

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.1275 of 2014

ORDER:

This criminal petition, under Section 482 of the Code of Criminal Procedure, is filed by the petitioner-Accused challenging the order, dated 11.12.2013, in CrI.M.P. No.1127 of 2013 passed by the Judicial Magistrate of First Class, Vemulavada, whereby the learned Magistrate dismissed the application filed by the petitioner under Section 311 Cr.P.C.

Heard and perused the material available on record.

The petitioner filed the impugned application before the Court below seeking to recall PW.1 for further cross examination. The Court below dismissed the said application through the impugned order, by observing as follows:

“The petition of the petitioner only says that a civil dispute is pending which is connecting to this case for which reason it is essential to put some questions to PW.1. No particulars of said civil dispute has been mentioned in the petition. No sufficient reason is submitted by the petitioner as to which aspect recall was sought for. Any petition to recall the witness U.Sec.311 Cr.P.C., the petitioner has to give sufficient reasons and the aspect on which he was seeking for further cross examination. Already this Court has given sufficient opportunity to the petitioner for cross examination.

Though PW.1 was secured from Mumbai, accuse was given one day time for cross examination at his request. After giving sufficient opportunity the evidence of PW.1 was closed. But again petitioner seeing to recall PW.1 at this belated stage is not acceptable. The petitioner herein after taking certified copy of the evidence of PW.1 filed the present petition. It clearly shows that in order to fill the gaps which aroused present petition has been filed. Furthermore, PW.1 cannot be secured without any amount of delay and without incurring any expenditure. Above all the case is an identified case which has to be disposed expeditiously. In view of the above circumstances, the contention of the petitioner is not acceptable.”

Aggrieved by the dismissal of the application, the petitioner filed the present application.

The impugned application was dismissed by the Court below on 11.12.2013 and the present criminal petition is filed in the year 2014, wherein no stay was granted by this Court earlier. Hence, after hearing the arguments of both the learned counsel and after perusing

the material available on record, this Court is of the view that, after lapse of three years, without there being any interim order in favour of the petitioner, no purpose would be served by allowing the present application. Therefore, this Court is inclined to pass the following order:

In case, CC No.371 of 2010 is pending before the Judicial Magistrate of First Class, Vemulavada, the petitioner is directed to file a fresh application to recall PW.1 and on such application being filed, the trial Court is directed to decide the issue afresh.

With the above directions, the Criminal Petition is disposed of. Miscellaneous petitions pending if any, shall stand closed.

RAJA ELANGO, J

February 18, 2016.
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