

HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO

Crl.R.C.No.782 of 2018

%01.04.2019

Sri Mohd.Sadiq

...Petitioner/
Accused

Vs.

\$ State of Telangana,
Rep. by its Public Prosecutor,
High Court, Hyderabad.

2. Smt.K.Annapurna

..Complainant
Respondent

3. Sri Govind Naik

4. Sri Padmanabha Bhatt

5. Sri P.Rakash Photographer

..Respondents
Accused 2 to 4

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri Mirza Nisar Ahmed Baig Nizami

^Counsel for Respondents: 1. State of Telangana,
Rep. by its Public Prosecutor,
High Court, Hyderabad.
2. Sri D.Raghavulu, Counsel for R.2

? Cases referred

1. (2012) 5 SCC 424

HONOURABLE DR.JUSTICE B.SIVA SANKARA RAO

CrI.R.C.No.782 of 2018

JUDGMENT:

The petitioner is accused in CC No.976 of 2009 taken cognizance for the offence punishable under Sections 290, 323, 352, 504 and part-I of 506 IPC. All are triable as summons cases which is outcome of the cognizance order of the learned Magistrate under Section 200 Cr.P.C. in issuing summons under Section 204 Cr.P.C based on private complaint of the second respondent against four accused including the petitioner-A1 leave about R.3 to R.5 of the revision not necessary parties the other accused. So far as the summary trial and summons trial is concerned, there is no difference between case proceeded on police report or on private complaint but for to the extent in relating to Section 258 Cr.P.C. of stoppage of proceedings in summary trial or summons case only arises in case arising of police report and in not for private complaint cases that was in fact clarified by this Court in Deevi Srinivasa Rai Radha Lakshmi Vs. State of Andhra Pradesh, 2015(2) ALD (CrI.) page No.159.

2. Pending the Calendar Case No.976 of 2009 before the learned Additional Judicial First Class Magistrate, Nizamabad supra, CrI.M.P.No.323 of 2018 filed by petitioner/ A.1 invoking Sections 239 and 258 Cr.P.C. covered by impugned dismissal order dated 01.03.2018 is with the contention that the entire trial vitiates for non-examination of the accused under Section 251 Cr.P.C. after his appearance on summons and having supplied copies of documents and before commencement of trial. It is not his case that he wants to admit his guilt for lenient view without ordeal of trial. He wants to plead not guilty. In fact that is also

his defence by suggestions to prosecution witnesses and on commencement of trial, he did not raise above objection. The case is at the stage of Section 313 Cr.P.C. examination of the accused from completion of prosecution evidence.

3. The main contention in the revision for admission consequent to the dismissal order of court below in impugning the same is that the very proceedings are invalid for the non-compliance of the mandatory requirement of Section 251 Cr.P.C. which says examination of the accused from substance of the accusation to the language of the accused and recording the answers of the accused to the extent possible in the language and words of the accused that was not complied with from use of word 'shall' from first part of Section 251 Cr.P.C. concerned, leave about the second part of the Section gives discretion to the Magistrate by use of word 'may' if at all on plea of guilty not chosen to convict can put to trial.

4. Chapter 35 Cr.P.C. deals with irregular proceedings. Section 460 Cr.P.C. says irregularities in the proceedings in respect of certain areas that will not vitiate the proceedings even the Magistrate not empowered by law to do. Section 251 Cr.P.C. not covered by this Section. There remained the other important Section 461 Cr.P.C. which says irregularities which vitiate the proceedings. The Section covers clauses A to Q, wherein also Section 251 Cr.P.C. not at all covered. Section 461 Cr.P.C. categorically speaks that if any Magistrate not being empowered by law in this behalf does any of those things. It is not the case that the Magistrate is not empowered by law to try the case. When Section 251 Cr.P.C. procedure Magistrate cannot dispose with is even to say not covered by Section 461 Cr.P.C., it cannot be contended of the

trial vitiates by said mere non-compliance of Section 251 Cr.P.C. the entire further trial by recording prosecution evidence with participation of accused through out, when came for examination of accused under Section 313 Cr.P.C, that too when it is his defence of he pleads innocence and the suggestions to prosecution witnesses of he did not commit the offence alleged, which could at best be answered under Section 251 Cr.P.C. initially before commencement of trial and not with any other version and could not show said procedural trial non-compliance caused any prejudice to him to claim as vitiated.

