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HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO
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CRIMINAL PETITION NO. 844 OF 2015

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C to quash the order dated 8.1.2015 in CrI.M.P.No. 4363 of 2014 in C.C.No. 581 of 2011.

2. The petitioner herein is accused in the said CC. The respondent-complainant alleged that the petitioner has committed an offence under Section 138 of Negotiable Instruments Act, 1881. The petitioner had examined husband of the respondent as DW-1 in the main case.

Subsequent thereto, he filed CrI.M.P.No. 4363 of 2014 under Section 311 Cr.P.C to recall DW-1, and reopen his evidence so as to confront him with his deposition recorded in C.C.No. 28 of 2010 as DW-1 on the file of III Additional Judicial First Class Magistrate, Kakinada.

3. The said application has been rejected by the Court.

4. Questioning the same, this Criminal Petition is filed.

5. Counsel for the petitioner contends that the Court below has observed in an order passed by it on 9.10.2014 in CrI.M.P.No. 3613 of 2014 that DW-1 has deposed in CC No. 28 of 2010 as DW-1; as per the provisions of Section 33 of Indian Evidence Act, 1872 the

petitioner is entitled to confront DW-1 with it by recalling him; and that when the petitioner has filed CrI.P.M.P.No. 4363 of 2014, the Court has dismissed the same.

6. It is not disputed that DW-1 was husband of the respondent. He is supporting the petitioner-accused in the case filed against the petitioner by the respondent. From the record, it appears that this witness had also deposed as DW-1 in C.C.No. 28 of 2010 before the III Additional Judicial First Class Magistrate, Kakinada. The question of confronting DW-1 with his own deposition in C.C.No. 28 of 2010 in the present CC does not arise for the reason that this witness is supporting the case of the petitioner or at any rate has not been declared hostile at the instance of the petitioner. Admittedly, he is a witness for the petitioner. Therefore, there is no question of confronting DW-1 with his own deposition in CC No. 28 of 2010 as DW-1. The Court below in my opinion has rightly dismissed it. I do not find any merit in the Criminal Petition.

7. Accordingly, the Criminal Petition is dismissed.

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

JUSTICE M.S.RAMACHANDRA

RAO

Date: 19.02.2014

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