

IN THE HIGH COURT FOR THE STATE OF TELANGANA

**CRL.R.C. Nos. 2479, 2500, 2501, 2502, 2503, 2504,
2505, 2506 & 2507 of 2013**

Between:

M/s Narne Estates Pvt. Ltd.

... Petitioner

and

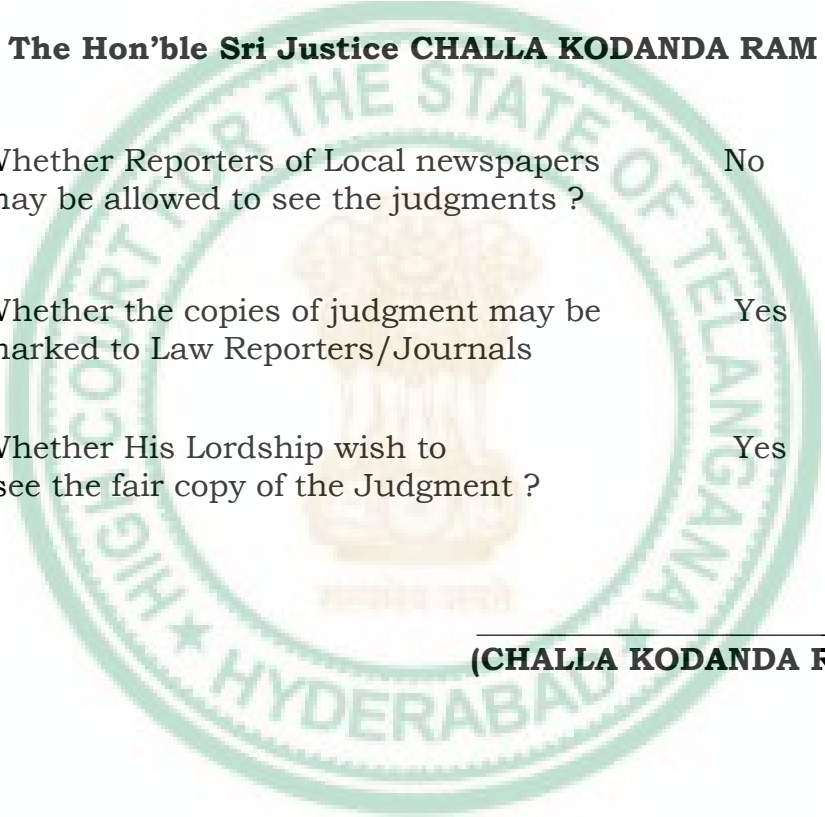
Sri Narne Gopal Naidu & another

...Respondents

Date of Judgment Pronounced: 29-01-2020

Submitted for Approval:

The Hon'ble Sri Justice CHALLA KODANDA RAM

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1. Whether Reporters of Local newspapers may be allowed to see the judgments ? No
 2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes
 3. Whether His Lordship wish to see the fair copy of the Judgment ? Yes

(CHALLA KODANDA RAM, J)

*** The Hon'ble Sri Justice CHALLA KODANDA RAM**

**CRL.R.C. Nos. 2479, 2500, 2501, 2502, 2503, 2504,
2505, 2506 & 2507 of 2013**

% Dated 29.01.2020

Between:

M/s Narne Estates Pvt. Ltd.

... Petitioner

and

Sri Narne Gopal Naidu & another

... Respondents

! Counsel for the petitioner : Sri Bikki Ravi Babu for
Sri Raja Reddy Koneti

^ Counsel for Respondent No.1: Sri Geddam Srinivas
Counsel for Respondent No.2 : Public Prosecutor

<GIST:

>HEAD NOTE:

? Cases cited:

- 1) AIR 1977 SC 2185
- 2) AIR 1978 SC 47
- 3) (2002) 5 SCC 82
- 4) 1980 AIR 962
- 5) ABC 2016(II) 126 SC
- 6) 2009(1) ALD (Cri) 871
- 7) (2017) 14 Supreme Court Cases 809
- 8) 2018 (1) ALT (CrI) 97 (AP)

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

**CRL.R.C. Nos. 2479, 2500, 2501, 2502, 2503, 2504,
2505, 2506 & 2507 of 2013**

COMMON ORDER :

In all these Revision Cases, numbering nine, the parties and the nature of controversy being identical, though they arise from different complaints which resulted in registration of various criminal cases before the Principal Judicial Magistrate of I Class Court, Bhongir, they all are heard together.

