

THE HON'BLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.1120 OF 2015

ORDER:

This criminal revision case is preferred by the petitioner by invoking provisions under Sections 397 and 401 of Code of Criminal Procedure (Cr.P.C.,) being aggrieved by the order dated 27.04.2015, passed in Crl.M.P.No.1676 of 2014 in S.T.C.No.83 of 2009 on the file of the Judicial Magistrate of First Class, Puttur, whereby the trial Court dismissed the petition filed by the petitioner to recall P.W.1 for further cross-examination.

Heard and perused the records.

The petitioner filed the petition by invoking Section 311 of CrPC., and the relevant portion of the petition reads as under.

It is humbly submitted that the petitioner/accused failed to cross examine the P.W.1 i.e., complainant herein on material aspects as to the existing legally enforceable debt or liability between the accused and complainant, so also, as to the issuance of legal notice by oversight. To elicit the said facts in support of the defence case, it is just and necessary to recall P.W.1 for the purpose of further cross examination. Else, the defence will greatly be prejudiced.

The learned trial Judge, after hearing both sides, dismissed the petition for the reason that lengthy cross examination was carried out by the accused counsel in two sessions and nothing remained to elicit from P.W.1. The learned trial Judge further observed that it appears to Court that only to drag on the proceedings, the counsel filed the miscellaneous petition to recall P.W.1 for further cross-examination, which is not necessary at this stage.

Learned counsel for the petitioner submits that to establish the fact that the petitioner is not capable of paying Rs.16 lakhs and to establish the fact that there is no money transaction between the petitioner/accused and the *de facto* complainant, it is necessary to further cross examination of P.W.1.

This Court perused the records, more particularly the cross-examination of P.W.1 before the trial Court.

In this said cross-examination, it is specific case of the petitioner that the complainant has not shown in his account books regarding the transaction of

Rs.16 lakhs and that the same was accepted by the complainant also. Further, the suggestion by the petitioner that there is a money transaction between the petitioner's wife and the *de facto* complainant, that for the said transactions the petitioner has given three cheques to the *de facto* complainant for security purpose, and that out of three cheques, one cheque is fabricated by the *de facto* complainant are all denied by the complainant.

This Court is of the view that even though the suggestions are denied by the *de facto* complainant, the petitioner wants to prove that there is no legal liability to pay the said amount to the *de facto* complainant and that for this purpose only, the petitioner has preferred the petition under Section 311 Cr.P.C., before the Court below. Once the cross-examination on the lines suggested before this Court by the learned counsel for the petitioner is completed, there is no purpose for recalling P.W.1 to put some more questions to him.

This Court is well aware of the fact that by invoking Section 311 Cr.P.C., for just decision of the case at any time, the Court can recall any of the witnesses or examine any new witness whether cited or not or available in the Court. But, in the present case, such necessity does not arise as P.W.1 was cross-examined at length.

Having regard to the facts and circumstances of the case and also on perusing the order of the Court below, this Court is of the view that the reasoning given by the Court below is in accordance with law. This Court is not inclined to interfere with the order passed by the Court below. The criminal revision case fails and is liable to be dismissed.

The Criminal Revision Case is accordingly dismissed. Consequently, the miscellaneous petitions filed in this revision, if any, shall stand closed.

JUSTICE RAJA ELANGO

06.07.2015

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