

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.2731 of 2015

ORDER:

This criminal Revision Case is filed by the petitioner, under Sections 397 and 401 of Criminal Procedure Code, against order dated 19.10.2015 passed in CrI.M.P. No.306 of 2015 by the Special Judge for SPE & ACB Cases, Nellore, whereby the learned Judge allowed the application filed by the prosecution invoking provisions under Section 216 Cr.P.C.

Heard and perused the material available on record.

Originally, the petitioner herein was charged for an offence under Section 7 (3) of the Prevention of Corruption Act (for short 'the Act'). At the time of framing the charges, the trial Court framed charge only for the offence under Section 7, deleting Section 13 (1) (d) read with 13 (2) of the Act. After completion of evidence by the prosecution, the prosecution filed an application to frame additional charges by invoking provisions under Section 216 Cr.P.C. The petitioner opposed the said application on the ground that without reopening the case of the prosecution, the prosecution would not have asked for framing the additional charges. The said contention was rejected by the trial Court on the ground that Section 216 Cr.P.C., does not contemplate that the case should be reopened for the purpose of framing additional charges, and allowed the said application and framed additional charge under Section 13 (1) (d) read with 13 (2) of the Act, through the impugned order. Challenging the same, the present revision case is filed.

During the course of arguments, learned counsel for the petitioner fairly conceded that the order passed by the trial Court to the extent that there is no need for reopening the case of the prosecution to frame additional charges is in accordance with law, but prayed this Court to pass an order directing the trial Court to invoke the provisions under Section 217 Cr.P.C., after framing of additional charge.

Section 217 Cr.P.C. reads as under:

“217. Recall of witnesses when charge altered:- Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed—

(a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) also to call any further witness whom the Court may think to be material.”

After perusing the entire material available on record and after hearing the arguments of both sides, this court is of the view that the order passed by the learned trial Court is in accordance with law and there is no need to interfere with the same. But at the same time, this Court is of the view that once an additional charge is framed by the trial Court, it is not only necessary but also mandatory to recall the witness, except when the trial Court is of the view that recall of witnesses is only with an intention to drag on the proceedings. Hence, if any application is filed by the petitioner to recall any of the witnesses, already examined, the trial Court is directed to allow that application and proceed with the case and dispose of the same in accordance with law.

With the above directions, the Criminal Revision Case is disposed of. Miscellaneous Petitions, if any pending, shall stand closed.

RAJA ELANGO, J

November 16, 2015.

KTL