

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

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Criminal Petition No.10843 OF 2022

Between:

Belli Mahender

... Petitioner/Accused

AND

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

...Respondent

2. Suddapalli Krishna Prasad

...Respondent/*de facto* complainant

DATE OF JUDGMENT PRONOUNCED: 04.01.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**
+ Criminal Petition No.10843 OF 2022

% Dated 04.01.2023

Belli Mahender

... Petitioner/Accused

AND

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

...Respondent

2. Suddapalli Krishna Prasad

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! Counsel for the Petitioners: Sri A.Prabhakar Rao

^ Counsel for the Respondent: Learned Additional Public
Prosecutor-for Respondent No.1,
Sri. G.Kishore Kumar-learned
counsel for Respondent No.2.

>HEAD NOTE:

? Cases referred

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.10843 OF 2022****ORDER:**

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') by the petitioner-Accused to quash the order dated 30.11.2022 in CrI.M.P.No.148 of 2022 in S.C.No.293 of 2022 passed by the Principal District and Sessions Judge, Hanamkonda.

2. Heard learned counsel for the petitioner-Accused, learned counsel for 2nd respondent – *de facto* complainant and learned Additional Public Prosecutor for the respondent – State. Perused the record.

3. The petitioner – accused is questioning the correctness of the order passed by the learned Sessions Judge allowing the application filed by the prosecution to recall PW9 who is the panch witness to the seizures of scooter and blood stained shirt and PW14 who is the Investigating Officer who was part of the proceedings of confession and seizure. The prosecution sought to recall the said witnesses on the ground that admissible portion of

confession of petitioner was not marked due to inadvertence during the course of trial while examining PWs.9 and 14. The said admissible portion pertains to the statement made by petitioner herein in Telugu language that "*if the police follow him to Hanamkonda Kumarpally, he would show the scooter in the house of Kandikonda Sridher and also the blood stained shirt which was thrown on the Rajeev Highway in bushes*" (translated by me).

4. Learned counsel appearing for the petitioner would submit that at fag end of the case when the arguments were also advanced revealing the defence of the accused, the prosecution identifying their mistake committed during the course of trial, filed the present application. Application under Section 311 of Cr.P.C. cannot be allowed to fulfill any lacunas in the prosecution case. He further submits that the said statement is not admissible and cannot be recorded for the reason of prohibition and inadmissibility under Section 25 of Indian Evidence Act.

5. On the other hand, learned Additional Public Prosecutor and learned counsel for 2nd respondent would submit that the said panchanama was brought on record in the proceedings, however on account of the hostility of PW9 and inadvertence, the said

admissible portion of the confession could not be marked either through PW9 or PW14.

6. At this juncture, learned counsel for the petitioner would submit that once the Ex.P6 and Ex.P7 which are recovery proceedings, separately drafted were already marked, there is no necessity to mark the portion in the confession which again would be inadmissible.

7. For convenience, Section 27 of Indian Evidence Act is extracted hereunder.

27. How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

8. In the course of investigation, on the basis of confession of an accused, if he intimates the police and witnesses to the confession that he would show the material objects or any new fact if they accompany him would be an admissible portion of the confession, which can be marked and stated by witnesses during course of trial. In consequence of such information received, if

the accused points to any information that the police would have discovered, such information including a material object would be admissible. Section 27 of Indian Evidence Act makes admissible both the information regarding the fact to be discovered and consequent discovery admissible. The portion of confession panchanama sought to be marked by the prosecution does not include admission of his guilt or as to how the offence was committed, but information regarding a new fact that is not known to the police. Such information recorded in the confession panchanama not relating to commission of offence, is admissible and can be marked in the evidence of witnesses. Such information is in conformity with the admissibility referred to in Section 27 of Indian Evidence Act.

9. In the said circumstances, this Court feels that since PW9 was declared hostile to the prosecution case, the necessity to examine him may not be the interest of the prosecution. Needless to say, the evidence of the police officer cannot be brushed aside only for the reason of the officer being part of investigation or part of the proceedings in such confession was recorded and consequently recovery is made. For the said

reason, this Court permits the prosecution to recall PW14 for the said purposes.

10. Accordingly, the Criminal Petition is partly allowed.

Miscellaneous applications pending, if any, shall stand closed.

Date: 04.01.2023
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K.SURENDER, J