

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.2409 of 2016

ORDER:

1) The present Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. questioning the order dated 08.08.2016 passed in CrI.M.P.No.2413 of 2015 in C.C.No.364 of 2014 on the file of the Special Magistrate-VII, Hyderabad, wherein and whereunder an application filed by the petitioner under Section 65 (B) of the Evidence Act for marking the C.D. was rejected.

2) As seen from the record, the petitioner herein filed two applications ie. CrI.M.P.No.2413 of 2015 to receive the C.D. for marking it as a document and CrI.M.P.No.2414 of 2015 to recall PW.1 for the purpose of marking the C.D. filed along with CrI.M.P.No.2413 of 2015. By common order dated 08.08.2016 the learned Magistrate dismissed both the petitions on the ground that the admission of the accused was recorded in the cell phone of PW.5 and that no certificate was filed along with the C.D. as required under Section 65 (B) (4) of the Evidence Act.

3) Learned counsel for the petitioner submits that it was PW.5, who recorded the C.D. Even assuming for the sake of argument that the said C.D. is admissible in evidence without going into 65-B of the Evidence Act, it can be marked only through PW.5 subject to its proof and relevancy. Therefore, the present application appears to be misconceived as filing of an application to recall PW.1 for marking the C.D. which was recorded in the cell phone by

PW.5 may not be proper. At this stage, learned counsel for the petitioner submits that an application for recall of PW.1 is filed only for identifying the voice. Identification of the voice would come after marking the C.D. Hence, I find no merits in the revision. The petitioner is always at liberty to file an application for recall of PW.5, who is alleged to have recorded the C.D., in which event the same shall be dealt with in accordance with law.

4) Accordingly, the Criminal Revision Case is disposed of. Miscellaneous petitions, if any, pending, shall stand closed.

23.09.2016
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C. PRAVEEN KUMAR, J