HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P.No.14757 of 2014

ORDER :

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the Petitioners-Accused 1 and 2 to set aside dismissal order dated 25.08.2014 in Crl.MP.No.1537 of 2014 in C.C.No.1837 of 2005 on the file of the III Additional Chief Metropolitan Magistrate, Hyderabad.

2. Heard the learned counsel for the petitioners so also the learned Public Prosecutor representing State-1st respondent and as the notice sent to the 2nd respondent/defacto-complainant returned, service held sufficient and taken as heard and perused the material on record including the impugned order dismissing the application for recall of P.W.1 for his further cross-examination.

3. On perusal of the impugned order of the learned Magistrate clearly speaks even pointing out the conduct of P.W.1 and Exs.P.17 to 37 which are required to be confronted to P.W.1 by recall, since not exhibited in his evidence, but only the prosecution got marked through P.W.8 of late. No doubt on perusal of the order of the learned Magistrate shows the petitioners herein earlier filed an application against receiving of the documents and also preferred a revision and dragged on the matter for one year further that itself cannot be a ground but for to consider any purpose of cross-examination further of P.W.1 to confront with Exs.P.17 to 37.

4. Having regard to the above, when the documents are filed only in the evidence of P.W.8 and the petitioners 1 and 2 wants to cross-examine the P.W.1 to confront with those documents i.e. Exs.P.17 to 37, by second part of Section 311 Cr.P.C. where it is necessary, it is the duty of the Court to secure the witness for said evidence. In view of that, the impugned order herein is liable to be set aside to subserve the end of justice.

5. Accordingly, the Criminal Petition is allowed by setting aside the order dated 25.08.2014 in Crl.MP.No.1537 of 2014 in C.C.No.1837 of 2005 on the file of the III Additional Chief Metropolitan Magistrate, Hyderabad, directing the trial Court to recall P.W.1 and permit cross-examination further by the petitioners with reference to Ex.P17 to 37 for that limited purpose on the day being fixed by the Court. If the petitioners fail to avail the concession on the day being fixed by the Court for P.W.1's cross-examination further within the limited scope supra, the trial Court order holds good. Consequently, miscellaneous petitions, if any pending, in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 24.08.2015
Vvr