

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

-
Criminal Petition No.1822 of 2015

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioners/A1 to A23 seek to direct the Special Sessions Judge-cum-X Additional District and Sessions Judge, Krishna at Machilipatnam to mark certified copy of FIR No.56 of 2003 of Avanigadda PS as a defence exhibit.

2) The petitioners/accused are facing trial for the offence under Sections 302, 307, 147, 148 r/w 149 IPC. They filed CrI.M.P.No.375 of 2014 seeking to mark the certified copy of FIR No.56 of 2003 of Avanigadda PS as an exhibit on behalf of defence. Their case is that PW1 in the instant case has earlier filed a private complaint against the petitioners/A1 to A6, A9 to A11, A13 to A15 and some others alleging that they committed offences under Sections 448, 307, 395, 342, 148, 427, 354 IPC and Section 3 (iv), (xi) (xv) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act) before the learned Additional Judicial First Class Magistrate, Avanigadda which was referred under Section 156(3) Cr.P.C. to the police who registered as Cr.No.56 of 2003. Their further case is that PW1 during the cross-examination evasively stated as if he does not remember whether the witnesses in the present case and the witnesses in Cr.No.56 of 2003 were one and the same or not though he admitted about his filing private complaint. So, to challenge the veracity of PW1, marking of certified copy of FIR in Cr.No.56 of 2003 is necessary. Hence, they filed the petition under Section 294 Cr.P.C. submitting if the prosecution has no objection regarding genuinity of the document, the said document may be marked as defence exhibit. The trial Court dismissed the said application holding that they come up with the petition at a belated stage when the matter was coming up for arguments. Hence the instant petition.

3) Heard.

4) The purpose for which the petitioners are seeking to mark the FIR No.56 of 2003 is that PW1 earlier filed a private complaint which was referred to police and the police of Avanigadda PS registered Cr.No.56 of 2003 and investigated into the matter and some of the witnesses in the instant case and in that case are one and the same and PW1 pleaded his ignorance about that fact and so the said fact can be established only by marking the FIR No.56 of 2003. I find some valid purpose in seeking to mark the certified copy of FIR. As can be seen from the impugned order, it is not mentioned therein whether prosecution disputes the genuinity of certified copy of FIR No.56 of 2003. So, it must be held they are not challenging its genuinity. In these circumstances, it is not apt on the part of trial Court to refuse the request of the petitioners solely on the ground of delay. Therefore, in the interest of justice the petition has to be allowed.

5) In the result, this Criminal Petition is allowed and impugned order dated 16.02.2015 in Cr.M.P.No.375 of 2014 in S.C.No.64 of 2010 is set aside and trial Court is directed to mark certified copy of FIR No.56 of 2003 of Avanigadda PS as an exhibit on behalf of defence side.

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

U.DURGA PRASAD RAO, J

Date: 23-03-2015

Murthy