

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.6813 OF 2016

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the order, dated 25.02.2015, passed in CrI.MP.No.45 of 2015 in S.C.No.513 of 2012 by the III Additional Sessions Judge, Gadwal, so far as denying the opportunity to recall PW.1 is concerned.

2. CrI.MP.No.45 of 2015 is filed under Section 311 Cr.P.C. to recall PWs.1 to 12, alleging that the counsel for petitioners therein is old aged and as such, he could not cross-examine the witnesses and failure to cross-examine the said witnesses by the counsel is neither intentional nor wanton, but it is purely due to the circumstances prevailing on that day. It is further alleged that PWs.1 to 12 are very important witnesses for just decision of the case, and if they are not cross-examined, the petitioners will be put to prejudice. The trial Court, by impugned order, dated 25.02.2015, partly allowed the petition recalling PWs.2 to 12, but dismissed the petition so far as recalling of PW.1, as she was already cross-examined.

3. In the present petition several contentions are raised regarding the conduct of PW.1 and involvement of deceased Ranga Swamy, husband of PW.1, in several cases. It is also stated that PW.1 is not an eye-witness, but a circumstantial witness. Alleging that failure to cross-examine her with regard to the criminal background of the deceased would affect the right of the petitioner in the main

case, the petitioner sought to set aside the impugned order passed by the trial Court denying the opportunity to recall PW.1, so as to cross-examine her.

4. As per the allegation made in the petition, the counsel appearing on behalf of him before the trial Court is an age old senior counsel and as such, he could not cross-examine PW.1 properly. But, that is not a ground to recall PW.1, since the scope of Section 311 Cr.P.C. is limited and the said provision cannot be utilised to fill up the lacunas in the case of defence. The only endeavour of the petitioner is that he wanted to put certain questions to PW.1 with regard to the criminal background of the deceased Ranga Swamy and elicit the involvement of the deceased in several cases, including Sessions Case.

5. According to Section 53 of Evidence Act, in criminal cases, previous good character is relevant, but here the petitioner intends to elicit something with regard to bad character of the deceased, which is irrelevant. Moreover, it is contended that the deceased developed enmity with several persons due to his involvement in several cases. But, that is not a ground to recall PW.1 under Section 311 Cr.P.C., more particularly, when the petition is bereft of reasons, except the bald allegation that the petitioner's counsel before the trial Court was old aged and could not cross-examine PW.1 properly. Hence, I find no ground to quash the impugned order,

dated 25.02.2015, passed in Crl.MP.No.45 of 2015 in S.C.No.513 of 2012 by the III Additional Sessions Judge, Gadwal, so far as denying the opportunity to recall PW.1 is concerned.

6. In the result, the Criminal Petition is dismissed at the admission stage. Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

December 06, 2016.
MD