For convenience sake, the facts narrated and set out in Criminal Revision Case No. 2479 of 2013 are taken up.

The petitioner – company is the complainant which set the criminal law into motion by filing FIR No. 134 of 2005 on the file of P.S. Bhongir against the 1st respondent herein accusing of committing certain offences punishable under Sections 408, 420, 423 and 426 of the Indian Penal Code. After due investigation, charge sheet was filed and the same was numbered as C.C. No. 624 of 2006 on the file of the Principal Junior Civil Judge's Court at Bhongir. Trial commenced. At the stage when P.W.1's examination is in progress, Crl.M.P. No. 172 of 2013 was filed purported to be under Section 242(2) of the Code of Criminal Procedure by the State through SHO, PS Bhongir to receive certain documents and to permit the prosecution to mark the said documents through P.W.1. The said Application was dismissed stating that:

‘ Section 242(2) Cr.P.C. does not apply in the circumstances as pleaded in the petition as Section 242(2) Cr.P.C. contemplates that the magistrate upon the application of prosecution may issue summons to any witness to attend (or) to produce any document. Therefore, the provision of law invoked by the prosecution cannot be applied and has no application at all as

under Section 242(2) Cr.P.C. no document can be received by the Court on this ground the petition is liable for dismissal.

Even otherwise, the accused herein is charged for the offences under Sections 420, 408, 423 and 426 IPC alleging that the accused being the paid director of Narne Estate Private Limited has committed criminal breach of trust and cheating while acting as paid director of Narne Estate Private Limited. Now the documents which the prosecution intends to rely upon as clearly averred in the petition i.e. documents No.1 to 7 have no nexus at all to the crime in question and they are immaterial and irrelevant for consideration and the prosecution even failed to explain as to how the said documents in question are material for establishing the alleged offences. When once the fact that the accused herein was a paid director in Narne Estate Private Limited was not at all disputed (or) denied by the accused which is clearly evident from the evidence on record i.e. of P.W.1 as the accused did not choose to cross-examine OP.W.1 who is said to be de facto complainant in this case. Therefore, mere mentioning in the petition that P.W.2 has whispered in his evidence about the documents that are referred in the petition itself is not ground to receive said immaterial and irrelevant documents which serve no purpose in deciding the main case. As already stated above the prosecution utterly failed to explain as to how the documents are material and relevant in bringing home the guilt of the accused person when once the status of the accused as the paid director in Narne State Private Limited is an admitted fact and the establishment and existence of Narne Estate Private Limited is not in dispute. Therefore, it appears that the petition is intended only to drag on the matter on some ground (or) other without any purpose.”

Sri Bikki Ravi Babu, learned counsel appearing on behalf of Sri Raja Reddy Koneti, learned counsel for the petitioner company would submit that the learned Magistrate ought to have allowed the Application filed by the State to receive certain documents which have material bearing on the facts of the case for, the Investigating Officer has every right to produce the documents at any stage, under Section 173(8) of the Code of Criminal Procedure. According to him, the learned Magistrate had rejected to receive

the same, quoting a technical ground that the Application was made under wrong provision i.e. 242(2) instead of Section 173(8).

As an objection was raised by the learned counsel for Respondent No.1 that the order under Revision is an interlocutory order, hence, no revision lies in terms of Section 397(2) of Cr.P.C., elaborate arguments were advanced by both the learned counsel on the scope of Section 397 as well as the one under Section 173(8).

In this context, the learned counsel for the petitioner placed on record the judgments of the Supreme Court in ***Amar Nath v. State of Haryana***¹, ***Madhu Limaya v State of Maharashtra***² and ***Central Bureau of Investigation v R.S. Pai and Another***³.

In ***Amar Nath's case***, the Supreme Court considered the point of revision against interlocutory order under section 397(2) of Criminal Procedure Code, 1973. It held that the High Court has power to revise any finding, sentence or order, except interlocutory order, passed by a Magistrate in any enquiry, trial or other proceeding. An interlocutory order is one which is passed at some intermediate stage of an enquiry, trial or other proceeding generally, to advance the cause of justice for the final determination of the dispute between the parties arising under the enquiry, trial or other proceeding. The term 'Interlocutory' is ordinarily understood as provisional, temporarily, not final and the term is opposed to "definitive" and contrasted with "final". It held that rejection of the Application made by the State causes prejudice to the prosecution case and thus, rights are affected and

¹ AIR 1977 SC 2185

² AIR 1978 SC 47

³ (2002) 5 SCC 82

hence, in terms of *V.C. Sukla's case*, the said order is not an interlocutory order.

