

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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CRIMINAL PETITION No.5978 OF 2015

ORDER:

This Criminal Petition is filed by the petitioner/accused under Section 482 Cr.P.C seeking to set aside the order dated 12.06.2015 in CrI.M.P.No.114 of 2015 in S.C.No.10 of 2014 passed by the Special Judge for the trial of case under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989-cum-V Additional Sessions Judge, Medak at Sangareddy.

Heard the learned counsel for the petitioner and the learned Public Prosecutor (Telangana) for the State.

The accused is facing trial for the offence punishable under Section 3(i)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 323 I.P.C. During trial, there were as many as 11 witnesses were examined. Among them PW.10 is Tahsildar, Serilingampally Mandal, PW.11 is investigating officer, who registered F.I.R. and PW.9 is the Sub-Divisional Police Officer, who verified and conducted further investigation and filed final report. The case reached the stage of examination under Section 313 Cr.P.C. after the evidence of prosecution witnesses is closed and to put the prosecution incriminating material to the notice of the accused. At this stage, the petitioner/accused filed an application under Section

311 Cr.P.C. for recall of PW.9-Sub-Divisional Officer, who was examined on 28.01.2015. The application was filed on 03.06.2015, undisputedly. The prosecution filed counter opposing

the same.

In fact the purpose of cross examination further by recall of PW.9 is certain material omissions, contradictions and improvements in the evidence of PWs.2 and 3 brought in their cross examination inadvertently not put to the investigating officer. The law is fairly settled that since the omissions and contradictions put to the witnesses is put to the investigating officer that cannot be used as contradiction or material omission as the petitioner fairly speaks inadvertence of the advocate in conducting the defence in not putting the questions not even the counter of the prosecution that there are no any omissions or contradictions that are required to be put to the notice of the investigating officer.

Having regard to the above, the dismissal of the application by the trial Court saying it is a belated one for the cross examination of PW.1 completed in January and application for recall during 313 Cr.P.C. stage in June, 2015 is untenable, as it is not the time that counts for that purpose is criteria.

Accordingly, this criminal petition is allowed setting aside the order dated 12.06.2015 in CrI.M.P.No.114 of 2015 in S.C.No.10 of 2014 passed by the Special Judge for the trial of

case under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989-cum-V Additional Sessions Judge, Medak at Sangareddy, subject to payment of costs of Rs.1,000/- (Rupees One thousand only) to be deposited by the accused before the trial Court within one week from the date of receipt of a copy of this order. In turn the trial Court to cause summon PW.9 for further cross examination by the accused. The said

Rs.1,000/- can be taken towards expenses by the witness PW.9
else it shall be remitted to the District Legal Services Authority.

Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 08-07-2015
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