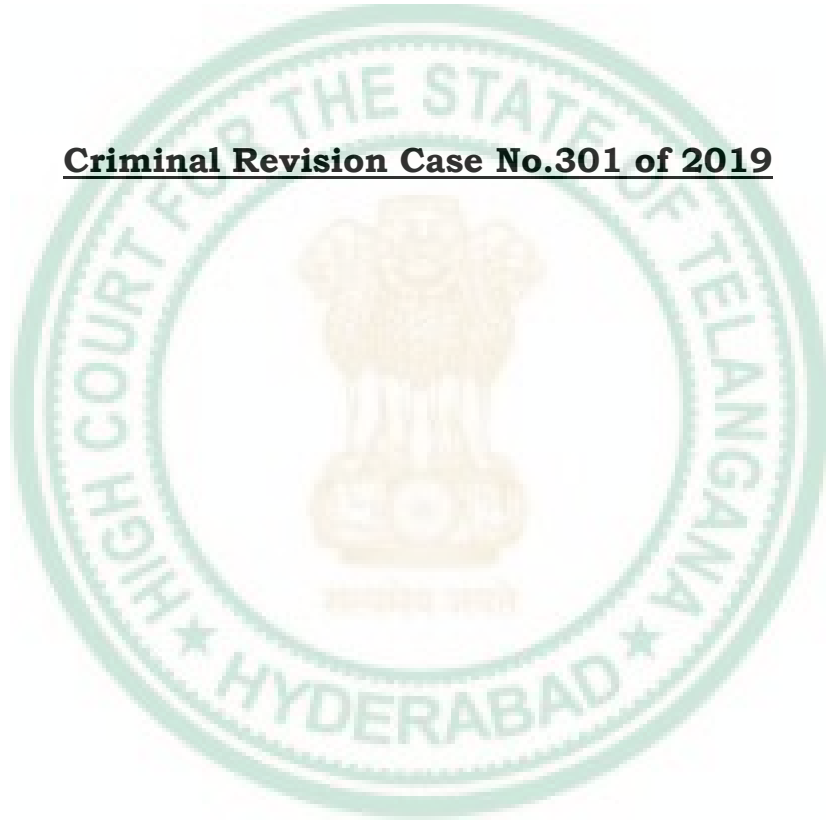
Dt.27.03.2019

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27th March, 2019

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