

IN THE HIGH COURT OF ANDHRA PRADESH

Crl.P.No.9346 of 2022

BETWEEN:

P. Narayana,
S/o. Subbaramaiah,
R/o. Plot No.26, Lodha Apartment,
K.P. Housing Board, Hyderabad.

... Petitioner

AND

\$ The State of Andhra Pradesh
Through the Investigating Officer /
Station House Officer,
Chittoor 1-Town Police Station, Chittoor District,
rep. by its Public Prosecutor,
High Court of A.P.,
at Amaravati

... RESPONDENT

Date of Judgment pronounced on : 06.12.2022

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

***HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

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% Dated:06.12.2022

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! Counsel for Petitioners

: Sri Sidharth Luthra

^Counsel for Respondents

: Learned Public Prosecutor

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>HEAD NOTE:

? Cases referred:

1. (1988) 2 SCC 271
2. (1977) 4 SCC 137
3. 1976 ALT 445
4. AIR 1968 SC 733
5. (2004) 5 SCC 729
6. (2017) 2 SCC 18
7. 2012 SCC Online Guj 3104 = 2012 Criminal LJ 4165
8. 1993 Cri LJ 2147
9. 2019 (18) SCC 145
10. (2013) 1 SCC 314
11. (2014) 8 SCC 273
12. (1988) II Delhi 197
13. 2013 (1) ALD (Cri) 800
14. (1977) 4 SCC 551 = AIR 1978 SC 47

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**Crl.P.No.9346 of 2022****ORDER:**

The petitioner herein is arrayed as accused No.9 in Crime No.111 of 2022 of Chittoor I town police station for offences punishable under section 5 read with section 8 and 10 of the Andhra Pradesh Public Examinations (Prevention Of Malpractices And Unfair Means) Act, 1997 (Public examinations Act') along with Sections 408, 409, 209, 120-B IPC and Section 65 of the Information Technology Act.

2. The petitioner was arrested on 10.09.2022 and produced before the learned Magistrate on 11.09.2022. The learned Magistrate, after considering the facts and circumstances of the case, recorded that she was not satisfied with the grounds mentioned for arrest of the petitioner in the remand report and directed release of the petitioner on execution of a personal bond for Rs.1,00,000/- with two sureties, for a like sum each, to ensure his appearance before the Court as and when required.

3. Aggrieved by the said order, the State had filed a revision petition, under Section 397 Cr.P.C., bearing C.R.P.No.14 of 2022 before the IX Additional District and Sessions Judge, Chittoor. The revisional Court, by order dated 31.10.2022, had set aside the order of the Magistrate dated 11.05.2022 and directed the petitioner to surrender before the IV Additional Judicial Magistrate of First Class, Chittoor, on or

before 30.11.2022, with a further direction to the Magistrate to remand the petitioner to judicial custody for the offences mentioned above. Aggrieved by the said order, the petitioner has approached this Court under Section 482 Cr.P.C.

4. Sri Sidharth Luthra, learned Senior Counsel appearing for Sri G. Subba Rao, learned counsel for the petitioner, assails the said order on the following grounds:-

- a) The order of the Magistrate, which was under revision, was an order granting bail. Such an order can always be reconsidered under Section 437 (5) of Cr.P.C. and the same would amount to an interlocutory order, which is not amenable to revision under Section 397 Cr.P.C. Reliance is placed upon **Usmanbhai Dawoodbhai Memon v. State of Gujarat**¹ (para 24), **Amar Nath and ors., v. State of Haryana and anr.**,² (para 6), **Thakur V. Hariprasad vs. State of A.P.**³ (para 10), **Thakur V. Hariprasad vs. State of A.P.**⁴ and **State, rep. by Inspector of Police and Ors., vs. N.M.T. Joy Immaculate**⁵.
- b) Even if the order is to be treated as an order refusing remand, the finding of the revisional Court, that refusal to remand would not amount to an interlocutory order and consequently a revision would be maintainable against such an order, is erroneous.

