(2011) 04 AP CK 0034

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 6048 of 2008

M. Ranga Rao APPELLANT

Vs

The State of Andhra Pradesh RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 191, 319, 319(1), 319(4)
Negotiable Instruments Act, 1881 (NI) — Section 144
Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471
Prevention of Corruption Act, 1988 — Section 13(2)

Citation : (2011) 04 AP CK 0034

Hon'ble Judges : K.S. Appa Rao, J

Bench : Single Bench

Advocate : C. Praveen Kumar, for the Appellant; T. Niranjan Reddy, Special Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

1. The petition is filed to quash the Order dated 17.7.2008 passed by the passed by the XIV Additional Chief Metropolitan Magistrate, Hyderabad in C.C. No. 333 of 2006 impleading the Petitioner as 2nd accused in this case.

2. The Central Bureau of Investigation filed Criminal Case against the accused No. 1 i.e. M/s Jai Kisan Seeds (India) Limited, represented by its Managing Director, M. Ranga Rao, for the offences under Sections 420, 468 and 471 of IPC. After the entire evidence has been recorded, when the matter is posted for judgment, the learned Magistrate found that there is prima facie material to proceed against Sri Ranga Rao in his individual capacity and took cognizance of the case by invoking the powers u/s 319 Code of Criminal Procedure to try Sri Ranga Rao along with prime accused. Being aggrieved by the Order of the learned Magistrate, the present Criminal Petition is filed.

3. It is the contention of the Petitioner''s counsel that Petitioner is the Managing Director of A. 1 company. The Central Bureau of Investigation filed a charge

sheet against accused No. 1 company represented by the Petitioner for the offences punishable under Sections 420, 468 and. 471 IPC. Initially, a case was registered against the Petitioner also, but Central Bureau of Investigation after investigation deleted his name from the charge sheet and filed the charge sheet only against A. 1 Company. The entire evidence was recorded and after hearing the arguments, the case was posted for judgment to 17.7.2008. On that day, the learned Magistrate suo-moto invoking powers u/s 319 Code of Criminal Procedure impleaded the Petitioner as 2nd accused. Against the said Order of the learned Magistrate, the Petitioner filed Crl. R.P. No. 128 of 2008 before the Metropolitan Sessions Judge, Hyderabad. The learned Sessions Judge, by his order dated 13.8.2008 dismissed the revision without hearing.

4. He further urged that there is absolutely no evidence against the Petitioner vis-a-vis the charges framed in the case. The transactions referred to by some of the witnesses have nothing to do with the charges framed in the case and that the power u/s 319 Code of Criminal Procedure should not be exercised in a casual manner and has to be used sparingly and with much circumspection, more so when the Central Bureau of Investigation did not choose to make any such application.

5. Now the point for consideration is whether the proceedings to include the appearance of the Petitioner in C.C. No. 333 of 2006 on the file of the XIV Additional Chief Metropolitan Magistrate, Hyderabad is liable to be quashed?

6. The impugned Order is dated 17.7.2008. The impugned Order reads that evidence on record discloses the composite of the present Petitioner and there is sufficient evidence to try the said Petitioner Sri Ranga Rao along with prima facie accused company and by invoking the powers u/s 319 of Code of Criminal Procedure to try along with prime accused company, the Court suo moto action was taken.

7. Before going into the merits of the Order of the trial Court below, it is imment to refer to Section 319 of Code of Criminal Procedure, which reads thus:

Section 319. Power to proceed against other persons appearing to be guilty of offence:

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which Such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the court he may be arrested or Summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the court although not trader arrest or upon a summon, may be detained by such court for the purpose of the inquiry into, or

trial of, the offence which he appears to have committed.

(4) Where the court proceeds against any person under Sub-section (1) then-

(a) The proceedings in respect of such person shall be commenced afresh, and witnesses re-heard.

(b) Subject to the provisions of Clause (a), the case may proceed as if such person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial was commenced.

