

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15969 OF 2016

ORDER:

This Criminal Petition, under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to quash the Order dated 07.11.2016 in CrI.M.P. No.1574 of 2016 in C.C. No.171 of 2011 passed by the V Special Magistrate, Hyderabad.

The case of the petitioner is that he filed a petition under Section 311 of Cr.P.C. to recall of P.W.1 for further cross-examination on the ground that while cross-examining the witness, it is found that the affidavit filed by P.W.1 was not signed, thereby it is invalid to cross-examine the witness to some extent. When the objection was raised, the first respondent seeks permission of the Court to put the signature on the chief affidavit. The trial court rejected the request, aggrieved thereby, the first respondent carried the matter to this Court. However, by order dated 14.06.2016 in CrI.No.1448 of 2014, this Court permitted the deponent/ first respondent to sign on the affidavit, since it would not cause any prejudice, but thereafter no opportunity was afforded to the petitioner to cross-examine the witness.

The counsel for the petitioner specifically contended that he did not avail proper opportunity, since the affidavit filed earlier in lieu of examination-in-chief was not valid and the witness was not cross-examined to the maximum extent with reference to Exs.P.8 and P.9. Therefore, sought permission to cross-examine P.W.1 with reference to Exs.P.8 and P.9. But the

trial court turned down his request by assigning its own reasons.

Sri K.Shankaraiah, learned counsel for the first respondent, strongly opposed the request made by the petitioner, mainly on two grounds. The first ground is P.W.1 was cross-examined at length on 27.02.2013, 06.03.2013 and again on 17.07.2013 and the other ground is documents- Exs.P.8 and P.9 were marked on 17.07.2013, but P.W.1 was not cross-examined with reference to Exs.P.8 and P.9. Therefore, the petitioner is not entitled to avail another opportunity to cross-examine P.W.1.

The whole controversy arose on account of failure of first respondent to sign on the affidavit and the affidavit which is not signed by the deponent/first respondent was taken as examination-in-chief and the petitioner was permitted to cross-examine the witnesses on 17.07.2013 itself. But, evidently, the affidavit filed in lieu of examination-in-chief by P.W.1 is not valid, as it was not signed. Therefore, when the affidavit filed in lieu of examination-in-chief is not valid, any amount of examination would not validate the examination-in-chief and consequently the cross-examination is of no use. But after signing on the affidavit as permitted by this court vide order in CrI.P.No.1448 of 2014, a reasonable opportunity is to be afforded to the petitioner herein to cross-examine the witnesses, since the affidavit became valid only the date when he signed. Therefore, necessary opportunity be afforded to the petitioner to cross-examine the witness only with reference to Exs.P.8 and

- 3 -

P.9. But the trial court did not properly appreciate the facts with reference to various stages of the case, more particularly, pendency of criminal petition before this Court and committed an error. Hence, the order passed by the trial is liable to be set aside.

In the result, the criminal petition is allowed, setting aside the order dated 07.11.2016 passed in CrI.M.P.No.1574 of 2016 in C.C. NO.171 of 2011 passed by the V Special Magistrate, Hyderabad, while ordering recall of P.W.1 for cross-examination to a limited extent of P.W.1 with reference to Exs.P.8 and P.9. The learned Magistrate is directed to fix a specific date for appearance of P.W.1 for further cross-examination by the counsel for the petitioner with reference to Exs.P.8 and P.9 and in case, the counsel for the petitioner is failed to cross-examine P.W.1 on the date fixed, the learned Magistrate can proceed with further in accordance with law.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 22.12.2016
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