¹ (1988) 2 SCC 271

² (1977) 4 SCC 137

³ 1976 ALT 445

⁴ AIR 1968 SC 733

⁵ (2004) 5 SCC 729

c) The finding of the revisional Court that the Public prosecutor was not given an opportunity of hearing required under Section 439 Cr.P.C and 437 Cr.P.C. is belied by the fact that the Government had initiated proceedings against the public prosecutor for having absented herself despite being informed by the investigating officer about the hearing being conducted for the remand of the petitioner herein.

d) The revisional Court by taking into account Section 409 IPC., while passing the impugned order, had committed an error. The provisions of I.P.C., including section 409 would not be applicable as the complaint was filed against the petitioner, under the provisions of the Andhra Pradesh Public Examinations (Prevention Of Malpractices and Unfair Means) Act, 1997, (for short 'the Public Examinations Act') which is a self contained special Act. Reliance is placed upon **Sharat Babu Digumarti vs. Govt. (NCT of Delhi)**⁶ (paragraphs 18, 25, 30, 31 and 37 to 39)

5. The learned Additional Advocate General, appearing for the State, supports the revisional order on the following grounds:

a) The order of the Magistrate was an order refusing remand and not an order granting bail.

⁶ (2017) 2 SCC 18

- b) The last proviso to Section 437(1) Cr.P.C., requires notice to be given to the Public prosecutor whenever an application for bail is being considered by a Court. In the present case, no such notice was given because the Magistrate was only passing an order of refusal of remand and not an order granting bail.
- c) An order refusing remand is not an interlocutory order and as such a revision filed against such an order would be maintainable. Reliance is placed on **Kandhal Sarman Jadeja vs. State of Gujarat**⁷, the order of the Hon'ble High court of Telangana, dated **29.10.2022 in Crl.R.C. No. 699 of 2022** (paragraph 18). The learned Additional Advocate general also submits that though the Hon'ble Supreme Court had observed, in its order in SLP.(Crl).No(s).10356 of 2022, dated 21.11.2022 that paragraphs 42 onwards of this judgment should not be treated as a binding precedent in Telangana, the observations in paragraph 18 has not been disturbed.
- d) Various other accused had been arrested and remanded to custody before the arrest of the petitioner. The inclusion of Section 409 IPC, at the stage of the remand of the other accused, was never disputed nor challenged.
- e) The Magistrate, at the stage of deciding whether remand should be extended or not, could not have conducted a mini trial and decided

⁷ 2012 SCC Online Guj 3104 = 2012 Criminal LJ 4165

that Section 409 IPC cannot be applied to the case. Reliance is placed on **Ramdoss and Ors., vs. State of Tamil Nadu and Anr.**,⁸ (para 19 to 21).

- f) The question, whether the provisions of Section 409 IPC cannot be made applicable to the present case, is premature.
- g) The contention that the provisions of I.P.C. would not be applicable once the provisions of a special Act are invoked is incorrect. Both the provisions would be attracted and can be tried together. Reliance is placed on **State of Maharashtra and Anr., vs. Sayyed Hassan Sayyed Subhan and Ors.**,⁹

6. In reply to the said contentions, Sri D. Srinivas, learned Senior Counsel appearing for Sri Gijnupalli Subba Rao, learned counsel for the petitioner contended as follows:

- a) The Magistrate considered the medical history of the petitioner while passing his order. As medical history is to be considered only in applications under Section 437 Cr.P.C., this order would have to be considered as an order granting bail.
- b) The second proviso to Section 437 (1) read with Section 59 Cr.P.C., would make it amply clear that medical history is to be considered for the purpose of bail.
- c) The revisional Court has not rendered any finding on the order of the Magistrate, except in paragraph 30, and as such the order of

⁸ 1993 Cri LJ 2147

⁹ 2019 (18) SCC 145

the revisional Court, passed without arriving at any findings, requires to be set aside.

- d) Paragraphs 29 and 33 to 37 of the judgment of a learned Single Judge of this Court in W.P.No.10882 of 2021 makes it amply clear that the provisions of IPC would have to give way to the provisions of the special enactment.

Consideration of the Court:

7. The case of the petitioner is that the order of the Magistrate was an order granting bail and the same is not amenable to a revision, as such the order is an interlocutory order, barred by Section 397(2) Cr.P.C. The case of the prosecution is that the order of the Magistrate is an order refusing remand, which is not an interlocutory order and would be amenable to revision.

8. It must be noted that the stand of the petitioner herein, before the revisional Court, was that the order of the Magistrate was an order refusing remand while the stand of the State, as recorded by the revisional Court, is that the order of the Magistrate was an order granting bail.

