

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

Criminal Petition No.8230 of 2015

Date: 30-09-2015

Between:

Chengala Venkat Rao

.. Petitioner

AND

The State of Andhra Pradesh, represented
by Public Prosecutor, High Court of Judicature
at Hyderabad.

.. Respondent

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

Criminal Petition No.8230 of 2015

ORDER:

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The present criminal petition is filed under Section 482 of the Code of Criminal Procedure seeking to recall PW.5 for the purpose of further cross-examination in C.C.No.324 of 2010 on the file of Chief Metropolitan Magistrate, Visakhapatnam.

The brief facts of the case, which led to filing the present criminal petition, are that, a charge sheet came to be filed against the petitioner/ accused in Crime No.437 of 2007 of II Town Police Station, Visakhapatnam, for the offences punishable under Section 353 IPC. The prosecution listed 10 witnesses out of

which 5 witnesses were examined as prosecution witnesses during trial. The counsel for the petitioner/ accused argued in detail on 27-03-2014 and the matter was posted for judgment on 07-04-2014 and on that date, as the judgment was not ready, it was posted to 21-04-2014, on which date, the counsel for the petitioner/accused further argued the matter and as such the matter was posted for judgment on 24-04-2014. On that day, the counsel for the petitioner/accused filed a petition seeking time and the same was allowed and the matter was posted to 29-04-2014, but on the said date, the accused did not appear before the Court, leading to issuance of NBW against the accused. Meanwhile, on 29-04-2014, the petitioner/accused filed CRLMP.No.599 of 2014 in C.C.No.324 of 2010 under Section 311 of the Code of Criminal Procedure, seeking to recall PW.5 for further cross-examination. The Court below dismissed the said application, holding that counsel for the accused cross-examined PW.5 in all aspects and also argued the matter in detail. Aggrieved by the said order, the present criminal petition has been filed.

As seen from the record, PW.5 was examined on 18-03-2013 and no application came to be filed till completion of arguments. Later, Crl.M.P.No.599 of 2014 came to be filed only in the year 2014 i.e., after long lapse of two years and no explanation is forthcoming for the delay in filing the petition. In addition to that, the ground, which has been urged by the learned counsel for the petitioner, is that due to oversight, PW.5 could not be cross-examined on certain vital aspects namely about his apprehension that there was a likelihood of law and order problem in the meeting Hall, Z.P. office, Visakhapatnam; the presence of P.W.1 along with staff there and as to whether the very presence of the police at the place was due to any request made by the officer or was it voluntary. But a perusal of the evidence of PW.5 would clearly disclose that a suggestion was made to him about the presence of the police personnel in the meeting. It would be relevant to extract that portion of cross-examination of PW.5, which is as follows:

“.....around 100 members attended the meeting and I cannot say whether the accused has knowledge that PW.1 was a constable....”

Therefore, a reading of cross-examination of PW.5 would clearly show that the accused cross-examined PW.5 by giving a suggestion with regard to presence

of police personnel at the time of the alleged incident. Therefore, the purpose for which the application under Section 311 Cr.P.C. came to be filed is of no avail, as PW.5 was already confronted on all the issues. Therefore, this court is of the opinion that there are no merits in the criminal petition, and the same is liable to be dismissed.

Accordingly, the Criminal Petition is dismissed. No costs.

C. PRAVEEN KUMAR, J

Date: 30-09-2015

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