

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.8961 of 2015

ORDER :

The criminal petition is filed by the petitioners/accused Nos.1 to 4 under Section 482 Cr.P.C seeking to quash the proceedings dated 02.01.2015 in CrI.M.P.No.5 of 2015 in S.C. No.224 of 2013 on the file of IX Additional District, Wanaparthy, Mahaboobnagar District in which the petitioners herein filed a petition under Section 311 Cr.P.C to recall P.W-11 and the same was dismissed by the trial Court.

2) Heard the learned counsel for the petitioners/A-1 to A-4 and also the respondent-State represented by the Public Prosecutor perused the impugned order of the learned Sessions Judge in dismissing the application under Section 311 Cr.P.C of recalling P.W-11 medical officer, who treated the injured and deposed about the incised injuries and it is the application with a prayer that in the course of cross-examination of P.W-1 by the accused persons, they failed to put some of the questions regarding the contradictory medical evidence as to the injuries not possible by knife as those are stab injuries and also by axe, the weapons allegedly said to have been used and a specific suggestion is required and otherwise it will cause much hardship. The learned Judge dismissed the application saying that merely because the counsel did not put some of the questions which ought to have been asked, that is not a ground for recall by relying on one of the expressions of the Madhya Pradesh High Court in 2001 and that of the Orissa High Court in the year 2004. In fact, to invoke the Section 311 Cr.P.C particularly from the Part II of the Section which says where the Court feel that for a just decision of the case, the witness is to be recalled to put the

questions to the witness, the Court can exercise the discretion and there is no any straight jacket formula in this regard but for to subserve the ends of justice. When the material evidence with regard to the ocular evidence is claimed in conflict, that has bearing to some extent on the merits of the matter. Thus, the recall is required to be permitted within the scope of Section 311 Cr.P.C read with Section 165 of Evidence Act.

3) Accordingly, the application is allowed subject to payment of costs of Rs.4,000/- to be deposited by the petitioner before the lower Court within one week from the date of receipt of this order and in such an event, the learned Judge shall recall the witness by summoning through prosecution agency for further cross-examination by accused in relation and confine to the conflict between medical and ocular evidence if any with reference to the testimony. Needless to say any further or re-examination, is left open to prosecution to put to the witness if arises after further cross-examination. Out of said amount of Rs.4,000/- after payment of T.A and D.A to the witness, balance if any be remitted to the District Legal Services Authority. As a sequel, miscellaneous petitions pending, if any, in this criminal petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

16.09.2015

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