

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.167 of 2015

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioners/Accused challenges the order dated 08.01.2015 in CrI.M.P.No.127 of 2014 in S.C.No.117 of 2011 passed by the learned V Additional Sessions Judge, Bhongir, whereunder learned Judge dismissed the petition filed by the petitioners/accused under Section 311 Cr.P.C to recall PW.1 and PW.12 for further cross-examination.

2) As can be seen, the petitioners sought for recall of PWs.1 and 12 for the following purposes:

- (i) PW.1 (LW.1) in his 161 Cr.P.C statement has not stated to the effect that A.1 to A.3 went to the house of PW.1 (LW.1) along with the deceased and left her in his house. However, for the first time, he stated this fact in his evidence which is an improvement.
- (ii) PW.1 (LW.1) in his 161 Cr.P.C statement only stated that about 15 days back they took their daughter to Choutuppal and requested A.1 and his mother (A.2) that they had no money and they were in hardship and left the deceased and her daughter and returned. In the 161 Cr.P.C statement, PW.1 (LW.1) did not mention about their requesting A.3 also. However, in the evidence, PW.1 for the first time he stated as if they requested A.1 to A.3 that

he cannot give Rs.20,000/- and 2 tulas of gold to A.1 as an additional dowry and left the deceased at their house and returned. So the request allegedly made to A.3 also appeared in the evidence of PW.1 is an improvement.

(iii) In his 161 Cr.P.C statement, PW.1 (LW.1) did not specifically mention about his giving Rs.80,000/- and 12 tulas of gold at the time of marriage but this fact was deposed by PW.1 for the first time in his evidence.

(iv) PW.1 stated in his evidence that he lodged the complaint in P.S. Choutuppal at 6:30am or 7:00am on 27.12.2008 but in fact the complaint was registered at 10:30 am.

On enquiry, the trial Court dismissed the petition on the observation that the petition was filed belatedly at the stage of the arguments with an intent to fill up the lacunae in their defence.

Hence, the Criminal Petition.

3) Heard both sides.

4) When the purpose for which the accused sought for recall of PWs.1 and 12 is verified with reference to 161 Cr.P.C statement and the deposition of PW.1 (LW.1), it would appear that there is some improvement in the evidence of PW.1 from his 161 Cr.P.C statement as narrated in Points 1 and 2 supra. Therefore, the prayer of the petitioners/ Accused to further cross-examine PWs.1 and 12 for eliciting the aspects covered

by Points 1 and 2 can be accepted but however, so far as point No.3 is concerned, in his 161 Cr.P.C statement PW.1 specifically mentioned that at the time of marriage on the demand of A.1 and his relations, he paid cash of Rs.80,000/- and gold, totaling Rs.1,60,000/- at the time of marriage. In view of the specific mentioning in his 161 Cr.P.C statement, I find no substance in the submission of accused in respect of point No.1. Similarly, point No.4 is concerned, if PW.1 (LW.1) stated different time of lodging complaint than mentioned in FIR, the same will be borne out by record and for that purpose PWs.1 and 12 need not be recalled.

5) So at the outset, in the considered view of this Court, the accused have good reason to seek for recall of PWs.1 and 2 for further cross-examination so far as points 1 and 2 are concerned but not on other points. Having regard to the fact that the accused are facing a grave charge under Section 304-B IPC and other relevant charges under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act, the trial Court in my view ought to have given an opportunity to the accused for fair trial.

6) In the result, this Criminal Petition is allowed and the impugned order dated 08.01.2015 in CrI.M.P.No.127 of 2014 in S.C.No.117 of 2011 passed by the learned V Additional Sessions Judge, Bhongir is set aside and the trial Court is directed to recall PWs.1 and 12 and permit the accused to cross-examine them strictly on the aspects claimed by accused

as follows:

- (i) PW.1 (LW.1) in his 161 Cr.P.C statement has not stated to the effect that A.1 to A.3 went to the house of PW.1 (LW.1) along with the deceased and left her in his house. However, for the first time, he stated this fact in his evidence which is an improvement.
- (ii) PW.1 (LW.1) in his 161 Cr.P.C statement only stated that about 15 days back they took their daughter to Choutuppal and requested A.1 and his mother (A.2) that they had no money and they were in hardship and left the deceased and her daughter and returned. In the 161 Cr.P.C statement, PW.1 (LW.1) did not mention about their requesting A.3 also. However, in the evidence, PW.1 for the first time he stated as if they requested A.1 to A.3 that he cannot give Rs.20,000/- and 2 tulas of gold to A.1 as an additional dowry and left the deceased at their house and returned. So the request allegedly made to A.3 also appeared in the evidence of PW.1 is an improvement.

As a sequel, Miscellaneous Petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 09-02-2015

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