

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**TUESDAY, THE THIRTIETH DAY OF AUGUST
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION NO: 4118 OF 2022

Between:

Mohammad Ayubpasha, S/o.Md.Rukmuddin, aged about 54 years, Occ.
TSRTC Driver, Employee No.206454, R/o.Musheerabad-2 Depot,
Musheerabad, Hyderabad-20.

...PETITIONERS/APPELLANT/ACCUSED

AND

1. The State of Telangana, Rep. by its Public Prosecutor High Court Buildings,
At Hyderabad.

...RESPONDENT/RESPONDENT

2. K.Srinivas Reddy, S/o.K.Bal Reddy, aged about 51 years. Occ.RTC
Employee, R/o. Plot No.680/A, SAD Nagar. B.N.Reddy Colony,
Vanasthalipuram, Hyderabad-79.

...RESPONDENT/DEFACTO COMPLAINANT

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to call for the entire records of Order dated 01/04/2022 in CrI.MP.No.282 of 2022 in CrI.A.No.541 of 2019 pending on the file of Special Judge for Trial of Cases under Essential Commodities Act-cum-III Additional Metropolitan Sessions Judge at Hyderabad and quash the same.

I.A. NO: 1 OF 2022

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to grant stay of all further proceedings in CrI.A.No.541 of 2019 pending on the file of Special Judge for Trial of Cases under Essential Commodities Act-cum-

III Additional Metropolitan Sessions Judge at Hyderabad, pending disposal of the above Criminal Petition.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri P. Gajendra Murthy, Advocate for the Petitioner and the Assistant Public Prosecutor (TG) on behalf of the Respondent No.1 and of Smt. Smita Kakkad, Advocate for the Respondent No.2.

The Court made the following: ORDER

THE HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.4118 of 2022

ORDER:

This Criminal Petition under Section 482 Cr.P.C. is filed by the petitioner, who is arrayed as Accused, seeking the Court to quash the order that is rendered by the Court of Special Judge for Trial of Cases under Essential Commodities Act-cum-III Additional Metropolitan Sessions Judge at Hyderabad, in CrI.M.P.No.282 of 2022 in CrI.A.No.541 of 2019, dated 01.04.2022.

2. Heard the submission of Sri P. Gajendra Murthy, learned counsel for the petitioner, as well as Smt. Smita Kakkad, learned counsel for unofficial respondent. Also heard the learned Assistant Public Prosecutor, who is representing respondent No.1 - State.

3. By the material available on record and upon hearing learned counsel for the respective parties, what could be perceived is, that challenging the judgment that was rendered by the Court of III Special Magistrate at Hyderabad, in C.C.No.342 of 2018, dated 23.05.2019, the accused therein preferred an appeal vide CrI.A.No.541 of 2019 and the said Criminal Appeal is pending

before the Court of Special Judge for Trial of Cases under Essential Commodities Act-cum-III Additional Metropolitan Sessions Judge at Hyderabad. In the said appeal, Crl.M.P.No.282 of 2022 was filed by the appellant under Section 391 Cr.P.C. seeking the Court to summon one Sri K. Prabhakar Reddy, for examining him as DW-1. The said application stood dismissed through order dated 01.04.2022. Aggrieved by the same, the petitioner therein filed the present Criminal Petition seeking the Court to quash the said order.

4. Learned counsel for the petitioner submits that the entire case rests upon the Memorandum of Understanding (MOU) dated 28.11.2015 and, indeed, the said MOU was fraudulently obtained by stating that the petitioner would be losing the appeal i.e. Crl.A.No.317 of 2015 that was pending before the Court of VIII Additional Metropolitan Sessions Judge, Hyderabad, and, hence, to prove that the MOU that was arrived at and reduced in writing is obtained fraudulently, examination of the witness, by name Sri K. Prabhakar Reddy is essential. Learned counsel states that without considering the ground urged and the plea taken,

the appellate Court erroneously dismissed the application and, thus, the petitioner is before this Court.

5. Vehemently opposing the said submission, learned counsel for unofficial respondent contends that as the said application is not maintainable, the appellate Court has rightly dismissed the said application. Learned counsel also states that the said application is filed only to protract the litigation and, further, at the stage of appeal, the petitioner has no *locus-standi* to seek for examination of any person and, hence, the order of the appellate Court is valid in all aspects.

6. Undoubtedly, the Code of Criminal Procedure grants power to the appellate Court to take further evidence or to direct such an evidence to be taken while dealing with the appeal. However, the law mandates that additional evidence can only be permitted to be taken when the appellate Court is of the opinion that the said evidence is essential for the just disposal of the appeal. Section 391 Cr.P.C., which deals with the power of the appellate Court to take further evidence or to direct evidence to be taken, reads as follows:

"391. Appellate Court may take further evidence or direct it to be taken.

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

7. The settled proposition of law is, that the power conferred under Section 391 Cr.P.C. should only be exercised with due care and caution and the appellate Court should not take or cause to be taken additional evidence only for the purpose of filling up the gaps on either side.

8. When the petitioner contends that to prove all the contents and the circumstances basing on which the alleged MOU dated 28.11.2015 is essential, the petitioner ought to have taken steps to adduce relevant evidence in that regard before the trial Court

itself. What prevented the petitioner from adducing such evidence is not indicated anywhere.

9. Learned counsel for unofficial respondent brought to the notice of this Court that when MOU was arrived on 28.11.2015, the Calendar Case in question was filed in the year 2018, later the petitioner/Accused was convicted and, subsequently, in the year 2019, the appeal is filed. Learned counsel also contended that when the Criminal Appeal is about to be disposed of, CrI.M.P.No.282 of 2022 seeking the Court to adduce additional evidence is pressed into service in the year 2022 only to protract the litigation.

10. The impugned order also indicates that the learned Judge, on a careful perusal of the entire material on record, felt that the application is filed only to protract the litigation and to prolong the matter. The learned Judge also held that the petitioner has not assigned any valid reason to entertain the application. Therefore, this Court does not find any infirmity in the impugned order. When a party rests upon certain documents and intends to prove the genuineness of the said documents, he has to take

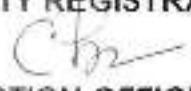
steps in that regard before the trial Court itself. In appeal, additional evidence can be permitted only in exceptional circumstances, that too when convincing grounds are urged that the party, who intends to adduce additional evidence, was prevented from a justifiable cause or where such evidence being not available. This case does not project existence of any of the above grounds. Therefore, this Court is of the view that the learned Judge did not err either in appreciating the facts or in applying the settled proposition of law, while dealing with the application. Thus, the Criminal Petition lacks merits and the same deserves to be dismissed.

11. Resultantly, this Criminal Petition is dismissed.


12. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

//TRUE COPY//

SD/-T.KRISHNA KUMAR
DEPUTY REGISTRAR


SECTION OFFICER

To,

1. The Special Judge for trial of Cases under essential conditions Act -cum- III Additional Metropolitan Sessions Judge at Hyderabad.
 2. One CC to Sri P. Gajendra Murthy, Advocate [OPUC]
 3. One CC to Smt. Smita Kakkad, Advocate [OPUC]
 4. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad. [OUT]
 5. Two CD Copies
 6. One Spare Copy
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HIGH COURT

DATED:30/08/2022

ORDER

CRLP.No.4118 of 2022



DISMISSING THE CRL.P

8 VLV
14/11/22