



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO
CRIMINAL PETITION NO: 371 OF 2023

Between:

1. KASTURI SURYANARAYANA @ SURI @ MUKKU SURI S/o. Chinnaiah, aged about 51 Years,
R/o. D.No.5/ 148-B, Bayanapalli Village,
Kodur Mandal, Annamayya District (YSR Kadapa District)
2. Gadikota Venkateswarlu @ Chinnaiah S/o. Subbaramaiah, aged about 54 Years,
R/o. D.No.6/ 119, Bayanapalli Village,
Kodur Mandal, Annamayya District (YSR Kadapa District)
3. Gadikota Naveen S/o. Venkateswarlu @ Chinnaiah, aged about 26 Years,
R/o. D.No.6/119, Bayanapalli Village,
Kodur Mandal, Annamayya District (YSR Kadapa District)
4. Kasturi Trilok Chowdari @ Trilok S/o. Suryanarayana, aged about 26 Years
R/o. D.No.5/148-B, Bayanapalli Village,
Kodur Mandal, Annamayya District (YSR Kadapa District)
5. Kasturi Mallikarjuna Naidu @ Mallikarjuna S/o. Nagaiah, aged about 56 Years,
R/o. D.No.5/149, Bayanapalli Village,
Kodur Mandal, Annamayya District (YSR Kadapa District)
6. Kasturi Vidya Sagar S/o. Mallikarjuna, aged about 31 Years,
R/o. D.No.5/149, Bayanapalli Village,
Kodur Mandal, Annamayya District (YSR Kadapa District)

...PETITIONER(S)

AND:

1. THE STATE OF ANDHRA PRADESH rep by its Public Prosecutor,
through Inspector of Police,
Railway Kodur Police Station, YSR Dist
High Court of Andhra Pradesh
7. Yedhoti Thulasamma W/o. Venkata Subbaiah, aged about 57 Years,
R/o. Bayanapalli Village,
Kodur Mandal, Annamayya District

...RESPONDENTS

Counsel for the Petitioner(s): RAVITEJA PADIRI

Counsel for the Respondents: PUBLIC PROSECUTOR (AP)

The Court made the following: ORDER



THE HON'BLE SRI JUSTICE R.RAGHUNANDAN RAO

CRIMINAL PETITION Nos.371 & 372 of 2023

COMMON ORDER:

As both the petitions arise out of the same order dated 09.01.2023 in CrI.M.P.No.52 of 2022, both these petitions are being disposed of by this common order.

2. Heard Sri Ravi Teja Padiri, learned counsel for the petitioners in CrI.P.No.371 of 2023 and Sri Shaik Mohd.Ismail learned counsel for the petitioners in CrI.M.P.No.372 of 2023 and the learned Public Prosecutor.

3. The petitioners in CrI.P.No.371 of 2023 are accused Nos.1 to 6 and the petitioners in CrI.P.No.372 of 2023 are accused Nos.7 to 11 in S.C.No.309 of 2018 on the file of the III Additional Sessions Judge, Rajampet for offences punishable under Sections 147, 148, 449, 351 and 302 r/w 149 of I.P.C.

4. In the course of investigation, one Sri M. Bhakthavatsalam, Sub-Inspector of Police collected the C.C T.V footage of certain cameras installed in the area of the scene of offence. The said C.C T.V footage is said to have been collected in a Compact Disk as well as a pen drive.



5. The Compact Disk was filed along with the charge sheet after the completion of investigation. However, the pen drive was not filed. Sri M. Bhakthavatsalam, S.I of Police was also not listed as a witness in the charge sheet.

6. The Compact Disk was marked and the fact that Sri M.Bhakthavatsalam had recorded the C.C T.V footage in both Compact Disk and Pen drive was also elicited in the evidence of P.W.16.

7. At this stage, an application bearing CrI.M.P.No.52 of 2022 was filed under Sections 242(2) & (3) of Cr.P.C and Section 311 of Cr.P.C., by the prosecution, for receiving the Pen drive and to summon Sri M. Bhakthavatsalam as witness to give evidence. This application was contested by the petitioners in these two criminal petitions.

