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S. Krishnaiah Vs Guru Raghavendra Traders

Court: Andhra Pradesh High Court

Date of Decision: Sept. 19, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 162, 397, 401
Evidence Act, 1872 â€" Section 135, 136, 137, 138, 139

Citation: (2015) 1 ALD(Cri) 416 : (2015) 3 ALT(Cri) 398

Hon'ble Judges: B. Siva Sankara Rao, J

Bench: Single Bench

Advocate: Malipeddi Srinivas Reddy, Advocate for the Appellant

Judgement

@JUDGMENTTAG-ORDER

Dr. B. Siva Sankara Rao, J.
This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. by the petitioner-accused, having

been aggrieved by the order dated 11.06.2014 in Crl.M.P. No. 1202 of 2014 in C.C. No. 62 of 2014 on the file of the II Special Magistrate at

Hasthinapuram, Ranga Reddy district (private complaint case filed for dishonour of cheque).

2. The petitioner-accused when filed Crl.M.P. No. 1202 of 2014 under Section 145 of the Indian Evidence Act, with a prayer to permit him to

cross-examine the P.W. 1 by confronting with the video CD with the aid of CD. player to contradict with his previous statement and the same was

ended in dismissal after hearing both sides vide order dated 11.06.2014 holding that admittedly, there is no previous statement of the

respondent/complainant in writing on record and no material placed by the petitioner/accused certifying the authenticity of the video CD filed by the

petitioner/accused. Now impugning the same filed this revision with the contentions that the order of the learned judge is erroneous and without

appreciation of the facts and law in relation thereto, hence liable to be set aside.

3. The 1st respondent/complainant was served with notice and from the proof filed taken as heard to decide on merits. Heard the 2nd respondent-

State. Perused the material on record.

4. Now the points that arise for consideration are:

1. Whether the impugned order, dated 11.06.2014 in Crl.M.P. No. 1202 of 2014 in C.C. No. 62 of 2014 on the file of the II Special Magistrate

at Hasthinapuram, Ranga Reddy district, is unsustainable and requires interference for this Court while sitting in appeal, if so, with what

observations?

2. To what result?

Point No. 1:

5. Sections 135 to 139 of the Indian Evidence Act (for short, "the I.E. Act") speaks about examination of witnesses of the chief examination,

cross-examination and re-examination even apart from deciding on admissibility by the judge while recording the evidence. Section 145 of the I.E.

Act, deals with the cross-examination as to previous statements in writing which speaks "A witness may be cross-examined as to previous

statements made by him in writing or reducing into writing, and relevant to matters in question, without such writing being shown to him, or being

proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it

which are to be used for the purpose of contradicting him". It is needless to say in a criminal case, if there is a previous statement like under

Section 162 of Cr.P.C., the material omission also, as contained in the explanation of the section, tantamounts to contradiction wherein concerned

with. Coming to Section 155(3) of the I.E. Act, speaks about the credit of a witness may be impeached in the following ways by the adverse

party, or, with the consent of the Court, by the party who calls him:-"by proof of former statements inconsistent with any part of his evidence which

is liable to be contradicted. Thus, Section 145 of the Indian Evidence Act deals with cross-examination as to the aspects for the purpose of

contradiction generally and Section 155(3) of the I.E. Act, deals with the purpose of the contradiction specifically to impeach the credit of the

witness. Apart from it, Section 157 of the I.E. Act deals with equally of "former statements of witness may be proved to corroborate later

testimony as to same fact".

6. From this, the core issue is whether the video CD is a statement in writing as contemplated by Section 145 of the I.E. Act because the learned

Magistrate dismissed the application with reference to it in saying there nothing about previous statement of the complainant in writing on record is

placed to invoke Section 145 of the I.E. Act. In fact, the videographed material with the alleged Spypen camera that to be used for the purpose of

contradiction whether comes within the scope of statement in writing from what is required to be recorded whether can be considered as in writing.

In this regard, as can be seen from the expression of Delhi High Court in Ram Singh Vs. State of NCT of Delhi Crl. Rev. P. No. 124 of 2013, dt.

07.03.2013 (single Judge) with reference to Section 145 of IE Act, there was a observation at para-14 that as per the Apex Court"s expression in

N. Sri Rama Reddy, etc. Vs. V.V. Giri, of the Constitutional Bench) laid down that a previous statement made by a person and recorded a tape

can be used not only to corroborate the evidence given by the witness in Court but also to contradict the evidence given before the Court as well

as to test the veracity of the witness"s on impartiality. In para-15 a Division Bench of Delhi High Court, Court on its own Court on its own motion

Vs. State and Others, placed video CD on a higher pedestal than an audio CD on the ground that tape recorded material is concerned with only

one of our senses, that is, sense of hearing while video recorded material is concerned with two senses, that is, sense of hearing and that of sight,

that the Division Bench observed that while challenging the genuineness of a video CD, it has to be demonstrated that it is not only that the sound is

tampered but that the images are also tampered with. Further in para-19 of the judgment it referred the expression of the Apex Court in R.M.

Malkani Vs. State of Maharashtra, that tape recorded version is admissible provided that the conversation was relevant to the matter in issue and

its genuineness is proved by the person who seeks to rely on the same. Apart from it, in another expression earlier to it of the Apex Court in S.

Pratap Singh Vs. The State of Punjab, laying down that the tape recorded version as conversation is admissible in evidence either to corroborate

the witness or to contradict including to discredit.

7. Having regard to the above, it can be naturally not only the audio but also audio and video within the meaning of statement in writing, however, it

is necessary to mention that mere filing of the CD. and supply of copy to the opposite party is not enough but the photographs of the videographed

material of the CD. as well as audio conversation by exact words got written to be filed before the Court for its verification and its authenticity by

duly certifying before its use. In this case, it was not done however instead of so directing, the learned Magistrate went wrong in dismissing the

same which now impugned with the contention that audio and video recorded versions will not come within the purview of statement in writing but

said order is unsustainable and incorrect and is prone to revision to set aside. Accordingly, Point No. 1 is answered.

Point No. 2:

8. In the result, the Revision is allowed by remitting the matter back to the trial Court to permit the petitioner to compare with the material

contained in the audio and video coverage by supply of the copy of CD and by filing one in Court besides relevant photographs and the material as

well as translated typed version of the language used in the audio coverage of the video CD before its making use against the complainant either for

the purpose of contradiction under Section 145 or 155(3), of I.E. Act, as the case may be, as the question of corroboration in the cross-

examination generally of the accused once to rely against the complainant does not arise but for which is favourable to the complainant if at all

relied in the re-examination out of it. Consequently, miscellaneous petitions, if any, pending in this revision, shall stand closed.