

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRIMINAL PETITION NO.1499 OF 2020

Between:

Pattivada Balaji

... Petitioner/Respondent

Versus

The State of Andhra Pradesh, through Station House Officer, Kanchikacherla Police Station, Krishna District, represented by Public Prosecutor, High Court of Andhra Pradesh at Amaravati.

...Respondent/Petitioner

* * * * *

DATE OF ORDER PRONOUNCED : 23.09.2023.

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

1. Whether Reporters of Local Newspapers may be allowed to see the Order? Yes/No
2. Whether the copy of Order may be marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the fair copy of the Order? Yes/No

JUSTICE B.V.L.N.CHAKRAVARTHI

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The State of Andhra Pradesh, through Station House Officer, Kanchikacherla Police Station, Krishna District, represented by Public Prosecutor, High Court of Andhra Pradesh at Amaravati.

...Respondent/Petitioner

! Counsel for the petitioner : Sri Srinivasa Rao Velivela

^ Counsel for the Respondent/Petitioner : Sri Y.Jagadeeswara Rao, learned Special Assistant Public Prosecutor for State.

< Gist:

> Head Note:

? Cases referred:

1. **J.B.Roy vs. The State of Andhra Pradesh** reported in **AIR 1968 AP 236.**

2. **Zahira Habibullah Sheikh and Ors. vs. State of Gujarat and others** reported in **2006 (3) SCC 374.**

This Court made the following:

THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

CRIMINAL PETITION NO.1499 OF 2020

O R D E R:

Heard Smt. Vallabhaneni Sireesha, learned counsel representing Sri Srinivasa Rao Velivela, learned counsel for the petitioner and Sri Y.Jagadeeswara Rao, learned Special Assistant Public Prosecutor representing respondent.

2. This criminal petition is filed under Section 482 of the Code of the Criminal Procedure, 1973 (for brevity 'CrPC') to quash the Order, dated 20.02.2020 rendered by XIV Additional Metropolitan Magistrate, Nandigama in Crl.M.P.No.3828 of 2019 in C.C.No.694 of 2018.

3. The contention of the petitioner is that the impugned order is not maintainable in law as the learned Magistrate did not consider the fact that the prosecution is trying to fill up the lacunae in their case during the trial by introducing new witnesses.

4. The learned Special Assistant Public Prosecutor contends that the proposed witnesses are not new witnesses and they were examined by the police during investigation of the case and their statements were also recorded under Section 161 CrPC.,

but due to inadvertently, their names were not mentioned in the list of witnesses filed with the Police Report (charge sheet) and therefore, only to assist the Court to arrive at a just decision, the prosecution intends to examine them and copies of the statements recorded under Section 161 CrPC., of the said witnesses were also been provided to the accused, and the accused has a right of cross-examination and therefore, it would not cause any prejudice to the accused.

5. Now the point that arises for determination is:

“Whether the impugned Order, dated 20.02.2020 passed by the XIV Additional Metropolitan Magistrate, Nandigama in Crl.M.P.No.3828 of 2019 in C.C.No.694 of 2018 suffers from any error, illegality, impropriety and irregularity requiring this Court to quash the same?”

6. **P O I N T:**

The some and substance of the case is that the respondent/police filed the Police Report (Charge Sheet) against the petitioner/accused for the offence punishable under Section 304-A of the Indian Penal Code, 1860 (for brevity ‘IPC’); the learned Magistrate has taken cognizance of the offence and registered the case as Calendar Case No.694 of 2018 on the file of Additional Judicial Magistrate of the First Class, Nandigama; and after conclusion of examination of the accused under Section 251 CrPC., posted the case for trial; during trial, the

prosecution has examined two witnesses as P.W.1 and P.W.2 and case is coming for further evidence of the prosecution; the prosecution filed the application in Crl.M.P.No.3828 of 2019 under Section 311 CrPC., to issue summons to additional witnesses by name Allagunta Nagaraju and Bandi Nagaraju; learned Magistrate allowed the application under the impugned Order, dated 20.02.2020 and issued summons to the witnesses for examination as witnesses for the prosecution.

7. The contention of the prosecution is that the Investigating Officer during the course of investigation of the case has had examined the above two witnesses under Section 161 CrPC., and also recorded their statements but, inadvertently failed to mention their names in the list of witnesses filed with the Police Report (Charge Sheet) and that they are eye-witnesses to the occurrence of the incident and therefore, their evidence would assist the Court to arrive at a just and proper conclusion.

8. The petitioner/accused opposed the application before the Trial Court that the prosecution is trying to fill up the lacunae in their case, and therefore, it would cause prejudice to the accused.

9. In the light of above rival contentions Chapter XX, Section 254 CrPC which deals with the procedure when accused is not

convicted either under Section 252 CrPC or 253 CrPC in a summons case triable by Magistrates is relevant. It is extracted as under:

Section 254: Procedure when not convicted.

(1) If the Magistrate does not convict the accused under section 252 or section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

(2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing.

(3) The Magistrate may, before summoning any witness on such application require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court.

10. Section 254 (1) CrPC., would speak that if the Magistrate does not convict the accused under section 252 or 253, he/she shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and to hear the accused and take all such evidence as he produces in his defence. So, it speaks that **all such evidence as may be produced in support of the prosecution be received** during

the trial. It is an established principle in Law of Evidence that evidence includes both oral and documentary.

11. To arrive just decision of the case, similar provision is there in Chapter XIX relating to trial of warrant-cases by Magistrates, in which Section 242 CrPC is as under:

242. Evidence for prosecution:

(1) If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under Section 241, the Magistrate shall fix a date for the examination of witnesses:

[Provided that the Magistrate shall supply in advance to the accused, the statement of witnesses recorded during investigation by the police.]