8. The facts of the case briefly reads as follows:

A case was registered in R.C.38(A)/2003 in CBI, Hyderabad, on 30-12-2003 u/s 120-B, 420, 468 and 471 IPC and 13(2) r/w 13(2)(d) of PC Act, 1988. This case was registered on the basis of a source information that the bank officials, Sri K. Raghavendra Rao, Sri Shyam Sunder Kakani, Sri P. Guruswarupa Rao, Sri Seshagiri Rao and Sri P. Achuthadeva Rayulu conspired with the private persons Sri M. Ranga Rao, Sri AR Nagarajachary and Smt. Parvathamma during the period from 1997 to 1998 in the matter of sanction of credit facilities to M/s Jai Kisan Seeds (India) Ltd. In pursuance of the said conspiracy, on the application filed by Sri M. Ranga Rao, this firm was sanctioned credit limits to the extent of Rs. 80 lakhs (Cash Credit of Rs. 35 lakhs, MTL of Rs. 10 lakhs and LC of Rs. 35 lakhs) on the basis of the guarantee given by Sri AR Nagarajachary and Smt. A. Parvathamma and equitable mortgage of the properties belonging to these two persons. It is alleged in the First Information Report that the private persons furnished title deeds of these properties knowing fully well that they were forged. Sri K. Raghavendra Rao failed to conduct proper pre-sanction inspection and sanctioned the said loan on 22.10.1997. Sri M. Ranga Rao mis-utilised the sanctioned credit. Sri Shyam Sunder Kakani, Sri P. Guruswarupa Rao, Sri Seshagiri Rao and Sri P. Achutuadeva Rayulu processed the credit proposal knowing fully well that the company was incorporated only in June, 1997 and that the sales were falsely projected to be Rs. 500 lakhs for the year 1998-99 the said officials also failed to conduct proper post-sanction inspection to ensure that the funds were utilized for genuine purposes. Equitable mortgage was accepted from the persons who had nothing to do with the company. The Controlling authorities were not informed about the bad conduct of the account. The fact of sanction of the credit facilities was suppressed by not intimating to these authorities. As a result, when this loan account became NPA, the bank was put to a loss of about Rs. 72.97 lakhs.

9. Out of the disbursed loan amount, many cheques were issued from the CC account by Sri M. Ranga Rao, who later became Managing Director of M/s Jain Kisan Seeds (India) Limited. The MTL and the LC facility were also fully utilized for purchasing various furniture items and for procuring seeds from within India and abroad respectively. During November, 1998, the company was shifted to Kukatpally, Hyderabad, and a few months later the company was shifted again and its location could not be identified even by the bank officials. After April,

1999, there have been no regular deposits by the company into the loan account and on 31.3.2000 the loan account was declared as NPA. As on 25.5.2000, the outstanding amount in the loan account was Rs. 82,72,158/-. It appears that, after doing some genuine business, the company ran into losses and subsequently wound up its operations without clearing the bank dues.

10. The entire evidence has been recorded before the trial Court. Before pronouncement of judgment the learned Magistrate thought it fit to take cognizance of the matter against Sri Ranga Rao, Joint Managing Director of the accused No. 1 company by invoking the powers u/s 319 Code of Criminal Procedure As seen from the impugned order, it is noted that there is prima facie material to proceed against the said Sri Ranga Rao in the facts and circumstances of the case on hand. The Central Bureau of Investigation, who investigated the case and filed the charge sheet mentioned that no case is made out against the said Sri Ranga Rao, without mentioning the reasons to do so. In fact, initially the case was registered against six persons including Sri Ranga Rao, which includes four bank officials. The allegations are that all of them inspired and obtained loan of Rs. 75 lakhs from the State Bank of Hyderabad by submitting false and forged title deeds of Sri AR Nagarajachary and Smt. A. Parvathamma. The Central Bureau of Investigation deleted the names of the bank officials on the premise that the authorities of State Bank of Hyderabad declined to issue sanction Orders to prosecute them. No material was placed on that score. The Central Bureau of Investigation also did not take any steps against the authorities of the State Bank of Hyderabad as they declined to give sanction order to prosecute the erring officials. As seen from the proforma filed by the Central Bureau of Investigation, they have simply noted that no case is made out against Sri Ranga Rao. It is also in the evidence on record that Central Bureau of Investigation also has sent signatures of Ranga Rao to the Handwriting Expert, who gave positive opinion. If that be the case, under what circumstances, the Central Bureau of Investigation filed the charge sheet deleting the name of Sri Ranga Rao. As per the observation of the learned Magistrate, the evidence of all the witnesses have pointed out against Sri Ranga Rao in particular the evidence of P. Ws.13, 15, 20 and 22, the bank officials of the State Bank of Hyderabad. In the instant case, admittedly the said Sri Ranga Rao, is representing the company as Managing Director of the prime accused company. There is also sufficient evidence on record, as per the evidence of P. Ws.13, 15, 20 and 22, the bank officials of the State Bank of Hyderabad, who categorically stated that Ranga Rao was the Managing Director for the company. It is also positive evidence of P.W.15 that the said Sri Ranga Rao only represented the cheques before him and encashed the amount. P.W-3 the Government Expert who examined the signatures of Ranga Rao opined that the signatures belonging to Ranga Rao. On the combined reading of evidence of P. Ws.3, 13, 15, 20 and 22, there is ample evidence on record discloses the complicity of the said Ranga Rao. Section 144 of Negotiable Instruments Act deals with the offence by the company. In this case, the company is the prime accused. A company being a

