

IN THE HIGH COURT OF SIKKIM AT GANGTOK

CRIMINAL REVISION PETITION NO.06/2012

DATED : 14.09.2012

CORAM

THE HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

The State of Sikkim
Represented by
Mr. Karma Thinlay Namgyal,
Additional Public Prosecutor,
Office of the Advocate General,
High Court of Sikkim,
Gangtok, East Sikkim.

Revisionist/Petitioner

Versus

1. Dil Hassan Ansari,
S/o Late Abdul Razzak (Ansari),
R/o Jorethang Bazar,
South Sikkim.
2. Irfan Ansari @ Ridu,
S/o Jabir Ullah Ansari,
R/o Jorethang Bazar,
South Sikkim.
3. Shahjana Ansari,
W/o Dil Hassan Ansari,
R/o Jorethang Bazar,
South Sikkim.
4. Benazeer Ansari,
W/o Dil Hassan Ansari,
R/o Jorethang Bazar,
South Sikkim.
5. Shamima Ansari @ Gurung,
D/o Dil Hassan Ansari,
R/o Jorethang Bazar,
South Sikkim.

Accused Persons/Respondents

FOR THE REVISIONIST/
PETITIONER

MR. KARMA THINLAY NAMGYAL,
: ADDITIONAL PUBLIC PROSECUTOR
WITH MR. THINLAY DORJEE
BHUTIA, ADVOCATE.

FOR THE RESPONDENTS

: MR. AJAY RATHI WITH MS.
SUSHMA PRADHAN AND MR.
RAHUL RATHI, ADVOCATES.

ORDER (ORAL)

Wangdi, J.

Heard.

By this Revision Petition, the Revisionist-State seeks to assail the Order dated 27.08.2012 passed by the Learned Chief Judicial Magistrate, East and North Sikkim at Gangtok, in G.R.Case No.102 of 2007 (**State of Sikkim vs. Dil Hassan Ansari & Ors.**), by which an application filed under Section 311 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C., 1973") was dismissed.

2. By the said application, the State - Petitioner had sought for recall of 223 witnesses on the ground that they were the persons from whom the documents consisting of the money receipts in respect of the deposits made in the Sanstha of the accused, Dil Hassan Ansari had been seized and, therefore,

necessary for recording their evidence for arriving at a just decision of the case. The application under Section 311 Cr.P.C. is filed as Annexure P-2 to the Revision Petition and I have perused the list of witnesses attached therewith.

3. Mr. Karma Thinlay Namgyal, the learned Additional Public Prosecutor, submits that each of those persons have deposited different amounts and, therefore, it would be essential to examine them. It is an admitted position that all of them are witnesses to the seizures of the money receipts pertaining to each of those persons. The question that would be necessary to determine is as to whether each and every person in the list ought to be examined or not.

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4. Mr. Ajay Rathi, learned Counsel appearing for the Respondents, submits that out of the 5 Investigating Officers in the case, the 4th one, namely, Mr. Balaram Rai, the then S.I., Jorethang P.S. had appeared as a witness during the proceedings of the case yesterday, i.e., on 13.09.2012, as PW66, and proved all the 98 seizure memos pertaining to the deposits that included the 223 witnesses mentioned in the application under

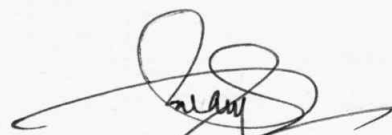
Section 311 Cr.P.C. that was rejected by the impugned order. It is his submission that the signatures of the depositors appearing on seizure memos out of which are those 223 witnesses, have not been denied as being theirs on behalf of the Respondents and, that the Respondents are proceeding on an admitted premise that those are the deposit slips or receipts pertaining to them and that the signatures are theirs. Mr. Rathi further submits that no dispute also has been raised on behalf of the Respondents as regards the contents of the documents seized vide the 98 seizure memos proved through the 4th I.O. Mr. Balaram Rai, PW66 and, if any of them have been left out, the remaining seizure memos, their signatures and the documents seized thereby will be proved by the next I.O. Mr. Chundi Choppel, who is being examined next as PW67, and his stand on those will be the same as taken in respect of the seizure memos proved by PW66, Mr. Balaram Rai. He submits that the Respondents do not dispute either the seizure memos or the contents of the documents seized thereby, but only that those do not constitute the offences as alleged against them.

5. In view of the fair submissions made by Mr. Ajay Rathi, learned Counsel for the Respondents, nothing further survives to be determined by this Court as the entire issue stands rendered infructuous and academic.

6. Under such circumstances, Mr. Karma Thinlay Namgyal, learned Additional Public Prosecutor, submits that he would not like to press the matter. Of course, it is his submission that it will be subject to correctness of the submissions made by Mr. Ajay Rathi.

7. This Court has no reasons to disbelieve Mr. Ajay Rathi and the apprehension of the learned Additional Public Prosecutor appears to be without any basis.

8. With the above observations, the Revision Petition stands dismissed as not pressed.



(S. P. Wangdi)

Judge

14.09.2012

Approved for Reporting : Yes / ~~No~~ ✓

Internet : Yes / ~~No~~ ✓