

THE HON'BLE SRI JUSTICE RAJA ELANGO

Criminal Petition No.3609 of 2016

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. challenging the order dated 16-09-2015 in CrI.M.P.No.1632 of 2015 in C.C.No.304 of 2014 on the file of Special Magistrate, Erramanzil, Hyderabad, dismissing the petition filed under Section 311 Cr.P.C. seeking to reopen the evidence of the complainant for the purpose of marking additional documents.

The petitioner, who is the complainant, filed C.C.No.304 of 2014 alleging the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and the evidence of the petitioner complainant was completed and posted the matter for 313 Cr.P.C. examination. At that stage, the petitioner/complainant filed CrI.M.P.No.1632 of 2015 under Section 311 Cr.P.C. seeking to reopen his evidence, which was closed on 28-08-2015 for the purpose of marking additional documents. The learned Magistrate dismissed the said application holding that there are no bona fides on the part of the petitioner-complainant in seeking to recall his evidence, as he did not avail the opportunities given earlier. Aggrieved by the said order, the present criminal petition is filed.

Heard the learned counsel for the petitioner and perused the material on record.

It is evident from the material on record that earlier the petitioner/complainant filed a petition in CrI.M.P.No.1476 of 2015 and the same was allowed on 13-08-2015 affording an opportunity for marking of documents mentioned therein. On 21-08-2015, the complainant did not avail such opportunity in view of his counsel

being out of station. Even thereafter also, though several opportunities were given, the petitioner-complainant did not avail the same and ultimately dismissed the application holding that there are no bona fides on the part of the petitioner/complainant. In such scenario, this Court is of the view that the reasons assigned by the trial Court in dismissing the application are justified and acceptable in the facts and circumstances of that case and the same do not call for any interference of this Court in exercise of jurisdiction under Section 482 Cr.P.C.

However, having regard to the facts and circumstances of the case and taking into consideration the submission of the learned counsel for the petitioner/complainant, this Court is of the view that interests of justice would be better served, if the petitioner-complainant can be permitted to avail one more opportunity for the purpose of marking additional documents as sought for within the time prescribed by the trial Court without seeking any adjournment on such terms payable directly to the accused.

In view of the same, the learned I Special Magistrate, Hyderabad is directed to fix a date for recalling the evidence of the petitioner-complainant for the purpose of marking additional documents as sought for on which date the petitioner/complainant shall present before the Court and produce all the documents, which he intends to mark as exhibits, without seeking any further adjournment. In the event the petitioner/complainant intends to seek any further adjournment for the said purpose, the learned Magistrate is at liberty to proceed further in accordance with law. However, it is made clear that the petitioner-complainant can be allowed for marking the documents only on payment of Rs.5,000/-

(Rupees five thousand only) towards costs directly payable to the accused on the date of recalling.

Accordingly, the criminal petition is disposed of. Consequently, miscellaneous petitions, if any, pending, shall stand closed.

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RAJA ELANGO, J

Date: 28-03-2016

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