

THE HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

CRIMINAL REVISION CASE No.76 of 2022

ORDER:

The present revision case is filed by the petitioner against the orders in CrI.A.No.1059 of 2016 , dated 11.01.2022 on the file of IV Additional Metropolitan Sessions Judge, Ranga Reddy, at L.B.Nagar.

2. Heard learned counsel for the petitioner.
3. It is the contention of the learned counsel for the petitioner that the original complaint was filed under sections 200 of Cr.P.C against the accused for the offences punishable under Sections 499, 500 and 506 of IPC and the learned II Metropolitan Magistrate-cum-Principal Magistrate for Juvenile Justice Board, Cyberabad at L.B.Nagar, has recorded the sworn statements of witnesses, namely, the complainant and two others and the said Magistrate had taken cognizance against the accused for the offence punishable under section 500 of IPC.
4. The trial Court also recorded the statements of P.Ws 1 to 3 and marked Exs.P-1 to P-7 on behalf of the complainant. D.Ws-1 and 2 were examined and Exs.D1 to D3 were marked on behalf of

the accused. But, though only one complainant/accused was present before the Court, in the judgment, it is mentioned that prosecution case was referred and accused Nos.1 and 2 were there.

5. Being aggrieved by the same, the appellant/complainant has filed an appeal, wherein, the appellate Court has observed as under;

“This case is arising out of protest petition filed under section 200 of Cr.P.C. On perusal of the entire record, the final report lodged by the police concerned is not available and there is no whisper of filing any final report by the police in the impugned judgment. As per the cause title of the complaint, there is only one accused namely M.Sudhakar Rao. Even in the cause title of the judgment also the same accused is shown. However, at various places, the learned judge referred A1 and A2 in the judgment. It is not known to this Court from where A2 has been imported into the judgment by the learned Magistrate. Even in the result portion also it is observed that the accused are acquitted under section 255(1) Cr.P.C. In fact, there is only one accused as per the complaint. Therefore, in the circumstances of the case, this Court is of the considered opinion that it is a fit case to remand the matter to the trial Court for fresh disposal according to law by referring the correct accused.”

6. The final report lodged by the Police was not available and here is only one accused named Sri M.Sudhakar Rao as per the judgment of the trial Court. But, the trial Court has referred at various places as A1 and A2 and that A2 has also participated

along with A1, and therefore, the appellate Court has observed as to whether A2 has been imported into the judgment and matter is remanded to the trial Court for passing appropriate orders.

7. It is the contention of the learned counsel for the appellant that, any typographical mistakes if occurred during the time of the judgment, can be rectified under section 362 of Cr.P.C instead of directing the learned Magistrate to do so. The appellate Court has remanded the matter to the trial Court for fresh disposal by referring to the correct accused, which is not untenable or susceptible under the eye of law.

8. It is further contended by the learned counsel for the revision petitioner that the proceedings before the appellate Court are the continuation of the trial Court proceedings, and the question of fact can be rectified by the appellate Court, but instead of rectifying it, the matter was remanded to the trial Court for fresh disposal, putting the parties to suffer. Therefore, prayed to set aside the judgment of the appellate Court.

9. Heard learned Assistant Public Prosecutor. Perused the record.

10. On perusal of the record it is evident that, appellate Court has remanded the matter to the trial Court directing to dispose it of afresh. This Court is of the considered view that the appellate Court itself can consider the matter by calling for the records and by hearing the arguments of the parties on record instead of remanding the matter to the trial Court.

11. Therefore, the criminal revision case is allowed, setting aside the impugned judgment of the lower appellate Court. The matter is remanded to the first appellate Court i.e., IV Additional Metropolitan Sessions Judge, Ranga Reddy at L.B Nagar, with a direction to call for the records from the trial Court, to verify whether there is only one accused or two accused, hear the contentions of both the parties and to dispose of the appeal on merits keeping in view the observations made herein.

Pending miscellaneous applications, if any, shall stand closed.

G. ANUPAMA CHAKRAVARTHY, J.

Date: 30.01.2023

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