

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.74 OF 2016

ORDER:

The petitioner has preferred the present criminal revision case by invoking provisions under Sections 397 and 401 of Code of Criminal Procedure (Cr.P.C.,) being aggrieved by the order, dated 18.11.2015, passed in D.V.C.No.6 of 2012 on the file of the II Metropolitan Magistrate, Cyberabad at L.B.Nagar, whereby the learned Judge closed the evidence of petitioner herein since the witness is not produced before the Court.

Heard and perused the material available on record.

The petitioner herein has filed the application for examination of witness, namely, D.Vijaya Bhaskar Reddy, Head Master, Sri Saraswathi Vidyashshramam Upper Primary School, Jammalamadugu, Kadapa District. The trial Court allowed the said application and ordered for issuance of summons for his appearance. On the date of trial, the said witness has not appeared and that he has also communicated that it is not possible for him to appear before the Court as he has met with an accident and also because of his physical ailments. The learned trial Judge without taking consideration the said facts, closed the evidence of the petitioner observing that the petitioner failed to produce the witness.

This Court is of the view that when summons are issued by the Court below on the basis of the petition filed by any party, if there is failure on the part of the witness to appear, coercive steps should be taken for appearance of the witnesses concerned and that the Court below cannot compel the petitioner to produce the witness on his own.

In view of the above discussion, the Court below is directed to reopen the evidence of the petitioner and allow the petitioner to take steps for appearance of the witness concerned. If the said witness is not in a position to appear before the Court, the Court below is at liberty to take appropriate steps to record the evidence of the said witness.

The Criminal Revision Case is accordingly disposed of. Consequently, the miscellaneous petitions filed in this revision, if any, shall stand closed.

19.01.2016
pln