B L Udaykumar Vs. The State of Karnataka

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Court : Karnataka

Decided On : Jul-23-2018

Judge : John Michael Cunha

Appeal No. : CRL.P 4398/2018

Appellant : B L Udaykumar

Respondent : The State of Karnataka

Judgement :

R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE23D DAY OF JULY 2018 BEFORE THE HONBLE MR. JUSTICE JOHN MICHAEL CUNHA CRIMINAL PETITION NO.4398 OF 2018 BETWEEN:- 1. B L UDAYKUMAR S/O LATE B.K.LAKSHMINARASHETTY, AGE50YEARS, R/O.RATHABEEDI, KUSHALNAGAR, KODAGU DISTRICT-571234. PRESENTLY AT VASAVI ENTERPRISES, IB ROAD, KUSHAL NAGAR, KODAGU-571234. T R MURUGESH S/O LATE T.K.RAJU, AGE54YEARS, R/O.SIDDAIAH PURANIKA BADAVANE, KUSHALNAGAR, KODAGU DISTRICT-571234. ASHOK KUMAR S/O LATE B.K.LAKSHMINARASHETTY, AGE54YEARS, R/O.RATHABEEDI, KUSHALNAGAR, KODAGU DISTRICT-571234. ... PETITIONERS2 3. (By Sri.CHANDRAMOULI H S, ADVOCATE) 2 AND: THE STATE OF KARNATAKA BY THE POLICE OF KUSHALNAGAR POLICE STATION, KODAGU DISTRICT-571234. REPRESENTED BY THE STATE PUBLIC PROSECUTOR, HIGH COURT BUILDINGS, HIGH COURT OF KARNATAKA, BENGALURU-560001. ...

RESPONDENT (By Sri.S.RACHAIAH, HCGP) THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO QUASH THE

ORDER
DATED1104.2017 PASSED BY THE LEARNED CIVIL JUDGE AND JMFC, KUSHAL NAGAR IN C.C.NO.1157/2010, WHEREBY THE APPLICATION FILED BY THE PROSECUTION UNDER SECTION2422) OF CR.P.C. TO PRODUCE THE ADDITIONAL DOCUMENTS IS ALLOWED. COURT MADE THE FOLLOWING:- THIS CRL.P COMING ON FOR ADMISSION THIS DAY, THE

ORDER

Whether the documents which are not the part of the charge-sheet could be received in evidence for prosecution after the commencement of trial?. is the question that falls for determination in this case.

2. The facts giving rise to the above question is that a charge-sheet was filed against the petitioners herein alleging commission of offences punishable under sections 408 and 201 of Indian Penal Code. In the course of the trial, the prosecution 3 filed an application under section 242(2) of Cr.P.C. seeking to produce 17 documents enumerated in the list. In the application, it was stated that at the time of submission of the charge-sheet, the original documents listed in the application were produced before the Honble High Court of Karnataka and in the Court of Senior Civil Judge and CJM, Kodagu and therefore, the Xerox copies thereof were produced along with the charge-sheet. Since the Xerox copies are not admissible in evidence, the complainant obtained the above documents from the Honble High Court of Karnataka and from the Court of Senior Civil Judge and CJM, Kodagu and the same were sought to be produced before the Court.

3. Petitioners herein raised serious objection to receive the above documents on record contending that the Investigating Agency ought to have seized the original documents through proper mahazar and filed a supplementary report to its primary report in terms of section 173(8) of Cr.P.C. The mahazar dated 24.06.2010 produced along with the charge- sheet does not disclose the factum of seizure of the Xerox documents. Section 242(2) of Cr.P.C. does not permit the 4 prosecution

to file documents at a belated stage after the submission of the charge-sheet. Section 173(5) of Cr.P.C. ordains that all the relevant documents should be produced along with the charge-sheet. Therefore, it is not open for the prosecution to produce the proposed documents during the trial. It is contended that the proper course available for the prosecution was to obtain the necessary permission from the court to conduct further investigation as per section 173(8) of Cr.P.C. and the documents so collected during further investigation could only be produced before the court along with a supplementary report. It is further contended that if the prosecution is allowed to produce additional documents at a belated stage, it is likely to prejudice the accused in their defence and thus the petitioners/accused sought for rejection of the application.

4. Before the trial court, both the parties placed reliance on certain authorities in support of their contentions. Considering the position of law laid down in the said decisions, the trial court was of the opinion that no party to the trial can be denied an opportunity to produce relevant materials which were 5 not brought on record due to inadvertence and further holding that no prejudice would be caused to the defence as adequate opportunity would be available to the accused to cross-examine the witnesses and to lead rebuttal evidence, by the impugned order dated 11.04.2017, allowed the above application and permitted the prosecution to produce the proposed documents and to mark the same in evidence through PW.1.

