

**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**CRIMINAL PETITION No.15894 OF 2016**

**ORDER:**

The criminal petition, under section 482 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed to quash the proceedings dated 24.10.2016 in CrI.MP. No.2449 of 2015 in CC No.167 of 2016, whereby the learned II Special Magistrate rejected to recall D.W.1 for further cross-examination.

The petitioner filed an application under Section 311 Cr.P.C. with the following prayer.

“....during the course of cross-examination of the Accused, certain facts are not elicited due to lack of supporting documents at that stage. Now the petitioner/ Complainant has verified the said documents in support of his case as such it is necessary to recall the DW1 for the just decision of the case.”

As seen from the allegations made in the petition, no purpose of cross-examination was pointed out except contending that due to non-availability of supporting documents, the accused could not be cross-examined effectively, and now he collected documents and intend to put certain questions to elicit the truth in the defense set up by him and requested to recall D.W.1 for further cross-examination, after reopening the defense evidence. The learned II Special Magistrate passed the impugned order on the ground that the petitioner did not mention the points on which he wants to cross-examine and did not disclose the details of supporting the documents and therefore, having found that there is no substance, dismissed the petition.

Learned counsel for the petitioner, during hearing, contended that the complainant in a Criminal case need not divulge his case in a petition filed under Section 311 Cr.P.C. to further cross-examine the witness on his recalling. He further contended that if the proposed questions are disclosed to the witness, it would adversely affect the case of complainant.

In the petition, except making bald allegations that they could not ascertain documents to elicit certain facts on the day when D.W.1 was cross-examined, no other allegation is made and what are the documents he collected after cross-examination of D.W.1, at least did not disclose the nature of documents he collected. Mere making such bald allegation is not sufficient to recall D.W.1.

Section 311 Cr.P.C. conferred power on the Court that the Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or. recall and re- examine any person already examined; and the Court shall summon and examine or recall and re- examine any such person if his evidence appears to it to be essential to the just decision of the case.

Therefore, prime requirement to order a petition under Section 311 Cr.P.C. is, the court has to record its satisfaction, that the evidence appears to it to be essential to the just decision in the case.

When the petitioner did not disclose the proposed questions and the documents on which he wanted to cross-

examine the witness, it is difficult to record its satisfaction as to the necessity of such evidence for just decision. Though the petitioner is not under obligation to divulge the proposed questions in the petition, unless disclosed, it is difficult for the court to record its satisfaction, which is *prima facie* requirement under Section 311 Cr.P.C.

Therefore, mere failure of the petitioner to disclose the documents which he collected and proposed examination on a particular point is suffice to reject the request of the petitioner under Section 311 Cr.P.C.

Learned counsel for the petitioner would draw the attention of this court to the Judgment of Orissa High Court in **RADHESHYAM SINGHANIA v. RANJIT KUMAR PATNAIK<sup>1</sup>**.

Wherein the Orissa High Court held as follows:

“We cannot therefore accept the contention of the appellant as a legal proposition that the Court cannot exercise power of re-summoning any witness if once that power was exercised, nor can the power be whittled down merely on the ground that prosecution discovered latches only when the defence highlighted them during final arguments, The power of the court is plenary to summon or even recall any witness at any stage of the case if the court considers it necessary for a just decision, The steps which the trial court permitted in this case for re-summoning certain witnesses cannot therefore be spurned down nor frowned at. The appeal is accordingly dismissed.”

He also drawn the attention of this Court to the Judgment of Apex Court in **RAJENDRA PRASAD v. NARCOTIC CELL**

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<sup>1</sup> LAWS(ORI)-1998-7-46

**THROUGH ITS OFFICER<sup>2</sup>**, wherein the Division Bench of the Apex Court held that the document can be received and the witnesses can be recalled at any stage.

There is no quarrel about the law declared by the Orissa High Court. However, Orissa High Court Judgment is not binding precedent under Article 141 of the Constitution of India, but it has got its own persuasive value. Therefore, this court need not place much reliance on the Judgment of Orissa High Court.

So far as the Judgment of the Apex Court in **RAJENDRA PRASAD**'s case, it does not sustain to claim relief in the petition, since the petitioner did not disclose the details enabling the court to record its satisfaction as to necessity of the evidence for just decision, which is prime requirement under Section 311 Cr.P.C.

Hence, I find no ground to set aside the order dated 24.10.2016 in CrI.M.P. No.2429 of 2016 in CC No.167 of 2016 passed by the II Special Magistrate, Kukatpally at Miyapur, Rangareddy District.

Accordingly, the criminal petition is dismissed.

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

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**M. SATYANARAYANA MURTHY, J**

Date: 10.11.2016  
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<sup>2</sup> 1999(3) SCR 818