
(2012) 07 AP CK 0046
In the Andhra Pradesh High Court
Case No : Criminal Petition No. 5353 Of 2012

V. Vani

APPELLANT

Vs

VBVSMK Prasad and 4 Others

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 311
Penal Code, 1860 (IPC) — Section 498A

Citation : (2012) 2 ALD(Cri) 248 : (2012) 3 ALT(Cri) 131

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : N. Raja Sekharam, for the Appellant;

Final Decision : Dismissed

Judgement

Honourable Sri Justice Samudrala Govindarajulu

1. The petitioner/defacto-complainant is aggrieved by the impugned order of the XIV Metropolitan Magistrate, Cyberabad at Lal Bahadur Nagar by which the lower Court dismissed the petition filed u/s 311 Cr.P.C refusing to give permission for examination of three named witnesses in the petition. The case under trial before the lower Court is one for the offence punishable u/s 498A I.P.C. It is a case instituted by the police after investigation. During investigation, the investigating officer examined 5 witnesses including the defacto-complainant/victim in support of the prosecution case and cited them as witnesses in the charge sheet apart from official witnesses. Now, the Assistant Public Prosecutor filed petition in the lower Court u/s 311 Cr.P.C. seeking permission of the lower Court to examine three witnesses namely K. Srinivas, K. Saritha and Adimulam Sudhakar on behalf of the prosecution in addition to the witnesses cited in the charge sheet. It is the prosecution case that K.Srinivas, K. Saritha who are husband and wife are family friends and Adimulam Sudhakar is relation of the parties and they are acquainted with facts in the present case. Placing reliance on Godrej Pacific Tech. Ltd. Vs. Computer Joint India Ltd., and Hanuman Ram Vs. The State of Rajasthan and

Others, of the Supreme Court, it is contended by the petitioner's counsel that request u/s 311 Cr.P.C can be made at any time and at any stage of the proceedings to examine any additional witness and that the only limitation is to find whether examination of those witnesses was for just decision in the case.

2. Right of a party to invoke Section 311 Cr.P.C at any stage of the proceeding has to be tested as against prejudice if any that is going to be caused to the accused. Names of the above three witnesses are not found at any stage of the investigation and they were also not disclosed by the petitioner in her evidence. It is contended by the petitioner's counsel that K. Saritha accompanied the petitioner to the police station at the time of giving report to the police and that the police recorded her statement u/s 161 Cr.P.C also and that in spite of it, she was not shown as witness for the prosecution and her statement u/s 161 Cr.P.C was removed by the police. This submission of the petitioner's counsel is nothing but a cock and bull story which has no basis in the record. Neither P.W-1 stated so in her evidence nor the record has any indication about the same. It is further contended by the petitioner's counsel that names of the above three witnesses were kept as secret by the defacto-complainant as there is every likelihood of the accused influencing those witnesses. This is what is prohibited in a criminal trial. The accused cannot be put to surprise by bringing names of witnesses and witnesses as and when the prosecution or the defacto-complainant wants to introduce. In a fair criminal trial the defacto-complainant as well as the prosecution has to disclose the entire prosecution evidence that is proposed to be let in during trial and furnish copies of documents relating to the said witnesses to the accused before starting of trial. In the absence of the same, the prosecution cannot be permitted to examine surprise witnesses or secret witnesses to the detriment or to the prejudice of the defence case. In the light of the above discussion, the lower Court rightly dismissed the petition filed by the Assistant Public Prosecutor u/s 311 Cr.P.C. There is no infirmity in the order passed by the lower Court muchless any miscarriage of justice flowing from it. Accordingly, the Criminal Petition is dismissed.