juristic person all its deeds and functions are result of acts of others. Therefore, it is the persons, who are incharge for conducting business of the company at the time of commission of offence are liable. Further, Ex.P-24 application for credit facility to State Bank of Hyderabad, Overseas Branch, Somajiguda, Hyderabad was given by the company represented by the then Managing Director Sri Srinivasa Rao. The application was accompanied by the details of the promoters/ partners in proforma signed by Sri T. Srinivas Rao, Chairman/Managing Director and Sri M. Ranga Rao as Executive Director of the company. Further in Ex.P-1 sanction Order given by the State Bank of Hyderabad, Sri T. Srinivas Rao and Sri Ranga Rao signed as Managing Director and Executive Director separately accepting the terms and conditions of the sanction letter. It is only they who furnished the guarantors with alleged forged title deeds as security. When Central Bureau of Investigation has chosen to file charge sheet against the company alone, it is not known how the company which has got the personality in the eye of law, cheated the bank by itself without processing by actual persons in management processing and accomplishing the offence. Admittedly, Sri T. Srinivasa Rao died and in his place Sri M. Ranga Rao became Managing Director. It is Sri M. Ranga Rao, who availed the entire loan amount by withdrawing amounts by way of Ex.P-6 cheques on various dates styling himself as Managing Director in the year 1998. The facts are that Sri M. Ranga Rao also joined in the application for credit facility to the bank and also jointly executed loan documents including acceptance of terms and conditions of sanction of loans.

11. The scope and application of Section 319 is a self-contained section, independent of Section 190 and 191 of Code of Criminal Procedure Section 190 refers to initiation of proceedings, but Section 319 deals with a matter arising during the course of proceedings already initiated. When an enquiry or trial is already commenced, the Court may independently of Section 190 proceed against a person who fills the character described in Section 319. The power to take cognizance against such persons rest with the Court. The powers of the Court is discretionary as held in Vasudevan Nair Vs. State of Kerala, It is also held in Michael Machado and Another Vs. Central Bureau of Investigation and Another, that it is not enough that the Court entertained some doubt from the evidence about the involvement of another person in the offence. The Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First, that the other person has committed an offence. Second, that for such offence that other person could be tried along with the already arraigned accused. The Court while deciding the whether to invoke power u/s 319 of Code of Criminal Procedure must itself should also address itself bout the other constraints imposed by the first limb of Sub-section (4), that proceedings in respect of the newly added persons shall be commenced afresh and the witnesses revisionary Court-examined. The whole proceeding must be recommenced from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are large in number the

Court must seriously consider whether the objects sought to be achieved by such exercise are worth wasting the whole labour already undertaken.

12. Therefore, exercise of the powers u/s 319 Code of Criminal Procedure is wholly dependant on the evidence which comes during the trial from which it may appear that such person, other than the accused was also involved in the commission of offence. Though the power u/s 319 Code of Criminal Procedure is discretionary and such discretion must be exercised judicially having regard to the circumstances of the case. Undoubtedly, it is an extra ordinary power and we use it sparingly and if compelling reasons exist. In the present case on hand, the trial Court having found that there is sufficient evidence to try the case against the said Sri Ranga Rao along with other prime accused company and there is ample evidence on record discloses the complicity of the said Sri Ranga Rao by invoking the powers u/s 319 Code of Criminal Procedure took the cognizance of the case against said Sri Ranga Rao. In these circumstances, the lower Court acted properly in impleading Sri M. Ranga Rao in his personal capacity as accused No. 2 in the pending case. No doubt, power u/s 319 Code of Criminal Procedure has to be exercised by the Courts sparingly and that with much circumspection, as contended by the Petitioner but in this case, the trial Court correctly exercised all precautions while finding that Mr. M. Ranga Rao is a necessary party to this case as co-accused. Absolutely, there is no impropriety or irregularity or illegality committed by the trial Court in passing the impugned Order. As stated earlier, the petition was filed u/s 482 Code of Criminal Procedure to quash the proceedings in C.C. No. 333 of 2006. It was held in Jagdish v. State 2006 Crl. L.J. 1265 that the power u/s 319 is discretionary power of the trial Court. The discretion exercised by the trial Court should not be lightly interfered with, unless it shows that the Order refusing to implead the accused has been made mechanically or it is arbitrary or perverse. Further it was held in catena of decisions that the inherent powers u/s 482 Code of Criminal Procedure could be used sparingly in exceptional cases. The High Court would not sit in judgment over judicial pronouncements in order to find out their correctness or the sufficiency of the materials on which they are based. The Magistrate acting within his powers u/s 319(1) Code of Criminal Procedure on his judicial satisfaction on the materials mentioned in Section 319(1) Code of Criminal Procedure decides to proceed against a person not being an accused in the case, on the ground that he was involved in the offence. It was held in the case of E.P. Narayanan Nambiar v. State of Kerala 1989 Cri. L.J. 8 that the High Court will not interfere with the decision to find out its correctness or sufficiency of material on which it was based. The satisfaction of the Magistrate or the opinion formed by him, if based on materials mentioned in Section 319(1) Code of Criminal Procedure is normally not liable to be disturbed even by the revisional Court as to the sufficiency of material. In the present case on hand, the learned Magistrate rightly while taking into consideration the evidence on record in particular ocular evidence and documentary evidence suo moto invoked the powers u/s 319 Code of Criminal Procedure and took the cognizance of the case against the Petitioner. Viewed

from any angle in the totality of the circumstances, the Orders of the trial Court below is very much sustainable.

13. In the result, the Criminal Petition is dismissed.

