
(2016) 01 KAR CK 0239

In the Karnataka High Court

Case No : Criminal Revision Petition No. 1219/2015

Srinivasa Reddy and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, Section 313, Section 397
Penal Code, 1860 (IPC) — Section 201, Section 302, Section 34

Citation : (2016) 01 KAR CK 0239

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : S.K. Venkata Reddy, Advocate, for the Appellant; S. Rachaiah, HCGP, for the Respondent

Final Decision : Allowed

Judgement

A.V. Chandrashekara, J.—1. The present petition is filed under Section 397 of the Criminal Procedure Code challenging the order dated 26.10.2015 passed in S.C. No. 105/2009, which is pending on the Court of I Additional District and Sessions Judge, Ramanagara.

2. The petitioners herein are accused Nos. 1 to 3 in the said case. They have faced trial for the offences punishable under Sections 302 and 201 of IPC read with Section 34 of IPC. The prosecution had examined PWs. 1 to 17 and later on, case had been posted for examination of accused under Section 313 of Cr.P.C. When the case had been set out for examination of accused under Section 313 Cr.P.C. the prosecution intended to examine five more Police officials, who had not been cited as witnesses in the chargesheet. Permission was accorded by the learned Sessions Judge to examine all of them. Out of the five police witnesses, only two witnesses came to be examined on behalf of the prosecution.

3. At this stage, on 22.08.2014, an application was filed on behalf of the accused under Section 311 of Cr.P.C., requesting the Court to recall the Investigating Officer, PW. 17, for further cross-examination in light of the evidence tendered by

two official witnesses examined on behalf of the prosecution though not cited in the chargesheet. This application came to be rejected on 26.10.2015 and it is this order, which is called in question in this petition on various grounds.

4. Sri Rachaiah, learned High Court Government Pleader has opposed the petition on the ground that the impugned order is an interlocutory order and no revision is maintainable in the light of prohibition under Sub-Section (2) of Section 397 Cr.P.C. He has placed reliance on the decision of the Hon''ble Apex Court in the case of SETHURAMAN v. RAJAMANICKAM reported in , (2009) 2 SCC (Cri.) 627. In paragraph No. 5 of the said judgment, the Hon''ble Apex Court has observed that any order passed by the trial Court under Section 311 Cr.P.C., for recalling a witness would be interlocutory in nature. Therefore, sub-section (2) of Section 397 Cr.P.C., would come into play.

5. In the present case, an application came to be filed under Section 311 Cr.P.C., by the accused after examination of two more witnesses on behalf of the prosecution when the case had been set out for examination of the accused under Section 313 Cr.P.C. This Court cannot postulate as to the questions that would be put to the Investigating Officer after the examination of two more witnesses. Though the order impugned in this petition is interlocutory in nature, it is intermediate in the sense that the rights of the accused are infringed in a way. The order so passed in the present case cannot be considered as an interlocutory order to bring the same within the purview of sub-section (2) of Section 397 Cr.P.C.

6. It is made clear that the revision petition will have to be allowed to the limited extent of cross-examining the Investigating Officer with regard to the evidence tendered by two witnesses examined after the case was posted for examination of accused under Section 313 Cr.P.C. Hence, this glaring illegality found in the impugned order needs to be rectified in terms of Section 397 of Cr.P.C.

Accordingly, the revision petition is allowed. The impugned order is set aside. Permission is accorded to the petitioners - accused in S.C. No. 105/2009 to recall the Investigating Officer, PW. 17, for the limited purpose of cross-examination relating to the evidence tendered by two witnesses examined after the case was posted for examination of accused under Section 313 Cr.P.C. and not beyond that.