

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No.2890 of 2019

ORDER:

The present Criminal Petition is filed under Section 482 Cr.P.C. aggrieved by the order, dated 21.09.2017 passed in CrI.M.P.No.1251 of 2017 in C.C.No.327 of 2006 on the file of the VII-Metropolitan Magistrate, Cyberabad at Hayathnagar, which was confirmed by the learned V-Additional Metropolitan Sessions Judge, Ranga Reddy District at L.B.Nagar, Hyderabad, in CrI.R.P.No.16 of 2018 dated 29.03.2019.

2. Brief facts of the case are that the petitioner/complainant filed a private complaint under Section 200 of Cr.P.C., before the VII- Metropolitan Magistrate, Cyberabad at Hayathnagar, against the respondents/ A-2 to A-6, for the offences punishable under Sections 406, 420, 465, 468, 471, 120-B read with Section 34 of I.P.C., which was referred to the police under Section 156 (3) Cr.P.C. Basing on the said reference, the Police, Vanasthalipuram Police Station, registered a case in Crime No.116 of 2005 for the aforesaid offences. Eventually, the police, after investigating into the matter, filed a final report referring the case as "Civil Nature" and requested to close the case. Against which, a protest petition was filed by the

petitioner /complainant. Thereafter, the trial Court after recording the statement of the witnesses, took the case on file for the offence punishable under Section 420 of I.P.C. against the accused and numbered the same as C.C.No.327 of 2006.

3. When the aforesaid Calendar Case was coming up for further cross-examination of petitioner/complainant (P.W.1), he filed CrI.M.P.No.1251 of 2017 under Section 242 of Cr.P.C. seeking to receive certain documents annexed to the petition alleging that he could not file the documents in question along with the complaint as some of the documents were not in existence and that the certified copies of some other documents were not obtained. It is further stated that after obtaining the certified copies of the documents, the same were kept in the office, but unfortunately they were mixed up with other files and the same were traced out recently. Therefore, prayed to receive the documents annexed with the petition and mark the same as exhibits. Learned counsel for the respondents/accused opposed the said petition and reported no counter. After considering the rival submissions, the trial Court dismissed the said petition vide order dated 21.09.2017. Challenging the said order, the petitioner/complainant filed CrI.R.P.No.16 of 2018 before the V-Additional Metropolitan Sessions Judge, Ranga Reddy District at L.B.Nagar, Hyderabad. By an order dated

29.03.2019, while confirming the order passed by the trial Court, the learned Sessions Judge dismissed the Revision Petition. Aggrieved by the same, the present Criminal Petition is filed by the petitioner/complainant.

4. Heard learned Counsel for the petitioner/complainant; learned Additional Public Prosecutor for the 1st respondent and learned Counsel appearing for the 3rd respondent.

5. It has been submitted on behalf of the petitioner/complainant that the orders of the trial Court and appellate Court are perverse, arbitrary and bad in law and both the Courts below denied to receive the documents merely on a technical objection and not on any other valid ground or merits. It is also submitted that both the Courts below erred in not considering the explanation of the petitioner/complainant for non-filing of the documents at the time of filing the complaint and arbitrarily rejected the said explanation. If the documents are not received, great prejudice would be caused to the petitioner/complainant. The trial Court and appellate Court adopted too pedantic and didactic approach rather than a pragmatic and judicious approach for affirming and reassuring the concept of fair trial and due opportunity. The trial Court and appellate Court also erred in attributing procrastination to

the petitioner/complainant while dismissing the receive documents petition as the tactics of procrastination are attributable to the opposite party and not the party, who filed the case or the complaint in the instant case. It is also submitted that dismissal of the receive documents petition will have adverse affect in the trial and consequently have adverse effect on the end result.

6. On the other hand, learned Counsel for respondents 2 to 4 /accused contended that the petitioner/complainant had already availed the opportunity of filing of documents on four occasions and that the documents now sought to be produced were well within the custody of the complainant even at the time of filing of previous petitions. Therefore, 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.

7. 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

¹ 2018 Cr.L.J. 3925

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 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."

8. In the present case, the learned Magistrate while dismissing the application filed by the petitioner/complainant observed that "the complainant filed evidence affidavit on 28.04.2015 and the case is coming for further cross-examination of the complainant (P.W.1). The complainant ought to have filed all the documents at the time of filing of the complaint."

In the receive documents petition itself, the petitioner/complainant had given an explanation with regard to non-filing of the said documents at the time of filing the complaint, stating that the documents were mixed up with other files and recently the said documents were traced out in the office of the petitioner/complainant.

9. 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.

10. In the light of the aforesaid observations, the impugned order passed by the trial Court which was confirmed by the appellate Court is liable to be set aside and is hereby set aside.

11. Accordingly, the Criminal Petition is allowed. The trial Court is directed to receive the documents filed by the petitioner/complainant subject to proof and relevancy.

JUSTICE G.SRI DEVI

25.11.2019
gkv/Gsn

