

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.842 of 2016

ORDER:

Assailing the order dated 27.02.2016 passed in CrI.M.P.No. 278 of 2016 in C.C.No.174 of 2004 on the file of the Judicial Magistrate of First Class, Mahabubnagar, the present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C.

The facts in issue are as under:

An application under Section 326 (3) of Cr.P.C. came to be filed by the petitioners to direct the complainant-Drugs Inspector to record the evidence afresh before the Court and try the case *de novo* in the interest of justice. After hearing the accused and the Public Prosecutor appearing for the complainant, the learned Magistrate rejected the said petition. Challenging the same the present revision is filed.

Though various grounds are raised in this revision, learned Senior Counsel appearing for the petitioners submits that in the interest of justice and by treating the said application as one under Section 311 Cr.P.C. the Drug Inspector may be recalled to cross examine him on certain technical aspects, which if not elicited, would cause grave prejudice to the accused.

Learned Public Prosecutor appearing for the respondent-State submits that if really the petitioners wanted to recall the witnesses they should have made an application under Section 311 Cr.P.C. In any event he submits that the case is posted for arguments and on one pretext or the other the accused are taking time.

It is true that the petitioners ought to have filed an application under Section 311 Cr.P.C. which fact is not seriously disputed by the learned counsel for the petitioners, but however having regard to the

circumstances of the case he submits that if the entire gamut of the application made before the trial Court is taken into consideration, it would convey the same meaning. Without going into these aspects and having regard to the facts and circumstances of the case, the Drug Inspector, Mahaboobnagar, who was examined as PW.1 and one B.Suresh Babu, who was examined as PW.2 in the above C.C. shall be recalled for cross examination with regard to oxidesable test (dry sterile water); to whether the same was conducted as per the parameters laid down and also on the issue of vicarious liability. Learned counsel for the petitioners undertake that the accused will not lead any further defence evidence even if the answers, if any, go against the accused.

Accordingly, the Criminal Revision Case is disposed of recalling the PWs.1 and 2 in C.C.No.174 of 2004 on the file of the Judicial Magistrate of First Class, Mahaboobnagar, for further cross examination to the extent indicated above. It is made clear that PWs.1 and 2 will appear before the Court on 28.03.2016, on which date the learned counsel appearing for the accused shall complete his cross examination. No further adjournments will be given on the said date. Immediately thereafter, the Judicial Magistrate of First Class, Mahaboobnagar, shall proceed with the arguments of the case.

Miscellaneous petitions, if any, pending shall stands closed.

JUSTICE C. PRAVEEN KUMAR

21.03.2016
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