9. The stand of the Petitioner, before this court, is that the order of the magistrate is an order granting bail. The stand of the State is that the order of the magistrate is an order refusing bail. Both the parties have reversed their stand before this Court and have made submissions in

direct opposition to the stand taken by them before the revisional court. In the circumstances, this court would have to consider the issue afresh.

10. The scheme of the Act is that a person, may be arrested by the police officer without a warrant, subject to the conditions contained in Section 41 Cr.P.C. Section 57 Cr.P.C., mandates that any person arrested without a warrant, cannot be kept in custody beyond 24 hours unless the said period is extended by a Magistrate under Section 167 Cr.P.C. The period of 24 hours would be calculated by excluding the time necessary for the journey from the place of arrest to the Magistrate's Court. When a person is produced before the Magistrate under Section 167 Cr.P.C., the Magistrate can either pass an order authorizing detention of the accused person for a term not exceeding 15 days for the whole, or he may refuse to extend the period of remand and release the arrested person.

11. The judgement of the Hon'ble Supreme Court in **Manubhai Ratilal Patel vs. State of Gujarat ad Ors.**,¹⁰ at paragraph 24, sets out some guidance in this regard:

24. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that

¹⁰ (2013) 1 SCC 314

investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner.

12. The Hon'ble Supreme Court, in **Arnesh Kumar vs. State of Bihar**¹¹, set out more elaborate guidelines, in this regard:

8. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57 CrPC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey:

8.1. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167 CrPC. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.

8.2. Before a Magistrate authorises detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the

¹¹ (2014) 8 SCC 273

constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused.

8.3. The Magistrate before authorising detention will record his own satisfaction, may be in brief, but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording his satisfaction in writing that the Magistrate will authorise the detention of the accused.

8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

13. In the event of the Magistrate extending the period of remand, it would always be open to the arrested person to move for bail. The Hon'ble High Court of Delhi, in **Shri K.K. Giridhar vs. M.S. Khathuri ILR¹²** had taken the view that an application opposing remand and an application for bail can be moved simultaneously.

14. This Court in **Gowri Shanker Gupta & anr., vs. State of A.P. through Public prosecutor, High Court of A.P., Hyderabad & anr.,¹³** had taken the view that an application for bail can be moved only after an order of remand had been passed by the Magistrate.

15. Without going into the question of when an application for bail should be moved, the order of the Magistrate shows that the Magistrate, after considering the material before her, had taken the view that a case for extended remand had not been made out before her and had thereupon released the petitioner on furnishing surety and a self bond. The observations of the Magistrate in the order would characterize the order of the Magistrate as an order refusing extension of remand.

16. The scope of the bar under Section 397(2) Cr.P.C., against filing a revision against an interlocutory order, was considered by the Hon'ble Supreme Court in **Amar Nath and ors., v. State of Haryana and anr.** This was further explained by the Hon'ble Supreme Court in **Madhu Limaye v. State of Maharashtra,¹⁴** wherein the Hon'ble

¹² (1988) II Delhi 197

¹³ 2013 (1) ALD (Cri) 800

¹⁴ (1977) 4 SCC 551 = AIR 1978 SC 47

Supreme Court had taken the view that the orders passed in the course of criminal proceedings would be interlocutory or intermediate or final orders and the bar under Section 397(2) Cr.P.C., would apply only to interlocutory orders. The Hon'ble Supreme Court in **State, rep. by Inspector of Police and Ors., vs. N.M.T. Joy Immaculate** had held that an order of extension of remand is an interlocutory order against which revision would not lie. However, a Division Bench of the Hon'ble High Court of Gujarat in **Kandhal Sarman Jadeja vs. State of Gujarat**, had held as follows:

17. In light of the aforesaid discussion, our final conclusion may be summarized thus:

(I) An order refusing to grant remand has direct bearing on the proceedings of the trial itself and in a given case will definitely have effect on the ultimate decision of the case.

(II) An order refusing to grant remand may affect the progress of the trial or its decision in any manner if Investigating Agency is deprived of having custodial interrogation of the accused so as to effectively investigate the offence and gather necessary evidence and material to put the accused to trial.

(III) An order refusing to grant police remand would be a final order and a revision under Section 397 read with Section 401 of the Code would be maintainable.

Reference is accordingly answered. Registry shall place the matter once again before the Hon'ble Chief Justice for appropriate orders so that the main matter can be placed before the appropriate Court taking up such matter.