8. The trial Court after hearing both sides had allowed the application relying upon a Judgment of the Hon'ble Supreme Court in the case of **Varsha Garg vs. State of Madhya Pradesh and Ors**¹. The trial Court took the view that the evidence of the proposed witness is just and necessary for arriving at a proper conclusion in the case and that the evidence that is being adduced to the proposed witness does not in any manner result

¹ (2022) 2 ALD 712 (Cri.) SC



in a surprise to the accused and that it is only a reinforcement of the existing evidence.

9. The petitioners being aggrieved by the order of the trial Court dated 09.01.2023 have approached this Court.

10. Sri Ravi Teja Padiri learned counsel, appearing for the petitioners in CrI.P.No.371 of 2023 would submit that the application filed by the prosecution was only for the purpose of filling up the lacuna in the evidence and the same is not permissible. He would point to the fact that the Compact Disk itself is not permissible in evidence and the present attempt of the prosecution to correct that mistake by bringing the Pen drive on record through the proposed witnesses cannot be permitted. He would further point out that this application has been filed at the fag-end of the trial and cannot be permitted.

11. A perusal of the evidence shows that the said Compact Disk was marked as material object No. 18, through P.W.16. The Investigating Officer, who was examined as P.W.16, had stated that the Compact Disk was not supported by any certificate about the correctness of the information in the Compact Disk.



12. The purpose of a trial is to place all the relevant material before the court to ensure a proper adjudication of the facts before the court. While the standard of proof, in a criminal case is higher, it would not mean that relevant and crucial evidence, concerning the case should be shut out merely on the ground that the said evidence is being placed before the court with delay. However, there are certain caveats to this principle. Section 207 of Cr.P.C. requires that a copy of all the material obtained in the course of the investigation would have to be served on the accused along with the charge sheet. This would ensure that the accused is aware of the case and material against the accused and he/she is not taken by surprise, in the course of the trial. Similarly, fresh material produced after the completion of the trial and after the accused has revealed his/her defence, in the normal circumstances, is not permissible. The Hon'ble Supreme Court in *CRIMINAL TRIALS* (2021) 10 SCC 598 had stipulated that copies of all the material collected in the course of the investigation, whether relied upon by the prosecution or not would have to be supplied to the accused.

13. In the present case, the charge sheet does not contain any statement that the C.C T.V footage had been



collected in a C.D and pen drive, by Sri M. Bhakthavatsalam. The accused, at the time of the marking of the C.D as a material object, had raised a specific objection that, the same cannot be marked, as a copy of the C.D had not been given to the accused earlier. (The trial court has taken a different view on this issue, which would have to be decided in the trial, as the view of this court is only a *prima facie* view). It does not require to be stated that a copy of the pen drive was never served on the accused as the original itself was never produced.

14. Further, the copy of the C.C T.V footage said to have been recorded in the C.D has already been placed before the trial court, no reasons are adduced as to why the pen drive is required to be marked again. Sri M. Bhakthavatsalam is sought to be produced to speak about the fact that he had recorded the C.C T.V footage in the C.D and pen drive. This fact has already been stated by PW16 who said that the sub inspector of police had recorded the C.C T.V footage in a C.D and pen drive under his instructions.

15. In view of the above infirmities, the present application to permit the marking of the pen drive through Sri M. Bhakthavatsalam would not be permissible.



16. Accordingly, the Criminal Petitions are allowed and the order of the trial Court, dated 09.01.2023 in CrI.M.P.No.52 of 2022 in S.C.No.309 of 2018 is set aside.

Miscellaneous petitions, pending if any, shall stand closed.

JUSTICE R.RAGHUNANDAN RAO

Date : 10.02.2023

RJS



THE HON'BLE SRI JUSTICE R.RAGHUNANDAN RAO

CRIMINAL PETITION Nos.371 & 372 of 2023

Date : 10.02.2023

RJS

