

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1468-1470 OF 2009

A. CHINNA KESAVA RAO Appellant (s)

VERSUS

ASHOK GALADA AND ORS. Respondent(s)
(with appln. for stay and office report)

Date: 05/05/2010 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.S. SIRPURKAR
HON'BLE MR. JUSTICE DEEPAK VERMA

For Appellant(s) Mr.Altaf Ahmad,Sr. Adv.
 Mr. Guntur Prabhakar,Adv.

For Respondent(s) Mr. R.Balasubramaniam, Sr. Adv.
 Mr. S. Thananjayan ,Adv
 Ms. Promila,Adv.

Ms. Altaf Fathima, Adv.
Mrs.D. Bharathi Reddy ,Adv

UPON being mentioned the Court made the following
O R D E R

The appeals are allowed in terms of the signed order.

(Shashi Sareen)
Court Master

(Shashi Bala Vij)
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos. 1468-70 OF 2009

A.CHINNA KESAVA RAO ... Appellant(s)

Versus

ASHOK GALADA AND ORS. ... Respondent(s)

O R D E R

1. Challenge in these appeals is against the impugned
order dated 12.10.2004 passed by the High Court in Criminal

Petition Nos. 3846, 3847 and 3848 of 2004 whereby the High Court, while allowing the criminal petitions, quashed the criminal proceedings against respondent Nos. 1 to 6 in CC Nos. 154, 155 and 156 of 2004.

2. The brief facts of the case are that Ashok Galada, the respondent No. -1 herein and A. Chinna Kesava Rao, the appellant herein were partners of a Hire Purchase Finance business namely; M/s. Naveen Finance Co. After disputes cropped up between the partners of the firm, the original complainant (appellant herein) filed a private complaint under Sections 406, 420, 468 and 471 IPC before the Chief Judicial Magistrate, Krishna district at Machillipatnam

and made certain allegations against the respondent Nos. 1 to 6. It was alleged in the complaint that 31 persons, who were granted loan by the partnership firm, had returned

the loans with interest from time to time yet that was not shown in the account books of the firm and thereby the accused persons had tried to cheat the complainant who was

also one of the partners of the firm. It was further alleged that the accused persons also tampered with the documents by inserting certain pages in place of the original record and tried to falsify the accounts. In all,

the allegation was that the accused persons had misappropriated Rs. 8,00,000/-. On the basis of this, the learned Magistrate before whom the complaint was filed ordered investigation and after investigation the police filed three charge sheets.

3. Very significantly, we find that in the charge sheet, list of witnesses was given and a specific idea has been given against the name of each witness as to the points on which the said witness was going to speak.

4. The accused persons challenged the charge sheets by filing Criminal Petitions Nos. 3846 to 3848 of 2004 under Section 482 Cr.P.C. before the High Court. By a detailed order, learned Single Judge of the High Court quashed the

charge sheets. It must be stated at this juncture that three charge sheets were filed pertaining to three financial years i.e. 1998-99, 1999-2000 and 2000-2001.

5. Mr. Altaf Ahmad, learned senior counsel appearing on behalf of the appellant submitted that, in fact, the filing of petitions under Section 482 Cr.P.C. and order of quashing the criminal proceedings were premature. Learned senior counsel further pointed out that this was not a stage when the evidence and the other facts including defence documents could have been taken into consideration for deciding the applications under Section 482 Cr.P.C. Learned senior counsel invited our attention further to the fact that the High Court in its order has not only relied on number of other documents which were not proved till then but had also gone on to comment on the so-called influence of the complainant on the investigating agency by holding that the Investigating officer, who filed the charge-sheets, was also under the influence of the complainant.

6. We have gone through the impugned order and we do not propose to discuss the order at this stage for the simple reason that we do not want to prejudice any of the parties by expression of our opinion. However, the fact of the matter is that the High Court has undoubtedly relied on certain documents which were relied upon by the complainant in the counter cases which are pending at Chennai. In our opinion, those documents could not have been taken into consideration at the stage of 482 Cr.P.C. though they could certainly be pressed for consideration at the stage of framing of the charges.

7. We do not want to confirm the impugned order wherein number of observations have been made which have no bearing on the facts of the case. Be that as it may, we therefore set aside the impugned order and remand CC Nos. 154, 155 and 156 of 2004 to the trial court for disposal in

accordance with law.

8. Needless to mention here, that at the time of framing of the charges, the concerned court shall examine the prima facie case against the accused persons and shall not take into consideration any observations made either by the High court or by this court. The matter shall be decided by the trial Court on its own merits and on the basis of the material produced before it by the parties concerned.

9. Mr. R.Balasubramaniam, learned senior counsel appearing on behalf of the respondent Nos. 1 to 6 urged that it is not that as if at the stage of filing petitions under Section 482 Cr.P.C., the documents cannot be considered.

10. We are aware that there are certain decisions where this court had taken a similar view while examining the bonafides of the complainant. However, in our opinion, this was not the case where the documents could have been considered by the High Court at the stage of deciding Petitions under Section 482 Cr.P.C.. However, we leave it as it is. Mr. Balasubramaniam further pointed out that the trial will be hazardous for the two ladies i.e. for accused nos. 2 and 6. If they approach the trial court for exemption from personal appearance, the trial court shall

consider their request. It is not as if the other accused persons cannot apply for exemption from personal appearance. We leave it to the discretion of the concerned court in this regard.

11. With the aforesaid observations, these appeals are allowed.

.....J.
(V.S.SIRPURKAR)

.....J.
(DEEPAK VERMA)

New Delhi,
May 05, 2010.