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution:

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

12. Similar provision is also there in Chapter XVIII relating to trial before a Court of Session, in which Section 231 CrPC is as under:

231. Evidence for prosecution:

(1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.

(2) The Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

13. Section 311 CrPC relates to power of the Court to summon any person as a witness, or examine any person in attendance, though not summoned, as a witness, or recall and re-examine any person already examined "if his evidence appears to it to be essential to the just decision of the case." This power was conferred on the Court in the general provisions as to inquiries and trials in Chapter XXIV of the Code. Whereas Section 231, 242, 244 and 254 CrPC relates to the procedure of taking evidence during the trial, conducted by a Court of Session and by Magistrate.

14. Therefore, in my considered opinion, as long as the trial in sessions cases, warrant cases or summons cases is at the stage

of evidence for prosecution, as laid down in the above sections, the Sessions Judge or Magistrate can take all such evidence as may be produced in support of the prosecution.

15. Though, such evidence either oral or documentary was not mentioned in the list of witness/documents filed with the police report (charge sheet) under Section 173 CrPC, copies of the statements or documents be furnished to the accused, to enable him to avail the right of cross-examination.

16. The list of witnesses/documents filed with the Police report (Charge sheet) filed by the police is only a practice. It does not prevent the Prosecution or Magistrate/Court from examining any other witnesses or receiving documents if they help the Court to arrive at a just decision in the case.

17. The right of the accused be protected by instructing the Prosecution to provide the copies of the statements of the witnesses if any, or documents, which were recorded/collected during investigation, but not mentioned in the list of witnesses and documents filed with the Police report (Charge sheet), to the accused, before examining the proposed witnesses. The probative value of the said additional evidence be decided later only, in the judgment. In the case on hand, the prosecution might have filed the application under Section 311 CrPC, it can

be considered as an application under Section 254 CrPC. It is a settled proposition of law that a party cannot be denied relief on the ground of quoting a wrong provision if, he is otherwise entitled to the relief under a different provision in the Code.

18. The High Court of Andhra Pradesh in **J.B. Roy vs The State of Andhra Pradesh**¹ at para-No.7 held as under:

“...The list of witnesses usually is given by the Police along with the charge-sheet because of the prevalent practice. The practice is undoubtedly desirable but no provision of the Code compels the prosecution to furnish any such list along with the charge-sheet. Nor furnishing of such a list of witnesses along with charge-sheet can mean that the prosecution has relinquished its right to call for any other witness whose name is not mentioned in the list. Nor binds the court to record only the statements of such persons whose names appear in the list. It does not disable the prosecution or the Court from examining any other witness if it is found desirable or necessary for the purposes of the case.”

19. It is pertinent and necessary to note down the canons of criminal jurisprudence on which our criminal justice system functions. Every Criminal trial is a voyage of discovery in which truth is the quest. Conviction or acquittal is not the sole prerogative of the criminal trial. Truth is the main object. The quest of truth is the mandate of law and indeed the bounden

¹ AIR 1968 AP 236.

duty of the Courts. The criminal justice system will sustain only when the people will be convinced that justice is based on the foundation of the truth. Therefore, every criminal trial is voyage of discovery in which truth is the quest. The object of every investigation of trial is not only to administer and secure the ends of justice but also to find out the truth. It would be achieved only by fair, just and proper investigation and trial. Nobody can deny that the principle of fair investigation and trial is the object of Article 21 of the Constitution of India. On behalf of the State, the Prosecutor who oversees case should impartially provide all essential facts, witnesses, and evidence before the Court. The duty of a Public Prosecutor is not merely to secure the conviction of the accused at all costs but to place before the Court whatever evidence is in the possession of the Prosecution, whether it be in favour of or against the accused and to leave the Court to decide upon all such evidence.

20. In **Zahira Habibullah Sheikh and Ors v. State of Gujarat and Others**² the Hon'ble Apex Court observed that "each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and to society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and an

² (2006 (3) SCC 374).

atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witness or the cause which is being tried, is eliminated.”

21. Therefore, the Court is responsible for making sure that trials are conducted fairly, and that justice is served. Judges preside over criminal trials and make sure that the accused are given their due rights. Fair trial is not a favour afforded to the accused. It is a legally enforceable right guaranteed by the State to its citizens, for whom the State itself exists. Fair trial means it is not only fair to the accused; it should be fair to the prosecution and the society at large.

22. In the case on hand, there is no dispute that the prosecution has provided copies of the statements of the proposed witnesses recorded by the Investigating Officer during investigation, to the accused. The contention of the prosecution is that the proposed two witnesses are the eye-witnesses to the occurrence of the incident in the case and the Investigating Officer recorded their statements under Section 161 CrPC during investigation but, inadvertently they were not filed along with the Report (Charge Sheet) under Section 173 CrPC and hence, the prosecution intends to produce the said witnesses in support of the prosecution as evidence for prosecution. Hence,

the contention of the accused that the proposed evidence produced by the prosecution which is not mentioned in the list of witnesses and documents filed by the prosecution along with the police report (charge sheet) would cause prejudice to him if allowed, is not tenable in law.

23. In that view of the matter and considering the circumstances of the case, this Court is of the opinion that there are no grounds to interfere with the impugned Order rendered by the learned Trial Court. Therefore, the Criminal Petition deserved to be dismissed.

24. Accordingly, the Criminal Petition is Dismissed.

25. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE B.V.L.N. CHAKRAVARTHI

23rd September 2023.

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Note:

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B/o.
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