5. I have heard the learned counsel for the petitioners and the learned HCGP.

6. Learned counsel for the petitioners has reiterated the contentions urged before the Court below and placing reliance on the decision of the Honble Supreme Court of India in AMRUTBHAI SHAMBHUBHAI PATEL vs. SUMANBHAI KANTIBHAI PATEL AND OTHERS in (2017)4 SCC177 would submit that once the final report is submitted before the court as per section 173(5) of the Code, the only course open for the prosecution to introduce additional material by way of additional documents is to obtain permission of the learned Magistrate for further investigation and thereafter collect further evidence either oral or documentary, and forward the same to the learned Magistrate 6 by way of supplementary

charge-sheet. That having not been done, the prosecution cannot directly collect the documents from the complainant and produce them before the Court as if those documents were part of the charge-sheet. It is the submission of the learned counsel that the course adopted by the prosecution in the instant case is opposed to the provisions of section 173 Cr.P.C. in general and section 173(8) Cr.P.C. in particular. The Investigating Agency is required to be fair to the Court as well as to the accused. In the event, the prosecution is allowed to produce the bunch of documents after the commencement of trial and that too, after examination of the complainant, it would not only prejudice the defence of the accused, but would also take away the legal right accrued to the accused in challenging the materials produced before the Court.

7. Meeting the above arguments, learned HCGP has placed reliance on the following authorities to buttress the point that the documents sought to be produced were only the originals of the Xerox copies which were already produced along with the charge-sheet and therefore, no prejudice would be 7 caused to the defence by bringing on record the said documents. The decisions referred are: (1) Prakash Chand Baid vs. State of Rajasthan & Another in S.B.Criminal Misc. Petition No.851/2014 D.D. 05.06.2015; and (2) Salman Khan vs. State of Rajasthan in S.B.Criminal Misc. Petition No.606/2015 D.D. 10.04.2015.

8. I have given my anxious consideration to the submissions made at the bar. The factual contention urged by the learned HCGP that the documents proposed to be produced are the originals of the xerox copies which were already produced along with the charge-sheet is liable to be rejected outright. Though the learned counsel for the petitioners has pointedly referred to the seizure mahazars and the list of documents appended to the charge-sheet to bring home his point that the xerox copies of the 17 documents now sought to be produced were not seized during investigation, learned HCGP is unable to counter the said argument with reference to the seizure mahazars or the charge-sheet papers to show that the xerox copies of all these documents were in fact seized during the investigation. The learned Magistrate has also not adverted 8 his attention to this factual contention. A reading of the impugned order reveals that the learned Magistrate has proceeded on the assumption that the xerox copies of all these documents were seized

during the investigation. This is evident from the finding recorded by the learned Magistrate at para 16 which reads that: As the section 242(2) of Cr.P.C. as aforesaid provides ample power for the prosecution to produce the documents which are not seized to produce at the later stage, it is not necessary for the prosecution to seek the support of the investigation agency to file supplementary report. This finding presupposes that none of the documents now sought to be produced were not part of the charge-sheet papers. Therefore, the only question that arises for consideration is, whether the prosecution can be allowed to produce fresh documents after the commencement of the trial?.

9. On this question, the Rajasthan High Court, in the decision relied on by the learned HCGP in Prakash Chand Baid vs. State of Rajasthan & Another, is of the opinion that under section 91 of the Criminal Procedure Code, court has been 9 empowered to issue summons for production of the documents, therefore, there can be no bar for the court to permit the prosecution to produce documents which are necessary for proper disposal of the case irrespective of the fact that it was not filed along with the charge-sheet.

10. Contrary to the above reasoning, learned Single Judge of this Court in B.R.Rudrani & Others vs. The State of Karnataka, by the Chitradurga Town Police Station & Another in Criminal Petition No.6996/2015 dated 25.11.2015, has held that: As such, documents to be produced by the prosecution were not collected by the I.O. during the course of investigation, neither did he take permission under Section 173(8) of Cr.P.C. to carry out further investigation. The production of the documents which were in the custody of the complainant cannot be permitted to be produced to fill up lapses in the case of the prosecution and it is against the established procedure. 11. In my considered opinion, the answer to the above question is provided in section 242(3) of Cr.P.C. This section finds place in Chapter XIX of the Code dealing with trial of 10 warrant cases by Magistrate. Section 242 specifically refers to the evidence for prosecution. Since the said provision has direct bearing on the relief sought by the prosecution before the learned Magistrate, it may be apposite to extract the section as it throws light on the controversy raised in this petition. It reads as follows: 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 11 deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

