

(1996) 11 KAR CK 0032
In the Karnataka High Court
Case No : Criminal Petition No. 670 of 1992

Ismail Baba Sahab

APPELLANT

Vs

A.A. Hulageri

RESPONDENT

Date of Decision : 21-11-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 311, 313, 482
Penal Code, 1860 (IPC) — Section 499, 500

Citation : (1997) CriLJ 1804

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : F.V. Patil, for the Appellant; I.G. Gachchinamath, for the Respondent

Judgement

1. Being aggrieved by the order passed by the learned Civil Judge and C.J.M., Dharwad, in C.C. No. 2226/82 dt. 4-3-92 rejecting the applications filed by the petitioners herein u/s 311 & also Section 313, Cr.P.C. seeking permission to produce certain letters, said to have been written by the complainant and also to recall the complainant for cross-examination, the petitioner filed this petition u/s 482, Cr.P.C.

2. The brief facts leading to these applications are that the respondent filed a complaint u/s 200, Cr.P.C. on the allegation that the respondent has made certain derogatory and false statements in the letter written to the Dist. & Sessions Judge, Dharwad alleging among other things that the complainant indulges in using his official position against the interest of this respondent and influencing them in the matters pending before the Court, etc. This letter was forwarded to the complainant by the Dist. Judge for his remarks. On the basis of the allegations contained in the letter, the complainant lodged a complaint before the learned Civil Judge and C.J.M. Dharwad for the alleged offence u/s 500, I.P.C. The said case was registered in C.C. No. 2226/82. In actual fact, the trial was concluded and the statement of the petitioner who is accused before the Court was recorded and the case stood posted for arguments. At that time, the

petitioner filed two applications as stated above. The respondent filed objections to these applications and after hearing both the parties, the learned Court rejected the application on the ground that the records were not produced from the proper custody and therefore, the Court refused to receive the letter and also permission to recall PW-1 for further cross-examination. This order is questioned in this petition.

3. Heard the learned counsel for parties and the learned counsel for the respondent also filed a written argument in detail. Perused the same.

4. From a perusal of the order, it is abundantly clear that the points raised by the Court below itself are incorrect. The points formulated by the Court for determination are :

1. Whether the documents sought to be produced under the application in question by the accused were from proper custody ?

2. If point No. 1 is answered in the negative, whether the accused is entitled to produce those documents in support of his case ?

3. What order ?

5. It is well established law that u/s 311, Cr.P.C. the Court is empowered to permit the parties to produce documents and also to recall, examine, cross-examine and re-examine witnesses if the documents produced are essential for the just decision of the case. Under the circumstances, the question ought to have been whether these documents are necessary for the just decision of the case and whether recalling of witnesses would be essential for the said purpose. Therefore, from the very nature of the points raised by the Court below, it is clear that it proceeded on the wrong assumption that unless the documents are produced from proper custody, the same cannot be received by Court. It is not a stage at which the Court has to decide as to whether the documents are admissible in evidence if not produced from proper custody. An opportunity should be given to the parties to explain as to how they came into possession of those documents at a belated stage. Such being the case, the only point that the Court has to decide is as to whether those documents and evidence are necessary for the just decision of the case. The learned Court below was persuaded to accept the argument of the complainant only on the ground that those letters were written to his uncle and those letters were stolen and in that connection a police complaint was lodged and some of the documents were seized from the custody of the accused persons. Even accepting for the sake of argument that these documents were stolen, it is for the accused to establish that these documents are admissible in evidence and its authenticity cannot be questioned, etc. Therefore, the contention of the learned counsel for the respondent herein that since the documents are not coming from proper custody cannot be accepted and the Court has rightly rejected the same, is not tenable.

6. The learned counsel for the respondent further submitted that these letters

came to be written as could be seen from the dates mentioned therein, subsequent to the complaint lodged by the complainant. Therefore, it has no relevance to the facts of the case. As stated earlier, it is not at this stage that the Court has to decide as to the relevance and admissibility of the documents. It is for the petr. to explain and if the accused fails to establish their relevance, the Court is at liberty to reject the same from being exhibited. The respondent in his written argument mainly deals with the merits of the case. As against it, the learned counsel for the petitioner has drawn my attention to the decision reported in, (1982) 1 Kar LJ 22, Chikke Gowda v. State of Karnataka, wherein it is held that mere recording of the statement of the accused under S. 313 would not mean that the trial has come to an end. The trial is not finally concluded when evidence is taken and arguments are heard. A trial continues till judgment is delivered and so the power to examine witnesses can be exercised so long as judgment had not been pronounced. In Mohanlal Shamji Soni Vs. Union of India and another, . Their Lordships have held that the power can be exercised at any stage of the proceedings provided the examination of such proceeding is essential for the just decision of the case. In a decision reported in Jamatraj Kewalji Govani Vs. The State of Maharashtra, it is held that witnesses called by Court at the instance of prosecution after the defence case is closed witness deposing to reasonable belief necessary under S. 123 Customs Act, 1962, for offence under S. 135 that goods were smuggled, the question was whether calling such a witness at that stage was permissible. Their Lordships have held that since the evidence is essential for the just decision in the case, even at that stage also, the Court can permit the prosecution to examine the witness. From all the 3 decisions, it is abundantly clear that at any stage of the proceedings, before the Judgment is pronounced the Court is empowered to recall any witness and examine them for the purpose of the just decision of the case. These decisions further repel the argument advanced by the learned counsel for the respondent that these applications came to be filed belatedly is unsustainable.

7. From a perusal of the letters, without going into the merits of its contents it is clear that in some of the letters, the respondent appears to have made a statement and assurance to the effect that he knows some of the officers in judicial dept. and also A.P.Ps. and that his uncle need not worry about certain things. This shows, even if it is proved that the respondent is trying to use his office for certain purpose (sic).

8. On the basis of this, the learned counsel for the petitioner contended that the case is for the alleged offence u/s 500. The accused petitioner is entitled to take defence under exception 9 of Section 499, I.P.C., and exception 1 of Section 499, I.P.C. The petitioner being the accused is entitled to take all such defence as is available to him. It may be true that these letters came to be written subsequent to the complaint lodged by the respt. But from the contents the petitioner wants to establish that this respondent is indulging in using his judicial position, but to what extent the petitioner should be able to establish through this letter is a matter to be decided by the Court after the conclusion of the trial. From a

perusal of this letter it appears the claim of the petitioner that these documents are necessary for the just decision of the case has some force. To mark these documents, it is also necessary that the complaint be recalled for further cross-examination. At the same time, the complainant also will have full opportunity either to rebut or to deny the contents of the documents, etc. Such being the case, the finding of the trial Court that since these documents are not produced from proper custody they cannot be received in evidence is unsustainable in law.

9. As stated earlier, the petitioner has filed two applications, one u/s 311 Cr.P.C. to recall the complainant for further cross-examination and also to adduce further evidence in that case. The other application is filed u/s 313 Cr.P.C. seeking permission to produce the documents. These applications are interconnected. Petitioner has made out that these letters are necessary for the just decision of the case and these documents could be marked only if the author is further cross-examined. According to the petitioner, the author is none other than the complainant himself. Under those circumstances, both the applications deserve to be allowed.

10. In the result therefore, I proceed to pass the following :

ORDER

11. The petition is allowed. The Impugned order is set aside directing the trial Court to receive the document filed along with the application and also to permit the petitioner to cross-examine and also to examine the witnesses in that case.

12. Petition allowed.