

HONOURABLE SMT JUSTICE ANIS

CRIMINAL PETITION No.2763 OF 2015

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ORDER:

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This criminal petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioners herein, seeking to set aside the order dated 25.02.2015 passed in CrI.M.P.No.154 of 2015 in C.C.No.139 of 2013 on the file of the learned V Additional Judicial Magistrate of First Class, Kakinada, whereby and whereunder the petition filed by the petitioners, who are accused in the above said C.C., under Section 311 Cr.P.C., to recall P.W.1 for further cross-examination, was dismissed.

Learned counsel for the petitioners argued that the defacto complainant made wild allegations against her father-in-law/A2, who is the 2nd petitioner herein, and her husband/A1, who is the 1st petitioner herein, and that the counsel for the petitioners has not properly cross-examined P.W.1 earlier, regarding the wild allegations made by the defacto complainant, and hence the petitioners filed the present application to recall P.W.1 for further cross-examination. He further argued that if one more opportunity is given to the petitioners to cross-examine P.W.1, no prejudice would be caused to the defacto complainant. He, therefore, prayed the Court to set aside the order of the trial Court and allow the CrI.M.P.No.154 of 2015 in C.C.No.139 of 2013.

On the other hand, the learned Public Prosecutor argued that the petitioners-accused conducted the cross-examination of P.W.1, who is the defacto complainant, at length and further the petitioners failed to mention as to on what aspects they are going to cross-examine P.W.1 and, therefore, the trial Court rightly dismissed the petition filed by them. He, therefore, argued that the order of the trial Court needs no interference and prayed for dismissal of this criminal petition.

Now, the point for consideration is -

“Whether the petitioners are entitled to set aside the order dated

25.02.2015 passed in CrI.M.P.No.154 of 2015 in C.C.No.139 of 2013 on the file of the learned V Additional Judicial Magistrate of First Class, Kakinada, as prayed for?”

A perusal of the record shows that P.W.1, who is the defacto complainant, filed a complaint against the petitioners for the offences punishable under Section 498-A read with Section 34 I.P.C. and Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961, and on filing of charge sheet by the Investigating Officer, the same was numbered as C.C.No.139 of 2013. After the evidence of the witnesses was closed in the said C.C., the matter was posted for examination of the accused under Section 313 Cr.P.C. and at that stage, the petitioners-accused filed the petition to recall P.W.1 for further cross-examination. A perusal of the record makes it clear that P.W.1 was cross-examined by the counsel for the petitioners-accused at length and more over, P.W.1 was examined in chief on 09.04.2014 and after a lapse of three months therefrom, she was cross-examined on 13.07.2014. It is also evident from the record that the petitioners-accused also filed CrI.M.P.No.122 of 2015 to recall P.W.2 for cross-examination and the same was allowed on 06.02.2015 and thereafter, P.W.2 was cross-examined. After completion of cross-examination of P.W.2 and closure of the evidence, the petitioners-accused again came up with the present petition to recall P.W.1 for further cross-examination, on the ground that some important aspects were not confronted to P.W.1 in the cross-examination.

In this context, it is appropriate to refer to the provisions of Section 311 Cr.P.C., which reads as under:

“Power to summon material witness, or examine person present.- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine, any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

A perusal of the contents of the petition filed by the petitioners-accused shows that the petitioners stated that P.W.1 could not be cross-examined on some important aspects and cross-examination of P.W.1 is very essential to prove their contentions and they further stated that there is no negligence on their part in not proceeding with cross-examination on material aspects. No doubt, the petitioners-accused filed the petition to recall P.W.1 at a belated stage and when the matter is

coming up for their examination under Section 313 Cr.P.C. However, having regard to the fact that the petitioners-accused want to cross-examine P.W.1 regarding the wild allegations made by her against accused Nos.1 and 2, who are her husband and father-in-law respectively, this Court is inclined to allow the petition, however, by imposing reasonable costs on the petitioners.

Accordingly, the order dated 25.02.2015 passed in CrI.M.P.No.154 of 2015 in C.C.No.139 of 2013 on the file of the learned V Additional Judicial Magistrate of First Class, Kakinada, is set aside and the said petition is allowed, subject to payment of costs of Rs.500/- (Rupees Five Hundred only) to P.W.1 by the petitioners. On payment of such costs, the trial Court is directed to permit the petitioners to cross-examine P.W.1 within a period of two (2) weeks from the date of receipt of a copy of this order.

The criminal petition accordingly stands allowed. Pending miscellaneous petitions, if any, shall stand closed.

ANIS, J

16th April, 2015

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