

(2016) 03 KAR CK 0231

In the Karnataka High Court

Case No : Criminal Petition No. 100045 of 2016.

Nataraj and Others - Petitioners @HASH State of Karnataka and Another

Date of Decision : 16-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 242, Section 311

Citation : (2016) 3 KantLJ 445

Hon'ble Judges : B. Sreenivase Gowda, J.

Bench : Single Bench

Advocate : Sri G.I. Gachchinamath, Advocate, for the Petitioners; Sri Praveen K. Uppar, High Court Government Pleader, for the Respondents

Final Decision : Allowed

Judgement

Mr. B. Sreenivase Gowda, J. - The accused in C.C. No. 948 of 2001 on the file of the Judicial Magistrate First Class, Hubballi have preferred this petition, seeking to set aside the order dated 13-11-2015 passed in Criminal Revision Petition No. 57 of 2014 by the I Additional District and Sessions Judge, Dharwad, sitting at Hubballi.

2. Heard the learned Counsel for the petitioners and the learned High ; Court Government Pleader for the 1st respondent-State and perused the order passed by the Courts below.

3. The facts leading to this petition are as under:

On the information of one Baburajendra, S/o. Channappa Bhadrapur, the jurisdictional police have registered a case against the petitioner in Crime No. 1746 of 2016 and submitted charge-sheet before the Judicial Magistrate First Class, I Court, Hubballi, for the offence punishable under Sections 323, 324 and 504 read with Section 34 of Indian Penal Code, 1860 pursuant to which the learned Magistrate registered a case in C.C. No. 948 of 2001 against the petitioner.

4. The prosecution, in order to prove its case, has examined the charge-sheet witness No. 5 namely, Krishna, S/o. Ambasa Kalburgi as P.W. 6 and he was cross-

examined by the accused and long after conclusion of the evidence of P.W. 6, the prosecution has made two applications one under Section 311 of Criminal Procedure Code, 1973 and another under Section 91 read with Section 242 of Cr. P.C., one for recalling P.W. 6 to examine him further and another application for confronting three documents through P.W. 6. The learned Magistrate by order dated 30-6-2014, rejected both the applications. The prosecution aggrieved by the said order of the learned Magistrate, challenged the same before the I Additional District and Sessions Judge in Criminal Revision Petition No. 57 of 2014. The learned Sessions Judge allowed the revision and set aside the order passed by the learned Magistrate and ordered for recalling P.W. 6 and directed the Trial Court to permit the APP to conduct re-examination with liberty to the accused to further cross-examine P.W. 6.

5. Sri G.I. Gachchinamath, learned Counsel appearing for the petitioners-accused submits, P.W. 6 was examined by the prosecution on 7-10-2013 and he was cross-examined by the accused on 23-11-2013. On 24-6-2014, nearly after 7-8 months, the prosecution has made two applications one for recalling P.W. 6 to cross-examine him further and another for production of three documents through P.W. 6 for clarifying the ambiguity occurred in his evidence.

6. P.W. 6 in his examination-in-chief has stated as under:

VERNACULAR MATTER

In his cross-examination held on 23-11-2013 he has stated as under

VERNACULAR MATTER

To put it in a nut cell, P.W. 6 in his examination-in-chief has stated that he knows the accused and the complainant earlier to the case. He has got a stationary shop at Dajibanpeth. The house of the complainant is situated nearby his shop in Hulikote Chal. That on 21-5-2001, the date on which the alleged incident had taken place, at 11.30 a.m., when he was in his shop, he heard galata at Hulikote Chal and when he went there to see, he found the accused and complainant at Hulikote Chala and found the accused abusing the complainant as

VERNACULAR MATTER

7. In his cross-examination recorded on 23-11-2013, he says, he is a resident of Bhuvaneshwari Extension in Keshavapur of Hubli. His shop at Dajibanpeth is situated 5 kms. away from his house and the said shop is bangles and cosmetics shop. In 2001, his shop was very popular. On 21-5-2001 at 11.00 a.m. when he had been to the shop, his brother had already opened the shop. His shop faces the Main Road of Dajibanpeth. The house of the complainant at Hulikoti Chal is situated at a distance of 100 feet from his shop. On that day he had not gone out from his shop. He had gone out at 2.30 p.m. to have lunch. From 11.00 a.m. to 2.30 p.m., there was no occasion for him to go out from his shop. His friendship with the complainant is 20 years old. It is in this evidence of P.W. 6, the prosecution says, there is ambiguity.

8. This Court after going through both the examination-in-chief and cross-examination, not find any ambiguity as complained by the prosecution. The learned Magistrate after careful analysis of the examination-in-chief and cross-examination, and considering the application filed by the prosecution on merits and, having not found any merit in the applications, has rightly rejected the applications.

9. The learned Sessions Judge, without perusing the evidence of P.W. 6 has committed an error in allowing the applications filed by the prosecution and setting aside the order passed by the Magistrate, thereby directing the Magistrate to permit the A.P.P. to re-examine P.W. 6, with a liberty to the accused to cross-examine him. The learned Sessions Judge has lost sight of the purpose for which the prosecution has sought for recalling P.W. 6 and producing additional documents through him. Prosecution has sought for recalling P.W. 6 for further examination-in-chief and cross-examination and to mark three documents through P.W. 6 on the ground that there is ambiguity in his evidence.

10. As there is no ambiguity in the evidence of P.W. 6, there is absolutely no reason for allowing the applications filed by the prosecution, as has been held by the learned Magistrate.

11. Accordingly, the petition is allowed.

12. Order dated 13-11-2015 passed in Cri. R.P. No. 57 of 2014 by the I Additional District and Sessions Judge, Dharwad, sitting at Hubballi, is set aside.