

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**Criminal Petition No.8658 of 2014**

**ORDER :**

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the Petitioner-defacto-complainant to call for the records pertaining to CrI.M.P.No.911 of 2014 in C.C.No.240 of 2010 on the file of the III Additional Judicial First class Magistrate, Kakinada, East Godavari district and quash the same.

2. Heard the learned counsel for the petitioner/defacto-complainant so also the learned Public Prosecutor representing State-1<sup>st</sup> respondent and respondent Nos. 2 to 5-accused before admission and before ordering notice to the respondents and perused the material on record.

3. After framing charges, the learned Magistrate put the accused to trial for the offences under Section 498-A read with Section 34 of I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act (for short, 'the Act'). It is after examination of P.Ws. 1 to 3 on behalf of the prosecution, recall petition vide CrI.M.P.No.911 of 2014 is filed under Section 311 of Cr.P.C. by the Station House Officer, Gollapuram Police Station who registered the crime on the report of the defacto-complainant, seeking to examine a retired teacher, Roy Swamyel Cokarni, a neighbour to the respondents/accused persons at Visakhapatnam to speak about the alleged ill-treatment the defacto-complainant meted out within the four walls of her husband's house by her husband. The learned Magistrate dismissed the application after hearing both sides with the observation mainly in page 2, para-4 of the order dated 07.04.2014 impugned herein that though P.W.1 stated that one retired teacher witnessed the incident being neighbour to the house of the accused at Visakhapatnam, but no satisfactory reasons explained by the prosecution for non-examination of the said witness during the course of investigation and further observed that if the prosecution is permitted to examine the above witness at this stage without being cited as a prosecution witness in the memo of evidence which leads to injustice.

4. It is contended by the learned counsel for the accused that the name of the witness now wants to be examined by the prosecution neither mentioned in the chargesheet nor in other record of the prosecution and it is only to fill up the gaps, the application is filed.

5. In fact, as contended by the learned counsel for the petitioner/defacto-complainant, though there is no whisper about the name of the witness now wants to be examined by the prosecution in the chargesheet nor in other record of the prosecution, it is reflected in the 4<sup>th</sup> para of the impugned order that the petitioner-defacto-complainant as P.W.1 stated that, one retired teacher being neighbour of the accused house, witnessed the incident. Leave the controversy as it is. It is only the core issue to decide under Section 311 read with Section 161 Cr.P.C. whether so called teacher is neighbour to the accused at Visakhapatnam and if so whether he is a necessary witness to speak anything about alleged ill-treatment meted out in the hands of the husband by the defacto-complainant even deposed by her as P.W.1 for the first time and not covered by any earlier statement of such third party witness of retired teacher name supra for his examination. Once it is necessary, as trial is voyage and truth is the quest, for the Court to ascertain the truth; nothing comes in the way. The Court did not advert to this aspect covered by law. In fact, this Court way back in **Chemo Steel Ltd, Managing Director, Secunderabad Vs. State of Andhra Pradesh**<sup>[1]</sup> observed that irrespective of the witness not examined during investigation by the investigating officer and there is no any further investigation as contended required including under Section 173(8) of Cr.P.C., once the trial is commenced and once the accused got the opportunity to cross-examine the witness under Section 137 of the Indian Evidence Act, no prejudice can be caused to the accused by permitting examination of any such witness if necessary.

6. Having regard to the above proposition with reference to the facts, the **Criminal Petition is disposed** of subject to costs of Rs.2,000/- by the defacto-complainant to the accused persons and to secure the witness by

summoning or otherwise by the defacto-complainant to cause examine before the trial Court. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

---

**Dr. B.SIVA SANKARA RAO J,**

Date: 02.09.2015

Vvr

---

[\[1\]](#) 2004(2)ALT 481