

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

Criminal Petition No.5044 of 2014

ORDER:-

The petition is filed under Section 482 Cr.P.C., questioning the correctness of the orders of the learned VI-Additional District and Sessions Judge, Guntur, in CrI.M.P.No.72 of 2013 in S.C.No.62 of 2009 which was filed under Section 311 Cr.P.C., to recall PW.5 for further cross-examination.

In the cross-examination of PW.5 on behalf of the petitioners, on 09.11.2012, PW.5 admitted that he reached near Bharat Gas Godown, witnessed the incident and from there he returned back to Police Station to inform about the incident to his S.I. But, in fact, out of the above said statement, only the following extent is typed and the remaining portion was omitted to be typed in the deposition. The typed portion is "I went to P.S. to inform about the accident to my S.I.". The remaining portion is not typed. On this ground the APP filed an application for further cross-examination of PW.5.

The next aspect is that PW.5 stated in the deposition dt.09.11.2012 that the date as 20.05.2007, but it is typed as 28.05.2007. So, on the above said two aspects, PW.5 has to be recalled.

Learned Counsel appearing for the petitioners/A.2 and A.3 submits that even though the witness gave the evidence properly, the same was not recorded correctly, due to which the suggestion that is put to PW.5 is not conveying the meaning that was sought to be elicited. It is further submitted that at one place the date has been typed as 20.05.2007 instead of 28.05.2007. The Court below has refused to accede to the request of the petitioners/accused on the ground that even though the evidence of PW.5 was recorded as long back as on 09.11.2012, the petition to recall him was filed only on 07.03.2013.

The trial in a criminal case is to be conducted in a manner which should be fair, just and reasonable to both the prosecution as well as the accused. The valuable rights of an accused are at stake and if he seeks to recall a witness to set the record straight, the same should be acceded to unless the petitioner seeking such relief is grossly negligent in pursuing his legal remedies. In the instant case, even though the cross-examination of PW.5 was done on 09.11.2012, the petition in hand came to be filed in March, 2013 to recall PW.5 for obtaining clarification on two aspects. The lower Court ought to have considered the request and allowed the same on some terms but refusal may result in miscarriage of justice insofar as the petitioners are concerned.

In view of the above, the petition is allowed subject to the following conditions:-

- 1) The petitioners should deposit process for summoning PW.5 and also deposit a sum of Rs.2,000/- (Rs.Two thousand only) to be paid to PW.5 on the date when he comes to give his evidence.
- 2) The cross-examination of PW.5 should be completed on the date PW.5 is present/produced invariably without seeking any adjournment.
- 3) The above process should be completed by 08.08.2016. In default of any of the conditions, the petition shall stand rejected.

Miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

M.S.K.Jaiswal, J

Date: July, 2016
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