

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.1633 OF 2017

Between:

Smt.Dasari Aruna

...

Petitioner/Defacto
complainant

And

- 1.The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad
2. Dasari Veeraiah
3. Dasari Srinivasa Venkata Koteswar
4. Dasari Gangamma

... Respondents

DATE OF JUDGMENT PRONOUNCED: 28.10.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- | | | |
|---|--|--------|
| 1 | Whether Reporters of Local
newspapers may be allowed to see the
Judgments? | Yes/No |
| 2 | Whether the copies of judgment may
be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship
wish to see the fair copy of the
Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.P. No. 1633 of 2017

% Dated 28.10.2022

Smt.Dasari Aruna

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...

Respondents

! **Counsel for the Appellant:** Sri Jakkamsetti Ravindra

^ **Counsel for the 1st Respondent:** Sri S.Sudershan, Additional
Public Prosecutor

>**HEAD NOTE:**

? **Cases referred**

¹ (2021) 3 SCC 661

² 2012 Cri.L.J 305 (SC)

³ 2012 (3) Crimes 64 (68) (SC): AIR 2012 SC 2242

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No. 1633 OF 2017****O R D E R:**

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking direction to the respondent Police to conduct further investigation in respect of examining the material witnesses, who filed the affidavits along with this criminal petition, in C.C.No.467/2016 on the file of the XXIII Metropolitan Magistrate, R.R.District at Rajendra Nagar.

2. Heard learned counsel for the petitioner and learned Additional Public Prosecutor Sri Sudershan, for respondent State and perused the record.

3. The grievance of the petitioner who is defacto complainant in C.C.No.467/2016 is that though there are other witnesses, the police failed to examine the witnesses i.e. Smt.P.Sridevi, Sri Kandula Rama Rao and Sri Koti Reddy, who are material witnesses and have a bearing on the prosecution case.

4. Though an application under Section 173(8) of Cr.P.C. was made, the learned Magistrate has refused to refer the case for the purpose of further investigation.

5. For examining any witnesses who are not cited as witnesses in the Memo of Evidence filed by the prosecution, the defacto complainant or the prosecution has remedy under Section 311 of Cr.P.C. and also under Section 242 (3) of the Cr.P.C. Either calling witnesses under Section 311 and also Section 242(3) of Cr.P.C. will not confine to the witnesses whose names are mentioned in the list of witnesses enclosed to the charge sheet.

6. The Honourable Supreme Court in ***V.N.Patil v. K.Niranjan Kumar and others***¹ held that it was open for the trial Court to as well exercise powers of *suo motu* in summoning the witnesses whose statements ought to be recorded to sub-serve cause of justice with object of getting evidence in aid of just decision and to uphold truth.

7. The Judge of trial Court has a right to call for any witness, not called either by the prosecution or the defence and without the consent of either the prosecution or the defence, during the course of examining any witness is necessary in the interest of justice.

¹ (2021) 3 SCC 661

The scope is enlarged and to meet the ends of justice a witness who was not been cited and relevant to decide an issue, the trial Court is at liberty to call for such witnesses either at the instance of prosecution or the defence under Section 242 (3) of the Cr.P.C.

8. Section 242 of the Cr.P.C. reads as follows;

“ 242. Evidence for prosecution.—(1) If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under section 241, the Magistrate shall fix a date for the examination of witnesses: 1 [Provided that the Magistrate shall supply in advance to the accused, the statement of witnesses recorded during investigation by the police.]

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution:

Provided that the Magistrate may 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.”

9. Under section 242 (2), the Magistrate on an application of the prosecution, issue summons to any of its witnesses directing them to appear or produce any document or other thing.

10. Under Section 242 (3) of the Cr.P.C. it is mentioned that the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution.

11. The Legislature has thought it fit not to limit the witnesses who can be examined in a criminal trial only to the witnesses cited by the prosecution. All such evidence in clause (3) would mean the witnesses who are other than the witnesses cited by the prosecution in the charge sheet or the complaint and when such other witnesses are necessary to be adjudicated in a criminal trial, such witnesses can be called and examined.

12. The Honourable Supreme Court in ***Vijay Kumar v. State of Uttar Pradesh***² held that the power under Section 311 should be exercised for just decision of the case and in the process the evidence which may be tendered by the a witness is germane to the issue involved, or if proper evidence is not adduced or relevant material is not brought on record due to any inadvertence. The Hon'ble Supreme Court emphasized that power under Section 311 should be exercised for the just decision of the case.

13. In ***P.Sanjeeva Rao v. The State of A.P.***³ the Hon'bel Supreme Court held that the object underlying Section 311 of Cr.P.C. is to prevent failure of justice on account of a mistake of either party to bring on record valuable evidence or leaving an ambiguity in the statements of the witnesses.

² 2012 Cri.L.J 305 (SC)

³ 2012 (3) Crimes 64 (68) (SC): AIR 2012 SC 2242

14. The provision under 311 or 242 cannot be invoked to cause unnecessary delay in trial. For the said reason, it is for the concerned Magistrate to ascertain whether any witness or document called for under the said provisions are relevant and germane to the adjudication of the case. For the reasons to be recorded the learned Magistrate finds that the provisions are made for causing delay, the same can be rejected.

15. For the said reasons, the petitioner shall file a petition under Section 311 or 242 (3) of Cr.P.C. to examine the said witnesses.

16. Accordingly, the Criminal Petition is disposed off granting liberty to the petitioner to file a petition under Section 311 or 242 (3) of Cr.P.C. to examine the said witnesses.

Miscellaneous applications pending, if any, in this criminal petition, shall stand closed.

K.SURENDER, J

28.10.2022

Note: L.R.Copy to be marked.

B/o.tk

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No. 1633 OF 2017

Dt.28.10.2022

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