

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.15749 of 2014

ORDER:

In this petition, filed under Section 482 Cr.P.C., the petitioner challenges the order dated 19.11.2014 in CrI.M.P.No.346 of 2014 in Spl.S.C.No.28 of 2012 (common order) passed by learned Special Sessions Judge for trial of SCs. and STs. Cases-cum-Additional Sessions Judge, Ananthapuram whereunder the learned Judge dismissed the petition filed by the petitioner/accused seeking for re-call of PWs.1 to 6, 8 and 9 for further cross-examination.

Heard.

2) The submission of learned counsel for petitioner is that PWs.1 to 7 were examined prior to 24.06.2014 whereas PWs.8 and 9 were examined on 24.06.2014 and during the evidence of PW9 the prosecution for the first time introduced Exs.P7 to P11 which are not part of the charge sheet and sought to be marked through PW9. The trial Court allowed those documents and admitted through PW9. Since Exs.P7 to P11 were introduced for the first time during the evidence of PW9, petitioner/accused had no occasion to cross-examine the earlier witnesses with reference to those documents and so he sought for re-call of PWs.1 to 6 for further examination with reference to those exhibits and so far as PWs.8 and 9 are concerned, since those witnesses were cross-examined by the petitioner/accused himself during the absence of his counsel and as certain important aspects were not put in the cross-examination, those

witnesses were also to be recalled in Crl.M.P.No.346 of 2014, but the trial Court erroneously dismissed the said petition and unless those witnesses are recalled for further cross-examination the petitioner/accused will be put to great hardship.

3) On a perusal of impugned order coupled with the copies of depositions it is understood that PWs.1 to 6 were examined prior to 24.06.2014 but PWs.8 and 9 were examined on 24.06.2014. As rightly submitted by the petitioner's counsel Exs.P7 to P11 were marked through PW9. Therefore, there is truth in the submission of the petitioner that he had no occasion to cross-examine PWs.2 to 6 with reference to Exs.P7 to P11. So far as PW1 is concerned, learned counsel for petitioner/accused reported cross-examination as nil and so he cannot seek for recall of PW1 for any purpose. Similarly, PW8 is concerned, as stated supra, PWs.8 and 9 were examined in chief before lunch on 24.06.2014 and they were cross-examined after lunch by the accused himself. So, by the time of cross-examination of PW8, Exs.P7 to P11 were already on record and if he felt necessary he should have cross-examined PW8 with reference to Exs.P7 to P11 then itself. Therefore, the accused has no right to seek for recall of PW8 now. PW9 is concerned, the accused at length cross-examined him on various aspects including Exs.P7 to P11. Hence, he cannot now seek for his recall. So, at the outset petitioner/accused can ask for recall of PWs.2 to 6 alone for further cross-examination on the aspects relating to Exs.P7 to P11 alone. In my considered view, the trial Court ought to have recalled PWs.2 to 6 for those limited purpose but did not do so.

Hence, in the interest of justice and fair trial those witnesses shall be recalled.

4) Accordingly, this Criminal Petition is partly allowed and ordered as follows:

The trial Court shall recall PWs.2 to 6 for further cross-examination by the accused strictly on the aspects relating to Exs.P7 to P11 alone. As far as possible the trial Court shall summon PWs.2 to 6 on a single day and if so, the accused shall complete his cross-examination on the same day.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 16.02.2015

Murthy