

(1968) 03 AP CK 0009

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 192 of 1967 and Criminal Revision
Petition Case No. 180 of 1967

Pulim Chenchi Reddy and Others

APPELLANT

Vs

Mungamuri Sivarami Reddy and Others

RESPONDENT

Date of Decision : 05-03-1968

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 146, 147, 148(1), 148(3)

Citation : AIR 1968 AP 388 : (1968) CriLJ 1645

Hon'ble Judges : A.D.V. Reddy, J

Bench : Single Bench

Advocate : N. Subba Reddy, for the Appellant; Harishesha Reddy, for Public
Prosecutor, Rajasekhara Reddy, for the Respondent

Judgement

1. The only point that arises for determination in this case is whether after passing the final orders in proceedings u/s 145, Cr.P.C., the Magistrate could pass a separate order regarding costs u/s 148(3), Cr.P.C., on the application filed by the successful party.

2. In M.C. No. 2 of 1966 with regard to proceedings u/s 145, Cr.P.C., a final order was passed by the Court on 22-7-1966 and there was no order with regard to costs. The successful party styled as A-Party thereupon came forward with an application dated 27-9-1966 for the awarding of costs. They claimed that they spent a sum of Rs. 663.50 being the amounts paid towards Commissioner's fee, Commissioner's expenses, watching charges and advocate's fee but claimed only Rs. 500. After a counter was filed the Magistrate passed an order granting costs of Rs. 500. Hence this petition to revise that order.

3. Section 148(3), Cr.P.C., says that "when any costs have been incurred by any party to a proceeding . . . the Magistrate passing a decision u/s 145, 146 or 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding and whether in whole or in part or in proportion. The learned counsel for the A-Party-respondents contended that the Magistrate

has no jurisdiction to award any costs after the order in the main petition had been passed. For this contention the decision of Lakshmana Rao, J. (as he then was), in *Thoonga Vedan alias Chinnama Naicken and Others Vs. Perumal Goundan and Others*, is relied on. The order is cryptic and reads as follows:--

"There was no order as to costs in the decision u/s 147, Cr.P.C., and the award of costs by a subsequent order cannot be supported. The revision petition is, therefore, allowed and the order as to costs is set aside."

It is seen that there is no reason given as to why the awarding of costs subsequently made in the main petition should be disallowed. The same learned Judge, however, in a prior decision reported in *Naraiah v. Krishnamurthi* 1938 Mad WN 1011, following the decision in *Vythinada Tambiran v. Mayandi Chetti* (1906) ILR 29 Mad 373, held that the award of costs should be either contemporaneous or made within a reasonable time after the disposal of the case and in that case as there was delay of almost nine months, he set aside the order awarding costs. In the decision relied on by him in ILR 1906 29 Mad 373, *Subramania Ayyar, J.*, has pointed out that the award of costs u/s 148(3), Cr.P.C., should in the usual course be contemporaneous with the decision of the main question, that, however, if circumstances require the postponement of the award of costs, it should be made within a reasonable time after the disposal of the principal subject of the proceedings in the presence of both the parties. It will thus be seen that the award of costs subsequent to the passing of the order in the main petition u/s 145, Cr.P.C., has not been completely negated. In *Kapoor Chand and Another Vs. Suraj Prasad* it was pointed out that there is no time-limit fixed u/s 148(3) for passing an order awarding costs and as such any order passed within the reasonable time after passing of the order in the main petition cannot be said to be invalid.

4. The awarding of costs is entirely within the discretion of the Court. Section 148(3) does not prescribe any time limit for the awarding of costs. Ordinarily, costs should have been provided for in the main order itself. But the Magistrate has stated that no order for costs was then made as it was not argued before him. The party appears to have noticed that no order as to costs was made only after he obtained the certified copy of the order. No doubt in applying for the certified copy of the order there appears to have been a few days' delay and even after obtaining the copy for filing this petition, there was a little delay. On this account the party cannot be denied his costs. The application had been filed in about two months after the passing of the order in the main petition. I, therefore, find that the successful A-Party is entitled to recover the costs and the order passed regarding costs is valid.

5. It is, however contended that costs had been determined on hypothetical basis without proper proof. u/s 148(1), Cr.P.C., what is contemplated as the costs payable are the costs actually incurred by the successful party to the proceedings. In this case no proper data with proof of payment appears to have been filed before the Magistrate. The Magistrate appears to have fixed the

amounts payable towards Commissioner's fee, watching charges, advocate fee, of his own discretion. They are amounts that can be ascertained. I, therefore, consider that it is necessary that this case should be remanded to the lower Court for determining the actual costs incurred and for passing an order for costs. The learned counsel for the B-Party-respondents here contends that the expenses incurred do not relate entirely to the lands claimed by his clients. What proportion of the costs the respondents should pay and bear is left to the discretion of the Magistrate and will be determined by him.

6. With the above observations, this case is remanded to the lower Court for disposal according to law.

7. Case remanded.