In ***Madhu Limaya's*** case, the Supreme Court opined that Section 397(2) of the code shall not be deemed to limit or affect the inherent power because it would be setting at naught one of the limitations imposed upon the revisional jurisdiction. The bar provided in section 397(2) operates only in exercise of the revisional power of the High Court meaning thereby that the high court will have no power of revision in relation to any interlocutory order. The inherent power would come into play when there is no other provision in the code for the redressal of the grievance of the aggrieved party, in case the impugned order brings about a situation which is an abuse of the process of the court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in section 397(2) can limit or affect the exercise of inherent power by the High Court.

In ***R.S. Pai's*** case, the Supreme Court dealt with the question whether the prosecution can produce additional evidence gathered during the investigation, after submitting the charge-sheet under Section 173 of the Cr.P.C. The Court opined that the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet and there is no bar on production of additional evidence gathered during investigation by police officer even after the submission of charge-sheet, subject to leave of the Court.

He further contends that merely because the learned Public Prosecutor had quoted a wrong provision i.e. Section 242 instead

of Section 173(8), the same cannot be an embargo on the petitioner to produce the relevant documents which support its case. Since the order under revision denies the substantial rights of a party, it cannot be treated as an 'interlocutory order' and thus, the Revision is maintainable under Section 397. To fortify his contention, the learned counsel had also made a reference to the judgment of the Supreme Court in **V.C. Shukla v. State Through C.B.I.**⁴, particularly to the test laid down by the Court to determine what is an interlocutory order and when such an order shall be construed to be final. He also places reliance on **Prabhu Chawla v. State of Rajasthan**⁵, wherein it has been categorically held:

“ In our considered view any attempt to explain the law further as regards the issue relating to inherent power of High Court under Sect on 482 Cr.P.C. is unwarranted. We would simply reiterate that Section 482 begins with a non-obstante clause to state: “nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.” A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J “abuse of the process of the Court or other extraordinary situation excites the Court’s jurisdiction. The limitation is self-restraint, nothing more.” We venture to add a further reason in support. Since Section 397 Cr.P.C. is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 Cr.P.C. only to petty interlocutory orders! A situation wholly unwarranted and undesirable.”

On the other hand, the learned counsel for Respondent No.1 *Sri Geddam Srinivas*, questions the very maintainability of Revision on the ground that Section 397(2) bars Revision against an interlocutory order. To justify that the order under Revision is in

⁴ 1980 AIR 962

⁵ ABC 2016(II) 126 SC

interlocutory nature, the learned counsel has placed reliance on the judgment of the Apex Court in **Sethuraman v. Rajamanickam**⁶ particularly para 4, wherein it was held that *'both the orders i.e. one on the Application under Section 91 Cr.P.C. for production of documents and other on the Application under Section 311 Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397(2), revision was clearly not maintainable'*. He also places reliance on **Girish Kumar Suneja v. Central Bureau of Investigation**⁷ to say that inasmuch as the order made by the learned Magistrate refusing to receive the documents does not result in termination of the entire proceedings, the same is an interlocutory order. To the same effect is the judgment of the learned Single Judge of this Court in **Repalle Krishna Murthy v. Uppalla Nagendramma**⁸. Yet another submission made by the learned counsel is that the documents sought to be produced are not the ones collected during the course of investigation and further, the Investigating Officer had not obtained permission of the Magistrate before proceeding with further investigation.

Though it is tried to project by the learned counsel for Respondent No.1 that the order under Revision is of interlocutory nature, it is not necessary, in the facts of the present case, to specifically decide whether rejection of an Application for receiving the additional evidence would be an interlocutory order or otherwise, particularly in the light of the provision which casts a duty on the Investigating Officer to place on record the material /

⁶ 2009(1) ALD (Cri) 871

⁷ (2017) 14 Supreme Court Cases 809

⁸ 2018(1) ALT (Crl) 97 (AP)

evidence collected in the process of further investigation, as is evident from Section 173(8) which is extracted hereunder:

“ Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

The underlined portion “shall”, as a matter of fact, mandates an Investigating Officer to place the additional material / evidence before the Court. It may be noted that in the judgment referred to by the learned counsel for the petitioner in **Central Bureau of Investigation v. R.S. Pai’s case** (cited supra), the Supreme Court while holding that “shall” occurring in Section 173(8) cannot be interpreted as mandatory, on the other hand, preserved the right under Section 173(8) and held that the word “shall” in the context of the duty of the Investigating Officer has to be viewed as mandatory, in the interests of justice.

