

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Petition No.1448 of 2014

ORDER:-

The petition is filed to quash the Order of the learned Special Magistrate-V, Hyderabad, dated 20.01.2014, in M.P.No.862 of 2013 in C.C.No.171 of 2011.

The petitioner/complainant filed the complaint alleging offence punishable under Section 138 of the N.I.Act. The complainant in lieu of chief-examination has filed an affidavit. Subsequently, the respondent has cross-examined the complainant. Even thereafter, once again, the respondent/accused recalled the complainant-PW.1 and further cross-examined him. Subsequently, it was noticed that the affidavit filed in lieu of chief-examination by the complainant did not contain his signatures. Therefore, the petition was filed under Section 460 Cr.P.C., seeking permission of the Court to put the signatures on the chief affidavit. The learned Magistrate by the impugned order has rejected the request on the ground that the provision of law that is invoked is not applicable and hence the petition is dismissed.

Learned Counsel appearing for the petitioner/complainant submits that it is purely a mistake on the part of the complainant in not signing on the chief affidavit but at the same time the chief affidavit is made part of the record and on that basis, the respondent has subjected the complainant/PW.1 to cross-examination and therefore it cannot be said that no new material is introduced so as to cause any prejudice to the respondent.

Even if a provision of law is not correctly mentioned, that does not deter the Court for granting the relief if the interest of justice so demands. Law of procedure is intended to further the cause of justice not to create any impediments provided such invocation do not cause any grave or serious prejudice to the other side.

In the instant case, admittedly, the affidavit in lieu of chief-examination was filed and on its basis, the deponent of that affidavit

was subjected to elaborate and comprehensive cross-examination. Neither the Court nor the complainant nor the Counsel for the petitioner nor the Counsel for the respondent has noticed the fact that the chief-affidavit that is being considered for cross-examining the witness did not contain the signature of the complainant.

If the deponent of the chief-affidavit who has already been cross-examined is allowed to put signatures, it do not, in any way, cause prejudice to the respondent nor does it affect his rights, if any. It is different thing if any new material is sought to be introduced after the witness was subjected to cross-examination. Nothing of that sort is sought for. Therefore, in the interest of justice, the petitioner can be permitted to put his signatures on the affidavit filed in lieu of his chief-examination without making any additions or alterations.

The Criminal Petition is allowed accordingly. Pending miscellaneous petitions, if any, shall stand closed.

M.S.K.Jaiswal, J

June, 2016

smr