

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Petition No.6855 of 2016

ORDER:-

The petition is filed by the petitioners/A.3 and A.4 aggrieved by the orders of the learned Principal Special Judge for CBI Cases, Hyderabad, made in CrI.M.P.No.673 of 2016 in C.C.No.13 of 2009, dated 20.04.2016, by and under which, the learned Judge has dismissed the petition filed by the petitioners/A.3 and A.4 for recalling PWs.6, 7, 12, 14, 32 and 35 for the purpose of their further cross-examination.

The petitioners/A.3 and A.4 along with other accused are facing trial for the charges punishable under Sections 120-B, 419, 420, 468 and 471 I.P.C., and Section 13 (2) read with 13 (1)(d) of P.C.Act.

On behalf of the prosecution, PWs.1 to 36 were examined. The petitioners/A.3 and A.4 and others were also examined under Section 313 Cr.P.C., on 09.11.2015. On behalf of the petitioners/A.3 and A.4, D.W.1 was examined. No further defence was produced. When the case was coming up for arguments, the petitioners/A.3 and A.4 filed CrI.M.P.No.2114 of 2015 in the trial Court for recalling PWs.6, 18 to 20, 22 to 25, 28 to 35 (in all 17 witnesses) for the purpose of further cross-examination and the trial Court dismissed the said petition on 26.11.2015. Aggrieved by the said orders, the petitioners/A.3 and A.4 filed CrI.R.C.No.3047 of 2015 on the file of the High Court and by order dated 10.12.2015, this Court permitted the petitioners/A.3 and A.4 to recall PWs.24 and 34 only for the purpose of further cross-

examination subject to certain conditions. In pursuance thereto, PWs.24 and 34 were recalled and further cross-examined. The request of the petitioners/A.3 and A.4 to recall and further cross-examine other witnesses was not considered.

There was a direction from the High Court in Criminal Petition No.4830 of 2016 that the petitioners/accused should submit their arguments in the trial Court on 20.04.2016 and if the accused fails to do so, the trial Court was directed to proceed in accordance with law. Therefore, when the matter was taken up for arguments, the petitioners/A.3 and A.4 appeared to have filed petitions to further cross-examine the prosecution witnesses and the same were dismissed on the said date. The trial Court directed the learned Counsel appearing for A.3 and A.4 to proceed with the arguments as per the directions of the High Court without prejudice to the right of the petitioners/A.3 and A.4 to challenge the orders made by the Court on 20.04.2016.

Learned Counsel appearing for the petitioners/A.3 and A.4 submits that during the course of further cross-examination of witnesses, certain aspects have arisen which needs to be confronted to the present witnesses who are sought to be summoned for further cross-examination. Learned Counsel has relied upon various authorities not only during the course of arguments but also in the petition filed either before the Court below or in the present petition. There is no dispute with regard to the legal proposition that procedures of trial are to be followed in order to afford fair and reasonable

opportunity to all the stakeholders in dispensation of criminal justice. The Court has to take into consideration the totality of the facts and circumstances of each case for adjudging as to whether it is a fit case where the power conferred on it under Section 311 Cr.P.C., need to be invoked. Section 311 Cr.P.C. itself provides that the Court can recall, re-examine or issue summons to any witness if his evidence appears to it to be essential for the just decision of the case. In the process of affording fair and reasonable opportunity to a petitioner/accused, he cannot be given a free hand to proceed with the trial of a case in the manner in which he likes. If the conduct of a person depicts that his intentions are not *bona fide* and are intended to protract further proceeding in the matter, the same need to be curtailed. On behalf of the prosecution when several witnesses are examined and they were also subjected to cross-examination, at the stage when the matter is posted for arguments, request of the petitioners/accused to recall several prosecution witnesses for further cross-examination need to be carefully considered and only if it is shown that the further cross-examination of witness is essential to the just decision of the case, that needs to be favourably considered.

In the instant case, as has been stated *supra*, on behalf of the prosecution as many as 36 witnesses were examined, and the accused are examined under Section 313 Cr.P.C., and on behalf of the petitioners/A.3 and A.4, DW.1 was also examined. When the matter was coming up for arguments, on behalf of the petitioners/A.3 and A.4 the petition was filed to recall as many as 17

witnesses viz., P.Ws.6, 18 to 20, 22 to 25 and 28 to 35. That request of the petitioners was rejected by the trial Court. They preferred a revision before the High Court and during the course of arguments itself, as is evident from the orders of this Court in Crl.R.C.No.3047 of 2015, learned Counsel appearing for the petitioners/A.3 and A.4 confined his request only with regard to the recalling two witnesses viz., P.Ws.24 and 34, impliedly, the request of the petitioners/A.3 and A.4 to recall the rest of the witnesses was not pressed.

When that is the case, after the revision was disposed of and the trial Court has allowed the further cross-examination of P.Ws.24 and 34, once again the petitioners have filed a similar petition to recall and cross-examine P.Ws.6, 32 and 35, which was not considered by this Court as recently as on 10.12.2015. Therefore, there is no justification whatsoever for the petitioners to seek recalling of P.Ws.6, 32 and 35 for further cross-examination in view of the fact that the request made by them to that effect was rejected by this Court in Crl.R.C.No.3047 of 2015. No subsequent developments are shown as to why the same request is repeated even after it being rejected by the trial Court as well as the High Court.

In the present petition filed by the petitioners/A.3 and A.4 request is also made to recall P.Ws.7, 12 and 14. The ground on which these three witnesses are sought to be recalled for cross-examination are mentioned in the petition as under:-

“It is submitted that in respect of other properties belongs to Smt.Savitri Devi (PW.7) Vedpal (PW.12) and Dharampal (PW.14) are false and the same are

denied and those properties were being in existence. Therefore, it is just and ny that the petitioners herein are requied to “prove”/”establish” that the evidence of P.Ws.7, 12 and 14 is far away from the truth. Further, when the said prosecution witnesses are denied that either they have not mortgaged the properties or executed the documents in favour of the Bank on behalf of the petitioners etc., and to prove these aspects, the said prosecution witnesses have not taken any steps to substantiate their contention expect the oral evidence before this Court. Therefore, until and unless the said prosecution witnesses are being RECALLED and cross-examined, the real facts would not be come to the light. The investigation agency also failed to consider these aspects and mechanically filed charge sheet with false allegations against these petitioners/A.3 and A.4.”

What is noticed from the above is that no request was made by the petitioners/A.3 and A.4 to recall PWs.7, 12 and 14 for further cross-examination on earlier occasions either in the trial Court or during the course of pending of the revision in the High Court. Therefore, in the interest of justice, it is felt desirable that these three witnesses can be permitted to be recalled for further cross-examination by the petitioners/A.3 and A.4 subject to the following conditions:-

- i) The petitioners/A.3 and A.4 should deposit process for issuing summons to PWs.7, 12 and 14 on or before 17.06.2016.
- ii) The petitioners/A.3 and A.4 should deposit in the trial Court Rs.5,000/- for defraying the expenses of PWs.7, 12 and 14 along with the process which amount should be paid to PWs.7, 12 and 14 when their evidence is

recorded.

- iii) The trial Court should issue summons to these three witnesses for their evidence to be concluded by 30.06.2016.
- iv) When the witnesses are produced/present, the petitioners/A.3 and A.4 should complete their cross-examination on the same day without seeking any further adjournment.
- v) If the petitioners/A.3 and A.4 failed to comply with any conditions stated above, the request of recalling PWs.7, 12 and 14 stands dismissed.

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

M.S.K.Jaiswal, J

15.06.2016
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