

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16407 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 29.08.2016 in CrI.M.P.No.47 of 2014 in C.C. No.191 of 2012 passed by the I Additional Judicial Magistrate of First Class, Khammam, whereby the petition filed under Section 311-A of Cr.P.C. was allowed.

The order under challenge mainly on the ground that the specimen signature or handwriting can be obtained only during investigation, but not during trial. It is further contended that the language used in Section 311-A of Cr.P.C. is clear that specimen signatures or handwriting of a person, including an accused person, can be obtained during investigation or proceeding. But, when the charge sheet was filed, registered the same as Calendar Case and during trial, the court cannot invoke such procedure to obtain specimen signatures or handwriting. Therefore, prayed to set aside the same.

Learned Public Prosecutor fairly conceded that such specimen signatures or handwriting of accused can be obtained during investigation only.

Undoubtedly, a final report was filed in Cr.No.32 of 2012 before the I Additional Judicial Magistrate of First Class, Khammam, and the same was registered as C.C. No.191 of 2012. During trial the Public Prosecutor filed an application

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under Section 311-A of Cr.P.C. on behalf of the State and the same was allowed by the learned Magistrate.

Granting such permission to obtain specimen signatures or handwriting of the accused is outside the purview of trial. The Magistrate is entitled to obtain such specimen signatures or handwriting only during investigation in view of the language used in the Code. The proviso to Section 311-A of Cr.P.C. clarified that no order shall be made under this Section unless the person has at some time been arrested in connection with such investigation or proceeding. Thus, it is clear that such power can be invoked only during investigation but not during trial.

The Public Prosecutor, who is the prosecuting officer, assumed role of an investigating officer and filed the present application and the learned Magistrate allowed the same without assigning any reason, for granting such relief. Therefore, the order passed by the I Additional Magistrate of First Class, Khammam, is illegal and the same is liable to be set aside.

In the result, the criminal petition is allowed at the stage of admission.

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

M. SATYANARAYANA MURTHY, J

Date: 01.12.2016
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