

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

Criminal Petition No.1712 OF 2023

Between:

B.Chandrashekar

... Petitioner/Complainant

AND

1. P.Ashok Kumar
2. P.Archana Devi
3. The State of Telangana

...Respondents

DATE OF JUDGMENT PRONOUNCED: 20.02.2023
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.1712 OF 2023

% Dated 20.02.2023

B.Chandrashekar

... Petitioner/Accused

AND

1. P.Ashok Kumar
2. P.Archana Devi
3. The State of Telangana

...Respondents

! Counsel for the Petitioner: Sri Dharmesh D.K. Jaiswal

^ Counsel for the Respondent: Learned Additional Public
Prosecutor-for Respondent No.3

>HEAD NOTE:

? Cases referred

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.1712 OF 2023****ORDER:**

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') by the petitioner – *de facto* complainant to (i) quash the docket proceedings dated 07.02.2023 in C.C.No.353 of 2013 on the file of VII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, whereby charges were framed against the respondent Nos.1 and 2 - accused Nos.1 and 2 on 07.02.2023 under Section 239 of Cr.P.C. instead of 246 of Cr.P.C. (ii) to direct the VII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, to take steps in reconstructing the copy of the chief examination of PW1 and follow procedure under Sections 245 and 246 of Cr.P.C.

2. Heard learned counsel for the petitioner – *de facto* complainant and learned Additional Public Prosecutor for the respondent No.3 – State. Perused the record.

3. The petitioner is the complainant before the Trial Court. A private complaint was filed by this petitioner stating that an

amount of Rs.40,00,000/- was taken by the accused for purchase of a property and the balance amount of Rs.3,75,000/- has to be paid at the time of registration. In spite of repeated requests, accused Nos.1 and 2 who are respondent Nos.1 and 2 herein did not execute the registered sale deed in favour of this petitioner – complainant. The said complaint was taken cognizance of by the VII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad and after examining PW1 and PW2. Thereafter, charges were framed under Section 239 of Cr.P.C. by the learned Magistrate for the offence under Section 420 read with 34 of IPC against the accused Nos.1 and 2 on 07.02.2023.

4. Learned counsel for the petitioner would submit that part of chief examination is missing from the court file and in spite of requests made to the Trial Court for either reconstruction of the said chief examination or to adduce evidence of the complainant of the missing portion of the chief examination earlier given, the court refused and is now insisting that the complainant shall proceed with the trial. He further submits that the Trial Court has committed an error in framing the charge under Section 239 of Cr.P.C. since the procedure to be followed is under Chapter XIX Part-B of Cr.P.C.,

which contemplates trial in warrant cases otherwise than on police report. Accordingly, prayed to quash the charge framed under Section 239 of Cr.P.C.

5. As seen from the record, the learned Magistrate has followed due procedure prescribed under Chapter XIX Part-B of Cr.P.C. and for the reason of mentioning that the charges are framed under Section 239 of Cr.P.C., it would not in any manner vitiate the trial or the proceedings. The procedure followed by the Magistrate was to record evidence and thereafter framed charges, which is the procedure prescribed under Chapter XIX Part-B of Cr.P.C. Wrong mentioning of provision as Section 239 of Cr.P.C. instead of Section 246 of Cr.P.C. is of no consequence.

6. The Magistrate was of the opinion that there are grounds for presuming that the accused has committed an offence for which reason charges were framed and read over to the accused.

7. Since chief examination of PW1 is not found in the court record, the Court shall either reconstruct the earlier chief examination or examine the complainant in chief. It would be wholly improper if the Trial Court proceeds with trial without the

deposition of complainant/PW1 and no useful purpose would be served.

8. According to the learned counsel for the petitioner, the case is posted on 27.02.2023 in the Trial Court.

9. On 27.02.2023, in the event of the court below finding that the earlier chief examination cannot be reconstructed, the court shall examine the complainant and then proceed with the trial, for the reason of non-availability of the chief examination.

10. With the above direction, the Criminal Petition is disposed of. Miscellaneous applications pending, if any, shall stand closed.

K.SURENDER, J

Date: 20.02.2023

Note: L.R. Copy to be marked.

B/o.

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