A Division Bench of this Court in **The Public Prosecutor, High Court of Andhra Pradesh v. Paga Pulla Reddy**⁹ observed that:

“ A reading of sub-section (1) and (2) together shows that the High Court has power to revise any finding, sentence or order, except an interlocutory order, passed by a Magistrate in any enquiry, trial or other proceeding. It is clear that sub-section (2) envisages interlocutory orders in enquiries, interlocutory orders in trials, and interlocutory orders in proceedings other than enquiries and trials. A final order in a proceeding other than in an enquiry or trial cannot be construed as an interlocutory order within the meaning of Section 397(2) Cr.P.C. merely because, the proceeding has a direct relation to the enquiry or trial and such enquiry or trial did not terminate on

⁹ 1977(2) APLJ (HC) 93

the passing of the final order in the proceedings other than the enquiry or trial. An interlocutory order is one which is passed at some intermediate stage of an enquiry, trial or other proceeding, generally, to advance the cause of justice for the final determination of the dispute between the parties arising under the enquiry, trial or other proceeding.”

The ratio applied in the said case squarely applies to the facts of the present case.

The objection of the learned counsel for Respondent No.1 is also liable to be rejected in view of the judgment of the Larger Bench of the Supreme Court in **V.C. Shukla’s case** (cited supra) wherein, in para 100, it was held that ***“the test formulated by the Court was that any order which substantially affects the rights of the accused or decides certain rights of the parties cannot be said to be an interlocutory order. The fact that the controversy still remains alive was considered irrelevant”***. Hence, the said ratio will have preferential application.

It may also be noted that in the judgment in **Girish Kumar Suneja’s case**, the issue was in relation to the right of an individual vis-à-vis the power of the Court under Section 397 and that the Supreme Court held that the power under Section 397 is purely discretionary and there is no right on either of the parties.

Be that as it may, in the case on hand, though the Application is made invoking Section 242(2) read with Section 311 of the Cr.P.C., the right conferred on the prosecution under Section 173(8) cannot be whittled down by mere reference to a wrong provision of law. So far as the judgment of the Supreme Court in **Sethuraman’s case**, the same has no application to the facts of the present case, as, admittedly, the Application made by the Public Prosecutor was not under Section 91 Cr.P.C., which

empowers the Court to summon a witness / document. Even otherwise, without getting into the controversy, it may be noted, what all required to invoke Section 173(8) is - leave of the Court to be obtained for filing additional documents that too in the prescribed format. A perusal of the Code of Criminal Procedure and the format prescribed thereunder as well as the formats prescribed under the Criminal Rules of Practice, as applicable to the State, do not disclose any specific proforma having been prescribed for filing additional documents, except Format 20 for filing the charge sheet. The word 'prescribed', as defined under Section 2(t) by the Rules made under this Code does not contain any prescribed format for filing the material documents more particularly one in relation to Section 173(8). In other words, in normal parlance, either by way of additional charge sheet or by way of a challan, the documents can be placed before the Court.

Further, it may be noted the reasons for rejection as quoted supra in earlier paragraphs are hardly sustainable particularly with respect to para 7 of the order wherein the learned Magistrate came to the conclusion as to the relevancy or otherwise of the documents, ignoring the fact that the documents are yet to be taken on record, and their admissibility, relevancy or otherwise are the matters which are to be considered during the examination and marking of the documents and not at the stage of receiving the documents itself.

For all the above reasons, the orders under Revision are unsustainable and accordingly, the same are set aside with a direction to the learned Magistrate to complete the trial in C.C.No.

624 of 2006 as expeditiously as possible, keeping in view the year of institution of the case.

The Criminal Revision Cases are allowed. It is needless to mention that the documents to be brought on record shall be considered in evidence subject to admissibility, proof and relevancy.

CHALLA KODANDA RAM, J

29th January 2020

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