

(2003) 06 KAR CK 0052

In the Karnataka High Court

Case No : Criminal Revision Petition No. 369 of 2003

Smt. Ratnavva and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 06-06-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 233, 313, 397, 401
Penal Code, 1860 (IPC) — Section 201, 302, 34, 498A

Citation : (2003) 4 KarLJ 443 : (2003) 3 KCCR 1852

Hon'ble Judges : K. Bhakthavatsala, J

Bench : Single Bench

Advocate : Chandrashekar P. Patil, for the Appellant; M. Marigowda, Additional State Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K. Bhakthavatsala, J.—Though the matter is posted for admission, with the consent of both the parties, it is taken up for final hearing.

2. In this case, the petitioners who are accused in S.C. No. 25 of 2000 on the file of Sessions Judge, Godag, have filed the present revision petition under Sections 397 and 401 of the Cr. P.C., being aggrieved of the order dated 17-3-2003 passed in S.C. No. 25 of 2000 on the file of Principal Sessions Judge, Gadag, rejecting the application filed by the accused on 27-12-2002 to summon C.W. 36 as Court witness.

3. Respondent-State is represented by Additional State Public Prosecutor Sri Marigowda.

4. The brief facts of the case leading to the filing of the present revision petition may be stated as under:

The present accused/petitioners are facing trial for the offences under Sections 498-A, 302, 201, 202 read with Section 34 of the IPC in S.C. No. 25 of 2000 on the file of Principal Sessions Judge, Gadag. It is the case of the prosecution that

C.W. 36-Head Constable of Outpost Police recorded dying declaration of the deceased. When the evidence of the prosecution was in progress on 27-12-2002, an application was filed on behalf of the accused to summon C.W. 36 as a Court witness. On 17-3-2003, after examining P.W. 30, the prosecution closed its evidence. The learned Sessions Judge heard arguments on the above said application filed u/s 313 of the Cr. P.C., but rejected the same on the ground that when the prosecution has not chosen to examine the said witness, namely, C.W. 36, Court would not interfere. Therefore, the application was rejected and case was posted for recording statement of accused. This is impugned in this revision petition.

5. Heard arguments.

6. During the course of argument, the learned Counsel for the petitioners submits that since the prosecution has closed its case and the case is posted for recording statement u/s 313 of the Cr. P.C. and he would advise the accused to make use of Section 233 of the Cr. P.C. to summon the witness. It is not out of place to mention that the accused can adduce defence evidence by seeking issue of process to the witness u/s 233 of the Cr. P.C. When such a benefit is available to the accused after statement of accused is recorded u/s 313 of the Cr. P.C. the case of the accused is not prejudiced by the impugned order. Therefore, there is no need to interfere with the impugned order.

7. For the reasons stated supra, I pass the following order:

8. In the light of the observations made above, the revision petition fails and the same is hereby dismissed, at the stage of admission itself.