

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.8030 of 2015

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ORDER :

This Criminal Petition is filed by the petitioner/accused under Section 482 Cr.P.C seeking to quash the order dated 30.07.2015 in CrI.M.P.No.1449 of 2015 in S.C.No.2 of 2015 passed by the Special Judge for Protection of Children from Sexual Offences Act-cum-Additional Metropolitan Sessions Judge, Vijayawada.

Heard the learned counsel for the petitioner and also the respondent-State represented by the Public Prosecutor before admission and perused the material on record including the impugned order.

The *de facto* complainant, who was examined as PW.1 is none other than mother of the victim girl/PW.3 aged about 8 years. CrI.M.P.No.1449 of 2015 was filed by the accused under Section 311 Cr.P.C. for recall of PW.3 for further cross examination in view of alteration of charges i.e., by addition of charge under Section 376 r/w 511 I.P.C. in addition to the charge under Section 354(b) (Amended Act), 509 I.P.C. and Section 12 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

The learned Judge while passing the impugned order observed that as per the contention of the Special Public Prosecutor the victim girl(PW.3), aged 8 years was cross examined at length including all allegations as to tutoring etc., and now the accused sought for recall

PW.3 saying she is tutored and to elicit the truth; that the girl cannot be compelled to attend again and again which amounts to harassment; thereby, no grounds to recall PW.3; that from a perusal of the record shows that on 20.07.2015 PW.3 victim girl was examined and learned counsel for the accused also cross examined

by suggesting previous disputes, tutoring, collecting of waste clothes and other aspects and she gave reply; that the petitioner did not aver any ground whatsoever to justify to recall PW.3 and thereby no merits to recall PW.3 as contended by the learned Special Public Prosecutor it is only to harass the victim girl and consequently dismissed.

No doubt, the said application is filed under Section 311 Cr.P.C. to recall PW.3. In fact, as can be seen from the record, there is addition of charge under Section 216 Cr.P.C. for the offence under Section 376 r/w 511 I.P.C. in addition to the other offences, as stated above. As per Section 217 Cr.P.C. once there is alteration of charge, it is the duty of the Court where such alteration is after commencement of trial, to allow the prosecution of the accused to recall or re-examination is only with reference to such charge alteration or addition, of any witness already examined; unless for reasons to be recorded considers that such recall or reexamination sought is vexatious or to delay or to defeat the ends of justice. Here, by virtue of the mandate of Section 217 Cr.P.C. it shall be the duty of the Court but for to refuse where it is vexatious to recall. The mere not quoting of Section 217 Cr.P.C. will not be a ground even when it speaks duty of the trial Court. Thus it requires the recall of PW.3 only to the extent to permit to put questions within the limited scope only in relation to such alteration of the charge and save to the extent there is no earlier cross examination. Needless to say, under that guise the accused cannot be allowed to put any questions in the area already covered by earlier cross examination. The trial in this regard must live to the occasion during the further cross examination within its duty laid down by Section 165 of the Evidence Act of not to allow any repetition of questions or to put questions again with reference to cross examination already covered but for that too limited to such (altered) additional charge under Section 376 r/w 511 I.P.C. and

nothing beyond.

Accordingly, subject to the above observations, this criminal petition is allowed.

The miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:31-08-2015

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