5. Thereby there is no ground to interfere with trial Court's impugned order, leave about accused got a right under Section 251 Cr.P.C. to file an application to say that the criminal proceedings no way sustainable as per the decision of the Apex Court in Bhushan Kumar and another Vs. State (NCT of Delhi) and another¹. Thus any of the documents even not contemplate under Section 251 Cr.P.C., leave about accused not even chosen to come to witness box to lead any defence evidence with permission of Court under Section 315 Cr.P.C. even not chosen to examine any of the defence witnesses, leave about that stage not reached herein. Thus without prejudice to avail any of the remedies provided by law, in the Section 313 Cr.P.C. examination itself he can file any of the documents which he wants to rely along with any written statement of his version which forms part of record to consider on own merits.

6. Now it is the further submission that the learned Magistrate after filing of the application covered by the impugned order, examined under Section 251 Cr.P.C. of the accused and it is not provided. No doubt he could not have done so, and even done so it has no sanctity

¹ (2012) 5 SCC 424

which is now made clear. However the fact that the very non-compliance of Section 251 Cr.P.C. no way caused prejudice, that cannot take as a ground to vitiate the proceedings. There is nothing to interfere with the dismissal of the learned Magistrate.

7. Having regard to the above and in the result, the revision case rather dismissal is disposed of giving liberty to the accused to file whatever the documents he want to file along with written statement if any if he is so chooses during Section 313 Cr.P.C. examination, leave about he got further right of adducing defence evidence.

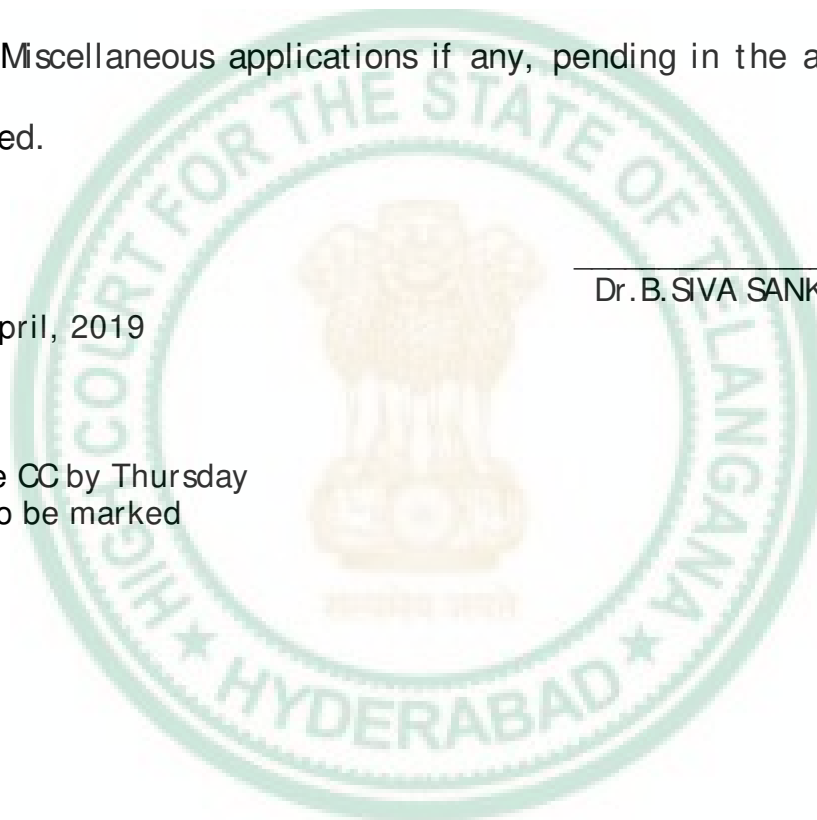
8. Miscellaneous applications if any, pending in the appeal shall stand closed.

Date: 1st April, 2019

Dr. B. SIVA SANKARA RAO, J

Note: Issue CC by Thursday
L.R. copy to be marked

B/o
PNV



HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO

