THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15680 OF 2016

ORDER:

This criminal petition, under Section 482 of Criminal Procedure Code, 1973 (for short, 'Cr.P.C'), is filed by the petitioner challenging the order dated 06.10.2016 in S.R. No.798 of 2016 in C.C. No.199 of 2008 passed by the II Additional Chief Metropolitan Magistrate, Hyderabad, wherein the petitioner herein filed a Memo raising objection to mark the documents which are summoned from the Income Tax Department, through P.W.1, as he is not competent witness, and if those documents are marked during examination of P.W.1, the petitioner herein will be deprived of chance of confronting those documents to the income tax officials, instead of deciding the objection, the learned Magistrate made certain observations that the petitioner is resorting to drag on the matter for one reason or the other, filing one or the other petition or memos to see that the matter is not disposed off at the earliest point of time and finally observed at paragraph 24 that the objections raised by the accused in the present memo are not tenable and answered the point without deciding the admissibility of those documents in evidence during examination of P.W.1.

The only contention of the petitioner before this Court is that the respondent intends to mark those documents during his examination in chief without examining the income tax officer or the concerned income tax authorities, who produced those documents before the court, who are custodian of those documents, and if the respondent is allowed to mark the documents in his evidence, it is difficult for the petitioner to confront those documents to the concerned authorities, and in fact the petitioner is not a custodian of the documents, but the petitioner submitted a representation to the income tax authorities and such document is to be marked through a competent witness and if really, the respondent intends to mark the said document, he can summon the income tax authorities and mark those documents, if he wishes. But instead of resorting such procedure, the respondent himself wanted to mark the same during his examination in chief, which cannot be permitted. However, the trial court did not decide whether such document can be received in evidence in the examination-in-chief or not, but rejected the objection raised, by filing a memo on the sole ground that the petitioner intend to drag on the matter, which is not borne out from the record, in the absence of any reason the order cannot be sustained.

Therefore, the order passed by the II Additional Chief Metropolitan Magistrate is hereby set aside directing the learned Magistrate to decide the admissibility of the documents, which are summoned from the income tax authorities, and proceed further, after affording reasonable opportunity to both the parties.

With the above direction, the criminal petition is allowed.

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

M. SATYANARAYANA MURTHY, J

Date: 04.11.2016
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