

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.2406 of 2015

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ORDER :

The petitioner is A.1 among three accused of C.C.No.477 of 2008 on the file of the XIII Additional Chief Metropolitan Magistrate, Hyderabad, facing trial for the offences punishable under Sections 498-A, 406, 420, 323 and 506 read with 34 IPC and Sections 4 and 6 of the Dowry Prohibition Act, 1961.

2. As per the material on record, the *de facto* complainant-2nd respondent herein was examined as PW.1 in June, 2012, her father was examined as PW.2 and a neighbour was examined as PW.3 in February, 2013. However, PW.1 was cross-examined on 22.01.2014 and PWs.2 and 3 were cross-examined on 01.04.2014 and 25.02.2014 respectively. No doubt, a perusal of the cross-examination done by the learned counsel for the accused (earlier counsel since changed with no instructions, undisputedly, as per the complainant, he is the 4th counsel after the case is registered as crime) indicates that it is cryptic and not even touching any material aspects. Learned counsel has drawn attention of this Court to the sworn statement, particularly of PW.1, recorded by the Court in taking cognizance under Section 200/202 read with Section 190 Cr.P.C., there from there are material omissions and improvements, which

tantamounts to contradiction within the meaning of explanation to Section 162 Cr.P.C. and thereby it is necessary to recall PWs.1 to 3 for further cross-examination on material aspects and therefore filed Crl.M.P.No.6185 of 2014 to recall the said witnesses and undertakes to complete the cross-examination of all the three witnesses even on a single day subject to their availability. The Court below dismissed the said application by the impugned order dated 22.01.2015, which is under challenge.

3. The impugned order is no doubt cryptic, which shows the learned trial Judge was influenced from the cross-examination of PWs.1 to 3 during January and February, 2014 and the main case is coming up for arguments (undisputedly after 313 Cr.P.C. examination no separate defence evidence let in by the accused) and without assigning valid reasons and tenable contentions at that stage, the petition cannot be considered, but for appearing as not bonafide and only to dodge the proceedings and therefore the petition was devoid of merits there from.

4. The scope of Section 311 Cr.P.C. reads in two parts. The first part is the Court has got discretion subject to the material facts placed on record by the party for any entitlement to the recall of any witness for further examination. Whereas the second part speaks, the Court shall do so, where it is just and necessary for the effective

decision of the case. As can be seen from the cryptic order referred supra, it did not advert either the scope of Section 311 Cr.P.C. or 312 Cr.P.C., much less, the scope of Section 165 of the Evidence Act that is required to be read with the second part of Section 311 Cr.P.C.

5. A perusal of the material on record referred supra, when there is no effective cross-examination, merely because there is delay in filing application, that cannot be a ground for the Court to refuse, as the trial Court did not consider the scope of the second part of Section 311 read with Section 165 Cr.P.C., which says that if the evidence of the witness is required for just decision in the factual matrix, to permit cross-examination at best for the delay by imposing reasonable costs against the accused persons rather than denying right of fair trial. Therefore, the impugned order is required to be set aside by allowing this application subject to costs.

6. In the result, this criminal petition is allowed with costs of Rs.3,000/- payable by the petitioner/A.1 to the three witnesses each on the day of their respective cross-examination. The petitioner is directed to deposit the amount within one week from the date of receipt of this order before the trial Court so as to pay the same to PWs.1 to 3 on the respective dates of their cross-examinations. If the petitioner/A.1 deposits the same and prepared for the cross-examination, the same benefit shall ensue to other accused Nos.2 and 3 also. Needless to

say, if the petitioner fails to deposit the amount within the stipulated time, the lower Court's order holds good for non compliance of this order without any further extension even before this Court. The amount once deposited with notice to the counsel for the de facto complainant in the lower court on record under Section 302 read with 24(8) Cr.P.C. and the A.P.P. concerned, it is for the prosecution to bring the witnesses for cross-examination. If three witnesses are produced even on same day, the cross-examination must be completed without right of further extension.

7. Miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

16th July 2015.

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