

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.16726 OF 2016

&

16730 OF 2016

COMMON ORDER.

This petition is filed under Section 482 of Cr.P.C. to quash the proceedings in CrI.P.M.P.No.230 of 2016 in S.C.No.332 of 2016 filed under Section 311 of Cr.P.C. to reopen the evidence of defence side and CrI.P.M.P.No.229 of 2016 in S.C.No.332 of 2016 under Section 311 of Cr.P.C. to permit the petitioner to examine one Mruthuyunjaya Kumar and K.Prabhudas as witnesses.

Since the parties are one and the same and since the issues involved in these two petitions are inter related, with the consent of both the counsel, both the petitions are disposed of by way of common order.

But the learned XIII Additional District Judge, Narasaraopet passed an elaborate order running into three pages and only reasons assigned for the petitioner for disposal of the petition is that the court also granted three adjournments for defence but they did not avail opportunity and therefore, learned judge refused to reopen and issue summons to the witnesses.

During hearing, learned counsel for the petitioner brought to the notice of this court that the petitioner is charge sheeted with serious offence punishable under Section 302 of I.P.C. but whereas Public Prosecutor contended that plea set up by the petitioner is that a plea of 'alibi' and at the time of examination of accused under

Section 313 of prosecution evidence, the petitioner did not raise such plea in the examination but expressed his intention to adduce defence evidence. When the plea of 'alibi' is raised, burden is upon the defence to prove that they were present elsewhere and it is relevant under Section 11 of India Evidence Act. But the only reason for failure of the petitioner to adduce evidence before trial court is that the counsel engaged was not well due to his old age and he was hospitalized for a week and therefore, they could not adduce any evidence. If the learned Public Prosecutor for the State of Andhra Pradesh requested this court to fix a date for examination of witnesses, with a condition that in the event of failure to adduce evidence, the sessions Court may be directed to close the evidence.

Considering the seriousness of the crime and defence set up by the petitioner, the effect of failure to adduce evidence in support of the plea of 'alibi' and the stage of the proceedings, keeping in view of the 'alibi', and health condition of the counsel, appeared before the court, I deem it appropriate to direct the Sessions Judge to fix any convenient date for examination of the defence witnesses by one Mruthuyunjaya Kumar and K.Prabhudas referred in the petition with a condition that evidence will be closed if the petitioner-accused failed to avail opportunity to examine those two witnesses and the matter will be decided in accordance with law.

In the result, both the Criminal Petitions are allowed and the learned Session was Judge is directed to fix a convenient date for examination of the defence witnesses one Mruthuyunjaya Kumar

and K.Prabhudas referred in the petition with a condition that the evidence will be closed, if the petitioner-accused failed to avail opportunity to examine those two witnesses and the matter will be decided in accordance with law and in the event of failure to adduce evidence by the petitioner-accused, the Sessions Judge is directed to close the evidence and proceed with the matter in accordance with law.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

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JUSTICE M.SATYANARAYANA MURTHY

Dated 19-12-2016.

Dvs.



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