

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1243 OF 2015

ORDER:

The petitioners have preferred the present criminal revision case by invoking the provisions under Sections 397 and 401 of Code of Criminal Procedure (Cr.P.C.,) being aggrieved by the order dated 26.06.2015 passed in CrI.M.P.No.199 of 2015 in Spl.S.C.No.26 of 2012 on the file of the Special Sessions Judge for trial of Scheduled Castes and Scheduled Tribes cases-cum-Additional Sessions Judge, Anantapuram, whereby the learned Judge dismissed the petition filed by the petitioners seeking to recall P.W.1 and P.W.5 for further cross-examination in the interest of justice.

Heard and perused the material available on record.

Learned counsel for the petitioners submits that the application was preferred by the petitioners before the Court below on the ground that at the first instance, the petitioners were charged for the offence under Section 307 IPC read with 149 IPC, and that later, the Court below *suo motu* framed charge against the petitioner for the offence under Section 326 read with 149 IPC. He further submits that as the new charge is framed against the petitioners, they should be given an opportunity for further cross-examination of P.W.1 and P.W.5 and as such, prays this Court to allow the revision and permit the petitioners to recall P.W.1 and P.W.5 for further cross-examination.

This Court is of the view that it is true that when the new charges are framed, necessarily an opportunity shall be given to the prosecution as well as the defence for examination of the witnesses to substantiate the charges as well as to rebut the evidence adduced by the witnesses concerned. But, in the present case, originally the petitioners are charged for an offence under Section 307 IPC read with 149 IPC and subsequently a charge is framed for an offence under Section 326 IPC read with 149 IPC, which is lesser offence than that of an offence under Section 307, or it can be said that the higher form of offence under Section

326 IPC is the offence under Section 307 IPC, and that the grounds, on which the offence under Section 307 IPC read with 149 IPC is equally applicable to the offence under Section 326 IPC read with 149 IPC. Hence, the evidence adduced by the witnesses while examining for the offence under Section 307 IPC read with 149 IPC is also applicable to the offence under Section 326 IPC read with 149 IPC. Hence, this Court is of the view that the Court below has rightly dismissed the application of the petitioner to recall P.Ws.1 and 5 for further cross-examination. The order of the Court below is in accordance with law and this Court is not inclined to interfere with the said order, and as such, the criminal revision case is liable to be dismissed.

The Criminal Revision Case is accordingly dismissed. Consequently, miscellaneous petitions pending in this petition, if any, shall stand closed.

JUSTICE RAJA ELANGO

29.07.2015
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