

Sri. Devaraj Vs. State of Karnataka By

Sri. Devaraj Vs. State of Karnataka By

SooperKanoon Citation : sooperkanoon.com/1194570

Court : Karnataka

Decided On : Nov-16-2017

Judge : K.N.Phaneendra

Appeal No. : CRL.P 6172/2017

Appellant : Sri. Devaraj

Respondent : State of Karnataka By

Judgement :

1 IN THE HIGH COURT OF KARNATAKA, BENGALURU DATED THIS THE 16^H DAY OF NOVEMBER, 2017 BEFORE THE HONBLE MR.JUSTICE K. N. PHANEENDRA CRL.P. No.6172/2017 BETWEEN SRI. DEVARAJ, S/O LATE LAKSHMANA CHAR, AGED ABOUT 30 YEARS, R/AT KITHAGANA VILLAGE ANEKAL TALUK BENGALURU RURAL DISTRICT 56210 ... PETITIONER (BY SRI. R. V. SHIVANANDA REDDY, ADV.) AND 1 STATE OF KARNATAKA BY HEBAGODI POLICE, BENGALURU DISTRICT REP. BY STATE PUBLIC PROSECUTOR HIGH COURT BUILDINGS BENGALURU - 560001 SMT. SHOBHA W/O LATE NARAYANACHAR AGED ABOUT 48 YEARS R/AT KACHAMARANAHALLI VILLAGE, VARTHUR HOBLI, BENGALURU EAST TALUK BENGALURU CITY PIN CODE:

56003. ... RESPONDENTS 2 (BY SRI. CHETAN DESAI, HCGP FOR R-1) THIS CRL.P IS FILED U/S 482 CR.P.C PRAYING TO SET ASIDE THE

ORDER

DATED 45.2.2017 AND PERMIT TO CROSS-EXAMINATION OF PW-1 TO 6 AND PW-9 IN S.C. NO. 5003/2015 ON THE FILE OF III ADDITIONAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT SIT AT ANEKAL. THIS C.R.P. COMING ON FOR ADMISSION ALONG WITH IA No. 1/2017 THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard the learned counsel for the petitioner and the learned HGCP.

2. Perused the records, specifically the order impugned in this petition.
3. The 3rd Additional Sessions Judge, Bengaluru Rural District, Bengaluru sitting at Anekal, has rejected the application filed by the petitioner seeking permission to cross-examine PWs. 1 to 6 and 9 in S.C. No. 5003/2015. The learned Sessions Judge by a detailed order has rejected the said application.
4. On careful perusal of the order, though the learned Sessions Judge has relied upon various rulings, but those rulings only state about the principles, but one should bear in mind that the application for recalling of 3 witnesses has to be tested from the surrounding facts and circumstances of each case and not by just quoting the principles laid down by various courts. Without testing the application with the materials on record, simply to reject such application is not acceptable. The Court also should see whether the court can shut the doors of the court permanently to the accused when particularly the accused is languishing in jail. Further, added to that the court has to consider the factual aspects narrated in the application. Without considering the factual aspects and also the surrounding circumstances, merely relying upon the principles laid down by certain rulings would not meet the ends of justice.
5. The object and scope of the provision of Section 311 of Cr.P.C. has to be mainly borne in mind by the courts before passing the orders on the provisions. The main object of this provision is to enable the Court to find out the truth and render a just decision in a given case. The salutary provision of Section 311

Cr.P.C. are enacted giving enormous and wide discretion to the court to call for any witness to the court or recall any of the witness 4 already examined in order to ascertain the truth or falsity of the case. The aid of this Section should be invoked in order to discover the relevant facts or obtaining proper proof of such facts for a just and proper decision. However, the provision cannot be used for the purpose of supporting capricious attitude of the person who makes such application. It should not be used for filling up the lacuna of the cases against each other. Therefore, the object of the provision is to do justice. In that context, the wide discretion given to the court should be understood. The jurisdiction of the court under this Section must obviously be considered on the exigency of the situation, fair- play and good sense. These guidelines appear to be the only the safe guides and that only the requirements of justice command, the examination of any person which would depend on the facts and circumstances of each case.

6. The reading of the above said provision itself shows that it gives a wide discretionary power to the court. The words used such as any court, at any stage, or or any enquiry, trial or other proceedings, any person and any such person clearly spells out that the Section 5 is expressed in the widest possible terms and do not limit the discretion of the court or creates any barrier to the courts in exercising such discretion. However, the court should come to a conclusion that, allowing of the party to examine a witness or cross examine a witness already examined, should be bonafide and it is based on circumstances. Though on one or two occasions, the accused may commit default in not cross examining the witnesses. The court should be alive to look into the surrounding circumstances and even such default by the accused can also be corrected by imposing certain stringent conditions and also terms. The ultimate goal of the court is to render just decision in the case and to prevent a failure of justice.

7. Therefore, I am of the opinion that the trial Court has not in detail considered the factual aspects of this case. In this background, now let me consider the factual aspects of this case in detail: The trial Court has set down the case for trial and issued summons to the witnesses by fixing the trial on 6 18.01.2016 to 20.01.2016. The court observed, on that day itself that the learned counsel must have received the instructions from the accused. Further, the trial was fixed on

21.03.2016. On 23.03.2016, the witnesses were examined and the counsel sought for time, as he has no complete instructions from the accused. It is an undisputed fact that during that time, the accused was in jail. It is very difficult for the Advocate to receive the fullest information when the accused was in jail and the counsel himself has to go to the accused for getting the instructions. Be that as it may. When the witnesses have been examined and they have specifically deposed the case of the prosecution with incriminating materials, then the court has to see that non-cross examination of those witnesses would cause prejudice and affect the interest and valuable right of the accused. If the court completely shuts the doors by refusing to permit the accused to cross-examine, and if it relies upon the evidence adduced in chief examination of the witnesses, nothing remains for the accused, but to suffer conviction judgment. That is not the object of Section 311 of Cr.P.C. Therefore, in my 7th opinion, when the witnesses are at not all cross-examined, and at the first instance itself the court has refused to permit the accused to cross-examine even after filing of the application, such order does not sustain both on facts and on law. Further, added to that whenever the accused persons are in jail and they make such application, the court should magnanimously consider the same atleast on terms to allow them to cross-examine the witnesses. The trial Court has lost sight of these principles.

9. Therefore, in the above circumstances, I am of the opinion that the petition deserves to be allowed. Consequently, the accused shall be permitted to cross-examine those witnesses in order to defend himself effectively in the said case.

10. In the above facts and circumstances of the case, I proceed to pass the following:- 8

ORDER

The petition is allowed. The order dated 04.05.2017 passed by the learned III Additional District and Sessions Judge, Bengaluru Rural District in SC50032015 is hereby set aside. Consequently, application filed by the petitioner before the trial Court under Section-311 Cr.P.C. is hereby allowed. The trial Court hereby directed to secure the witnesses viz., PWs. 1 to 6 & 9 at the cost of accused by fixing appropriate reasonable cost and permit the petitioner to cross examine those

witnesses. Learned counsel for the accused shall not pray for further time, unless it is granted by the court and he shall go on with the matter by cross-examining those witnesses without fail on the date fixed by the trial Court. In view of disposal of this case, the application-IA No.1/2017 filed for stay, does not survive for consideration. Accordingly, the said application stands disposed of. KGR* Sd/-
JUDGE

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com