

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.2851 of 2015

ORDER:

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This Criminal Revision Case is filed by the petitioners-accused aggrieved by the order dated 09.10.2015 passed in CrI.M.P.No.330 of 2015 in S.C. No.61 of 2012 on the file of the Special Sessions Judge for trial of cases under SCs & STs (POA) Act, 1989-cum-VII Additional District & Sessions Judge, R.R.District whereby the learned Sessions Judge allowed the application filed by the prosecution to recall P.Ws.2 & 3 under Section 311 Cr.P.C. for further chief-examination.

The main contention raised by the learned counsel for the petitioners is that P.Ws.2 & 3 have already been examined before the Court, wherein P.W.3 has not supported the case of the prosecution and whereas P.W.2 has supported the case of the prosecution to some extent.

Heard and perused the material available on record.

At the time of examination of P.Ws.2 and 3, the learned Public Prosecutor has not chosen to cross-examine P.W.2 to declare the said witness as hostile. As far as P.W.3 is concerned, even though the said witness is declared hostile, the learned Public Prosecutor has not suggested anything as if because the petitioners threatened him, he was deposing false. Whereas, in the impugned application filed by the prosecution, it is stated that P.W.2 got confused and P.W.3 was threatened by the petitioners herein. To substantiate the same, nothing is placed before the trial Court or before this Court. After considering the evidence of P.Ws.2 and 3, this Court is of the view that there is no need to recall the said witnesses since at the earlier point of time, the respondent-prosecution has not chosen to declare P.W.2 hostile and also they have not suggested that P.W.3 was threatened by the petitioners. Time and again, it is observed by the Apex Court that a witness should not be recalled with intent to fill up lacunae in the evidence. Further even if the said

witnesses depose before the Court as intended by the prosecution, it would not held in any way to the case of the prosecution. Hence, the impugned order is liable to be set aside.

In the result, the revision is allowed the and the impugned order passed by the trial Court dated 9.10.2015 is set aside and CrI.M.P.No.330 of 2015 in S.C.No.61 of 2012 shall stand dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

02nd December, 2015

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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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CRIMINAL REVISION CASE No.2110 of 2015

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