

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16118 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 27.10.2016 in CrI.R.P. No.14 of 2014 passed by the I Additional Sessions Judge, Adilabad, whereby the learned Sessions Judge confirmed the order dated 01.05.2016 in CrI.M.P.No.523 of 2016 in C.C. No.124 of 2015 passed by the Judicial Magistrate of First Class, at Boath.

The petitioner herein is the respondent and the second respondent herein is the petitioner before the trial court.

The petitioner herein opposed the petition on various grounds. Upon hearing both the counsel, the learned Magistrate allowed the petition, permitting the second respondent herein to recall himself as P.W.1, exercising jurisdiction under Section 311 of Cr.P.C. and permitted him to file an affidavit under Section 145 of Negotiable Instrument Act, 1881 (for short, 'the Act'). Aggrieved thereby, the petitioner herein preferred revision in CrI.R.P.No.14 of 2014 before the learned Sessions Judge. The learned Sessions Judge dismissed the revision petition confirming the order passed by the learned Magistrate on the ground that recalling of P.W.1 and permitting him to file an affidavit amounts to filling up of lacunas in the evidence, which can not be permitted, while exercising power under Section 311 of Cr.P.C.

The second respondent herein filed complaint against the petitioner herein before the trial court for the offence punishable

- 2 -

under Section 138 of the Act and the trial court recorded two sentences as examination-in-chief of second respondent in the absence of his counsel and he was cross-examined by the counsel for the petitioner herein.

The main contention of the petitioner herein is that the trial court itself recorded the examination-in-chief of the second respondent.

In the absence of counsel for the second respondent, the trial court has taken the role of the counsel for the second respondent, which is impermissible under law.

Learned counsel for the petitioner further contended that the counsel for the second respondent was present and examined the second respondent and drawn the attention of this court to copy of Docket Order dated 09.03.2016 to show that the accused (petitioner herein) was called absent, a petition filed under section 317 of Cr.P.C., was allowed and P.W.1 (second respondent herein) was examined on the same day.

It appears from the examination-in-chief of P.W.1 that no Advocate would adduce such evidence in normal course of events, even an Advocate of one year standing at the bar. It is also appears form the examination-in-chief of P.W.1 that, the witness was not examined in all probabilities. Therefore, if the witness is not permitted to recall himself and to file an affidavit in lieu of examination-in-chief, it would cause prejudice, since procedure adopted by the trial court playing the role of counsel for the complainant (second respondent herein) is erroneous.

- 3 -

Therefore, I find no error in the order passed by the trial court and the revisional court.

Hence, the criminal petition is dismissed, confirming the order dated 27.10.2016 in CrI.R.P. No.14 of 2016 passed by the I Additional Sessions Judge, Adilabad.

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

M. SATYANARAYANA MURTHY, J

Date: 18.11.2016
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