17. I am in respectful agreement with the said principle laid down by the Division Bench of the Hon'ble High Court of Gujarat. In such circumstances, it must be held that the revision filed before the Sessions Judge was maintainable.

18. The orders of the Magistrate refusing remand were passed on the following grounds:

- a) The petitioner was arrested solely on the basis of confessional statements made by other accused persons and there was no other material placed before the Court.
- b) The allegation against the petitioner was that the offence of obtaining the question papers illegally, was on the instructions of the petitioner, who was the head of the group of Narayana institutions. This allegation is shown to be untrue by the petitioner who produced documents showing that he had resigned from the management of the educational society as well as the membership of the educational society in the year 2014 itself.
- c) There was no material to make out a case under Section 409 IPC read with Section 120-B and 201 IPC.
- d) All the other offences alleged against the petitioner were offences which attract punishment of up to or less than 7 years imprisonment and the petitioner was entitled to a notice under Section 41-A Cr.P.C., both on account of the judgment of the Hon'ble Supreme Court in **Arnesh Kumar vs. State of Bihar** and

the guidelines issued by this Court in **Bollineni Rajgopal Naidu vs. State of A.P.** in **W.P.No.132 of 2021**. As such a notice was not given under Section 41-A Cr.P.C., the remand of the petitioner cannot be extended.

e) The medical history of the petitioner was also taken into account.

19. In the revision, the revisional court formulated two issues. Firstly, whether a revision petition under Section 379 Cr.P.C., is maintainable against the order of the Magistrate, and secondly, whether the order of the Magistrate was just and proper. The revisional court, after considering various judgments cited by both sides had taken the view that the order of the Magistrate, refusing to remand, would amount to an intermediate order and is amenable to revision.

20. On the question whether the order of the Magistrate is appropriate or not, the revisional court, after extracting various judgments and the submissions made by the learned counsel, on both sides, had set out his opinion in paragraphs 30 and 31 of the order. The revisional court, after observing that the record of the magistrates court did not contain any noting or direction showing notice being given to the public prosecutor, before passing the order, held that the Magistrate ought to have heard the Public prosecutor of the court before passing such an order and set aside the order of the Magistrate on the ground that the Magistrate passed an order without hearing the public prosecutor

and without asking the public prosecutor to submit his version whether remand should be extended or not.

21. The revisional court appears to have lost sight of the fact that it was the prosecution which produced the petitioner before the court and it was the investigating officer, who should have asked the public prosecutor to be present when the petitioner was being produced before the Court. In fact, the petitioner has now placed, before this Court, material to show that action has been initiated against the public prosecutor for having failed / refused to appear before the Magistrate when the petitioner was produced before the Magistrate. In the circumstances, the ground on which the Sessions Judge had set aside the order of the Magistrate is not correct.

22. Even if the said ground is to be accepted, the revisional court could not have simply set aside the order of the Magistrate and directed surrender of the petitioner without considering the issue on merits. The revisional court would have to apply its mind to the question whether the refusal of the Magistrate, to extend the remand of the petitioner, on the basis of the material placed before the Magistrate and the submissions made by both sides, is correct or not. No such exercise has been carried out. The non consideration of the revision on merits would require this order to be set aside, with a further direction to the revisional court to reconsider the merits of the case.

23. Both sides have made their submissions before this Court on the merits of the order of the Magistrate. However, this Court is not inclined to go into these issues as the appropriate forum for these submissions is the revisional court.

24. In view of the above circumstances, this criminal petition is allowed, setting aside the order of the IX Additional District and Sessions Judge, Chittoor dated 31.10.2022, in C.R.P.No.14 of 2022 and remanding the matter to the revisional court for a decision on the merits of the order passed by the Magistrate. Consequently, no coercive steps will be taken against the petitioner, in this case, pending the revision.

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

R. RAGHUNANDAN RAO, J.

6th December, 2022
Js.

06.12.2022 **RRR, J**

At the time of pronouncing the judgment, the learned Public Prosecutor sought to fix time for the disposal of the revision. Accordingly, the Revision Court shall dispose of the revision within a period of four (04) weeks from the date of receipt of this order.

R. RAGHUNANDAN RAO, J

6th December, 2022
MJA

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

Crl.P.No.9346 of 2022

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Js.