

THE HON'BLE SRI JUSTICE RAJA ELANGO

Criminal Petition No.3310 of 2016

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. challenging the order dated 28-01-2016 in CrI.R.P.No.4 of 2015 passed by the learned Special Sessions Judge-cum-IV Additional Sessions Judge, Tirupathi, dismissing the revision petition filed against the order 11-12-2014 in CrI.M.P.No.3644 of 2015 in C.C.No.290 of 2010 on the file of Additional Junior Civil Judge, Srikalahasthi, filed under Section 311 Cr.P.C. seeking to recall PW.2 for further cross-examination.

Heard the learned counsel for the petitioner and the learned Public Prosecutor and perused the material on record.

The petitioners herein are the accused in C.C.No.290 of 2010 charged with the offences punishable under Sections 146, 147 and 332 read with Section 149 IPC. In the said case, after conclusion of prosecution evidence and after completion of examination under Section 313 Cr.P.C., the petitioners/accused filed a petition in CrI.M.P.No.3644 of 2015 under Section 311 Cr.P.C. seeking to recall PW.2 for further cross-examination to elicit important and crucial points in respect of their presence, identity and the manner of alleged attack, which were not suggested due to oversight and mistake at the time of examination of PW.2, and the same were very much vital for just decision of the case. The trial Court dismissed the said petition, holding that at the time of examination under Section 313 Cr.P.C., when the court posed questions about incriminating circumstances appearing against them, the petitioners/accused reported no defence evidence on their behalf and they simply denied the same

as false. It also held that the petitioners/accused filed the impugned petition nearly after lapse of two years that too after closure of evidence of PW.2 way back on 03.04.2012 and holding that there was no necessity to recall PW.2, the trial Court dismissed the petition. Aggrieved by the said order, the petitioners/accused filed Crl.R.P.No.4 of 2015 before the Special Sessions Judge-cum-IV Additional Sessions Judge, Tirupathi. The learned Special Judge, considering the facts and circumstances of the case and the material on record, while upholding the findings given by the trial Court, dismissed the revision petition. Challenging the said order, the present criminal petition has been filed.

Having heard the learned counsel for the petitioner and the learned Public Prosecutor and on careful perusal of the material on record including the orders under challenge, this Court is of the view that the discretion exercised by the trial Court vested in it by giving cogent reasons in dismissing the petition was neither illegal nor irrational in the facts and circumstances of the case and the reasons assigned leading to dismissal of the application were but just and reasonable. The revisional Court also dismissed the revision petition, upholding the findings given by the trial Court. The petitioners/ accused even before this Court did not assign any specific reason for recalling PW.2 for further cross-examination, except reiterating the same reasons as raised before the Courts below. Therefore, in the absence of any specific reasons necessitating recalling of PW.2 for further cross-examination that too when the petitioners/accused reported no defence evidence on their behalf at the time of examination under Section 313 Cr.P.C., question of recalling of PW.2 for further cross-examination would

not arise. Therefore, the orders impugned do not suffer from any serious legal infirmity or illegality calling for interference of this Court in exercise of inherent jurisdiction under Section 482 Cr.P.C., and hence, the criminal petition is liable to be dismissed.

Accordingly, the Criminal Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending, shall stand closed.

RAJA ELANGO, J

Date: 15-03-2016

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