

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.5212 of 2015

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ORDER :

This Criminal Petition is filed by the Petitioner/Accused under Section 482 Cr.P.C seeking to quash the remand order dated 11.03.2015 in CrI.M.P.No.139 of 2015 in C.C. No.362 of 2011 on the file of Judicial Magistrate of the First Class, Bhainsa, Adilabad District.

2) Heard the learned counsel for the petitioner/accused and the respondent represented by the Public Prosecutor before admission and perused the material on record.

3) The impugned docket order is based on the charges leveled against the accused for the offences punishable under Section 403 and 409 I.P.C, if not any other penal provisions, he moved the application under Section 482 Cr.P.C to quash as stated supra. The factual background of the case discloses that Crime No.362 of 2011 was registered against the petitioner herein for the offences punishable under Sections referred supra on 02.09.2011 and after investigation police filed final report that was taken cognizance under Section 190 Cr.P.C by the learned Magistrate and after hearing and framing of charges under Section 240 Cr.P.C, trial conducted and there were as many as 109 prosecution witnesses listed in proof of the alleged misappropriation by the petitioner as employee of the Bank and undisputedly even from the impugned docket order of the Court, there were only

38 witnesses were examined though the case pending for the past more than 3 ½ years. The petition filed by the petitioner before the trial Court culminating the impugned order shows, according to the petitioner, it is a false accusation and prosecution examined official witnesses and procrastinating the trial without examining the other witnesses and the prosecution thereby unsustainable and hence to close the evidence of the other witnesses. The order passed by the learned Magistrate is that in spite of conditional orders, prosecution failed to produce remaining witnesses shown in the list and Court has no jurisdiction to close the evidence of remaining witnesses, if prosecution failed to examine being the sole author and it is the discretion of the prosecution alone to examine and hence, dismissed.

4) A perusal of the provisions of Sections 238 to 243 Cr.P.C in relation to the trial of warrant cases, outcome of police report after framing of charges under Section 240 Cr.P.C the evidence of prosecution where the accused not pleaded guilty and claims to be tried or the Court not accepted the plea of guilty as commenced the trial and it is in the course of evidence, the learned Magistrate may issue summons for any further witnesses to examine or those attended and produced to examine, equally of any documents and the learned Magistrate shall proceed to take such evidence as may be produced in support and permit cross-examine to be differed until any material witness and thereafter by closure of prosecution to permit any defence evidence. Section 309 Cr.P.C speaks that in every enquiry or trial of the proceedings

shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for the reasons to be recorded.

5) The observation of the learned Magistrate as if prosecution alone to examine or not to examine and till examination Court is helpless is unsustainable by virtue of the mandate of Section 309 Cr.P.C.

6) Having regard to the above, if the prosecution failed to produce the witnesses, the trial Court can close the evidence of the prosecution witnesses, those not produced and proceed with the trial and not to postpone to accommodate the prosecution despite availing opportunities and not producing witnesses.

7) Accordingly, the petition is disposed of directing the trial Court to proceed with the trial as referred supra in letter and spirit of Section 309 Cr.P.C. As a sequel, miscellaneous petitions pending, if any, in this criminal petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

24.06.2015
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