

THE HON'BLE SRI JUSTICE RAJA ELANGO

Criminal Petition No.1948 of 2013

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C seeking to quash the order dated 03-09-2012 in R.P.No.134 of 2012 on the file of the IV Additional Metropolitan Sessions Judge, Hyderabad and consequently direct the learned III Additional Chief Metropolitan Magistrate, Hyderabad to decide the discharge petition of accused No.2 in C.C.No.750 of 2005 on its file in accordance with law under Section 239 Cr.P.C. and strictly follow the direction contained in judgment dated 09-02-2012 in CrI.Appeal No.591 of 2011 on the file of the III Additional Metropolitan Sessions Judge, Hyderabad.

Even though the present petition is filed invoking the provisions under Section 482 Cr.P.C., the same is in fact a revision against the order passed by the appellate court. Once the petitioner invoked the provisions of revision, the petitioner is barred from invoking the provision for the second time. But, in any event, taking into consideration the persuasion made by the learned counsel for the petitioner, this Court is inclined to dispose of the matter.

The brief facts of the case are as follows :

The petitioner tried before the trial Court for the offences punishable under Sections 406, 418, 420 and 506 I.P.C. Thereafter, the petitioner was convicted for an offence under Section 418 Cr.P.C. Aggrieved over the same, he preferred an appeal before the appellate Court and the appellate Court remanded the case to trial court with a direction to try the matter afresh and record the finding on admissibility of Exs.P3 to P15 and pass appropriate orders. Then, the matter was placed before the trial Court for fresh trial. At that time, the petitioner preferred a petition to discharge the accused and the said petition was dismissed by the trial Court and when revision was preferred, the same was also dismissed. Aggrieved over the same, the present petition is filed.

The main contention of the learned counsel for the petitioner – accused No.2 is that once the appellate court ordered for re-trial, the petitioner has a right to file an application to discharge the accused.

This Court perused the entire records and heard the arguments. In the order of the appellate Court in Criminal Appeal it is categorically observed that the matter is remitted to the Court only to examine the admissibility of Exs.P3 to P15 and also to record a finding. Even assuming for a moment the appellate Court ordered for trial of the case, this Court is of the view that trial means other than enquiry and inquiry. Once if the appellate

Court is of the view that trial be proceeded with, the question of again framing the charges does not arise. Hence, this Court is of the view that the orders passed by the trial Court and the appellate court dismissing the application filed by the petitioner for discharge are in accordance with law. Hence, this Court is not inclined to interfere with the same.

Accordingly, the Criminal Petition fails and is dismissed.

JUSTICE RAJA ELANGO

Dated: 30.07.2015

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