
(2014) 01 AP CK 0150
In the Andhra Pradesh High Court
Case No : Crl. R.C. No. 1763 of 2013

Dilawar Hussain

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 173(3), 173(5), 242
Penal Code, 1860 (IPC) — Section 341, 427, 447, 506

Citation : (2015) 1 ALD(Cri) 447

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : Jithender Rao Veeramalla, Advocates for the Appellant

Judgement

R. Kantha Rao, J.—This criminal revision case is filed against the order passed by the Metropolitan Sessions Judge, Ranga Reddy District at L.B. Nagar dated 28.3.2013 in Criminal Revision Petition No. 101 of 2012. I have heard the arguments advanced by the learned Counsel appearing for the petitioner/de facto complainant and the learned Additional Public Prosecutor representing respondent No. 1/State and also the learned Counsel appearing for respondents 2 to 9.

2. Respondents 2 to 9 are the accused in CC No. 103 of 2011 on the file of the Special Judicial Magistrate of First Class Court-I at Rajendranagar, Ranga Reddy District. They were put up for trial on the allegation of commission of offences punishable under Sections 341, 447, 427 and 506 of I.P.C.

3. The facts of the case briefly are that the Government acquired some land of the de facto complainant in Sy. No. 94 in Raidurga Pammekantha Village and to compensate him, the Government allotted land in Sy. No. 91 of Gachibowli vide proceedings of the District Collector No. G2/4333/2008, dated 27.5.2009. According to the prosecution, the respondents/accused trespassed into the land and damaged some property situated therein and threatened the de facto complainant to vacate the land.

4. The question before the trial Court was, whether the accused criminally trespassed into the land, damaged the property and threatened the de facto complainant to vacate the land.

5. In the course of trial, the Assistant Public Prosecutor filed an application under Section 242 of Cr.P.C. to mark certain documents, which were not part of the list of documents in the charge-sheet, however, those documents were referred to in the charge-sheet. The documents are: (1) Certified copy of agreement of sale-cum-general power of attorney, (2) Order passed by the Joint Collector of Ranga Reddy District allotting the land to the de facto complainant, (3) No Objection Certificate for allotting the land in favour of the de facto complainant and the orders of the Joint Collector, (4) Decretal order passed in OS No. 483 of 2008 on the file of the Additional Junior Civil Judge, Kukatpally, Ranga Reddy District and (5) Order in Writ Petition No. 400 of 2009 on the file of the High Court of Andhra Pradesh.

6. The respondents/accused objected for marking those documents in evidence and contended that as the Investigating Officer did not seize those documents in the course of investigation and the list of those documents is not appended to the charge-sheet, they cannot be received and marked. The learned Magistrate brushing aside the aforesaid objections raised by the respondents/accused, allowed the petition filed by the de facto complainant under Section 242 of Cr.P.C.

7. Aggrieved thereby, the respondents/accused filed the Criminal Revision Petition No. 101 of 2012, which was heard and disposed of by the learned Metropolitan Sessions Judge, Hyderabad at LB. Nagar, Hyderabad and reversed the order passed by the learned Magistrate, holding that the proposed documents were not subjected to scrutiny by the Investigating Officer as to their genuineness and therefore, those documents cannot be marked through PW1-the petitioner herein who is the de facto complainant.

8. The learned Counsel appearing for the respondents/accused relied on the case of Vasant Arjun Rachh (Dr.) Vs. Nirmalal Ramniklal Shah and Others, , wherein the learned Single Judge took the view that in a case instituted upon a charge-sheet filed by the police, there 2015(1) ALD (Cri.)-F-29 cannot be any going beyond Section 173 of the Code. Clause 8 of Section 173 does not preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate. Nonetheless, this further investigation has to be carried out by the police machinery and not by any one else including the complainant. The relief sought by the prosecution to mark some additional documents has to be so moulded as to bring it in conformity with law. The Magistrate could have very well directed the complainant to move the Investigating Officer and in the alternative, he could have taken the material and directed a further investigation with the instruction that a supplementary report be made available. Ultimately, the learned Single Judge directed the Investigating Officer or his successor to take possession of the material sought to be produced by the complainant, look into the matter and collect all such

evidence as may be necessary and thereafter submit a supplementary report if the occasion so arises. It is further held by the learned Single Judge that needless to say that copies of all the documents will be made available to the accused. The learned Single Judge stayed the trial of the case until the investigation in respect of the additional material (tapes and transcripts) is carried out.

9. On the other hand, the learned Counsel appearing for the petitioner/de facto complainant relied on the case of Smt. G. Saroja Sharma Vs. The State of Andhra Pradesh and P.S.N. Venkata Saraswathi, wherein the learned Single Judge of this Court held that in fact there is nothing in Section 173(5) Cr.P.C. which prevents the prosecution from submitting any such documents at the time of trial of the case, which at the time of filing the charge-sheet/report were not available with them or even if they were available, the copies thereof were not supplied to the accused. The said provision of law provided for under Section 173(5) Cr.P.C. is only directory and it cannot be treated as mandatory. The non-compliance of the said provision of law cannot debar the prosecution from producing any documents during the course of trial i.e., after filing of the charge-sheet and furnishing copies of the said documents to the accused. The learned Single Judge further held that Sub-section (3) of Section 242 Cr.P.C. which deals with the evidence for the prosecution clearly states that on the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution. The said provision of law is very wide and the Magistrate is all competent to receive any further evidence, if necessary even if the documents are filed after filing of the charge-sheet. The said provision of law i.e., Section 242 Cr.P.C. has an overriding effect over sub-section (5) of Section 173 Cr.P.C. and the provisions under Sub-section (5) of Section 173(3) Cr.P.C. does not control the Magistrate in any manner.

10. In the instant case, the documents proposed to be marked are referred to in the charge-sheet, but they were not produced along with the charge-sheet and copies were served on the respondents/accused. Therefore, it cannot be said that no investigation at all was done in respect of the transactions under the documents proposed to be marked. Since the investigation was done, touching those documents, ordering further investigation would be only a futile exercise and taking such a course would only defeat the object of Section 242 of Cr.P.C. The learned Single Judge, held in the judgment second cited that Section 242 of Cr.P.C. has an over-riding effect over sub-section (5) of Section 173 Cr.P.C. By marking the proposed documents, it cannot be said that the prosecution is introducing any new facts or introducing any new case. Only to substantiate the case of the prosecution, the said documents were sought to be let in by the prosecution.

11. Therefore, in my view, the learned Magistrate is right in allowing the petition and the learned Metropolitan Sessions Judge committed error of jurisdiction in allowing the criminal revision petition.

12. Accordingly, the order passed by the Metropolitan Sessions Judge, Ranga Reddy District at L.B. Nagar dated 28.3.2013 in Criminal Revision Petition No. 101 of 2012 is set aside and the order passed by the learned Special Judicial Magistrate of First Class Court-I, Rajendranagar, Ranga Reddy District dated 30.7.2012 allowing Criminal Miscellaneous Petition No. 333 of 2012 is confirmed. The criminal revision case is allowed accordingly. The miscellaneous petitions pending if any shall stand closed.