12. As could be seen from the above, sub-section (3) mandates the Magistrate to take all such evidence as may be produced in support of the prosecution. The use of the language all such evidence in the sub-section means that the court is required to take or receive all such evidence which the prosecution may produce in support of its case. Having regard to the wide language used in the section, the expression all such evidence cannot be given a restrictive meaning so as to hold that only such evidence as relates to those of persons who have been examined by the police or only the documents collected during investigation could be produced before the Court. To read the section in such a restricted manner would amount to reading into the sub-section something which is not there. Even otherwise evidence in strict sense means oral and documentary evidence. As defined in Section 3 of the Evidence Act Evidence means and includes-(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are 12 called oral evidence; (2) (all documents including electronic records produced for the inspection of the Court) such documents are called documentary evidence. 13. Thus it is clear that sub-section (3) of section 242 casts a mandatory duty on the Magistrate to take all such evidence as may be produced in support of the prosecution. The word produced in sub-section (3) also cannot be given a restrictive meaning to hold that only the materials collected during investigation could be permitted to be produced in evidence. Such a construction would defeat the very purpose of trial. If the main object of criminal trial is to discover truth, necessarily all and every piece of evidence while could help the court to arrive at a

just decision should be allowed to come on record. Therefore, it is immaterial whether the evidence sought to be produced during trial was either collected in the course of investigation or subsequent thereto. Section 91 Cr.P.C. no doubt empowers the court or the officer in charge of the Police Station to ensure the production of any document or other thing necessary or desirable for the purpose of any investigation, enquiry or other proceedings by issuing summons 13 or written order to the person in whose possession or power such document or thing is; but section 242(3) Cr.P.C. requires the court to take all such evidence which the prosecution desires to produce including the documents which are not mentioned in sub-section (5) of section 173 Cr.P.C. subject of course furnishing to the accused a copy thereof and providing him a reasonable opportunity to meet the same. The only safeguard or restriction that could be thought of in view of the provisions of the Evidence Act is that such evidence must relate to the matters of fact in enquiry. In other words, as long as the proposed evidence, either oral or documentary, is relevant and in support of the prosecution case, the Magistrate cannot refuse to receive it.

14. In this context, it is also relevant to note that a duty is cast on the Public Prosecutor conducting the trial to produce all evidence relevant to the determination of the guilt or innocence of the accused. Therefore, it goes without saying that even the Public Prosecutor conducting the trial owes a duty to produce before the court all evidence in support of the prosecution. The Public Prosecutor therefore cannot withhold 14 any relevant piece of evidence which he finds it necessary for fair trial of the case. That being the position of law and the mandate contained in section 242(3) of Cr.P.C., I do not have any hesitation to hold that the criminal court conducting the trial is bound to receive all the evidence produced by the prosecution irrespective of the fact whether the said evidence or documents were part of the charge-sheet placed before the court or not.

15. The decision relied on by the learned counsel for the petitioners rendered by the Honble Supreme Court of India in AMRUTBHAI SHAMBHUBHAI PATEL vs. SUMANBHAI KANTIBHAI PATEL AND OTHERS in (2017)4 SCC177deals with totally a different set of facts. In the said case, after the conclusion of the oral evidence of the prosecution witnesses and after the examination of the accused

under section 313 of Cr.P.C., an application was filed at the culminating stage of trial by the informant seeking a direction under section 173(8) of Cr.P.C., for further investigation by the police. It is in this context the Honble Supreme Court considered the scope of amended section 173(8) of Cr.P.C. and in para 49 of the said judgment has held as under:

15. 49. On the overall survey of the pronouncements of this Court on the scope and purport of Section 173(8) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefore to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and the accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand. 16 16. This decision is not an authority on the question involved in this case. In my considered opinion sub-section (3) of section 242 of Cr.P.C. in unmistakable terms confers power on the Magistrate to take all such evidence as may be produced in support of the prosecution. It is a stand alone provision. It is not controlled by section 173 of the Code much less by sub- section (8) thereof. It operates on a totally different field. Section 173(8) of the Code confers a statutory right on the police officer, in the event of availability of evidence bearing on the guilt of the accused, to conduct further investigation. As held in the above decision, it is no longer res integra that a Magistrate, if exigent to do so, to espouse the cause of justice, can trigger further investigation even after a final report is submitted under section 173(8) of the Code. This Section, therefore, cannot be construed to mean that prosecution is debarred from producing additional evidence in support of its case during trial as canvassed by the learned counsel for the petitioners. In my view, the language of section 242(3) of the Code is wide enough to invest power in the Magistrate to take all the evidence produced

by the prosecution in support of its case. 17 Therefore, I do not find any justifiable reason to interfere with the impugned order. Accordingly, Criminal Petition is dismissed. I.A.No.1/2018 does not survive for consideration and accordingly, it is rejected. Sd/- JUDGE Bss.