

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

CRIMINAL PETITION No.13260 of 2015

ORDER:

The present criminal petition is filed under Section 482 Cr.P.C seeking to eschew Ex.P3-164 Cr.P.C statement of the *de facto* complainant marked in CC.No.11 of 2013 on the file of the III Additional District & Sessions Judge-cum-Special Judge for ACB Cases, Visakhapatnam.

2. The case of the petitioner/accused is that the above case is registered against him on the allegation that he demanded a sum of Rs.10,000/- from the *de facto* complainant as bribe for speedy completion of investigation and filing of the charge sheet in the crime pending against the complainant. A trap took place on 19.08.2011 at about 16.45 hours and ACB officials recovered the bribe amount said to have been given by the *de facto* complainant to him. At the initial stage, in the statement recorded by the Additional Judicial Magistrate of First Class, Bobbili under Section 164 Cr.P.C on 17.09.2011, the *de facto* complainant stated that the petitioner did not demand any amount. The police again got recorded the statement of the *de facto* complainant under section 164 Cr.P.C on 05.11.2011, deviating from the earlier statement made by the *de facto* complainant. The petitioner contends that recording the 2nd statement from the same *de facto* complainant is contrary to law and statute and hence prays to eschew the said statement from the record of the above calendar case.

3. The respondent filed counter, contending that on 21.10.2011 the *de facto* complainant filed an application before the Court below stating that as the petitioner threatened him and hence he gave his first statement on 17.09.2011 in favour of the petitioner and he intends to give proper statement. Accordingly, on the direction of the Court

below, the Investigating Officer got recorded another statement of the *de facto* complainant on 05.11.2011. Both the statements are marked as Exs.P2 & P3 through PW 1. PW 1 was also cross examined by the defence counsel elaborately. PW 2 was also examined. At this stage, the petitioner filed this petition, which is not maintainable. The second statement of the witness can be used for contradicting his testimony as per the provisions of the Indian Evidence Act.

4. Heard the learned counsel appearing for the petitioner and the Special Public Prosecutor appearing for the respondent.

5. The main contention of the petitioner who is an accused in the crime is that two statements of the witness under Section 164 Cr.P.C., cannot be recorded and therefore the subsequently recorded statement which is marked as Ex.P.3 needs to be eschewed from consideration.

6. The facts of the case are that the petitioner/accused is alleged to have been trapped while accepting the alleged bribe amount. PW.1 is the complainant. Originally, his statement under Section 164 Cr.P.C., was recorded by the jurisdictional Magistrate on 17.09.2011, in which he gave one version. Subsequently, again on 05.11.2011, he gave another statement under Section 164 Cr.P.C., changing the entire version. Thereafter, he has been examined in the Court as PW.1 and both his statements which are contradictory to each other are marked as Exs.P.2 and P.3.

7. The objection of the learned Counsel appearing for the petitioner/accused is that there cannot be two statements from the same witness under Section 164 Cr.P.C., and they cannot be accepted for the reason that the same witness cannot give his statements at different points of time.

8. There is no gain saying the fact that a statement recorded under Section 164 Cr.P.C., can never be used as a substantive evidence of truth of the facts but it may be used for contradiction or

corroboration of the witness who made it. That statement can be used to cross-examine the maker of it and the result may be to show that the evidence of the witness is false. But that does not establish that what he stated under Section 164 Cr.P.C., is true. Where a witness gave different versions in his statements under Section 164 Cr.P.C., and the Court appreciating the evidence has to find out whether the witness is of impeachable integrity, and if so, the same will enure to the benefit of the accused. If a deponent whose statement is recorded under Section 164 Cr.P.C., turns hostile, or reciles from his earlier statements, he could be prosecuted for perjury but on the strength of such a statement recorded under Section 164 Cr.P.C., no conviction can be placed. The statements recorded under Section 164 Cr.P.C., are at best useful for corroboration and contradiction. There cannot however be any bar, if statement of the same person is recorded on two occasions.

9. However, it is a matter of appreciation of evidence of such a person who gave contradictory or varying versions on two different occasions before the authority. The trial Court is required to test the veracity of a person who has given different statements on oath and to adjudge as to howfar such a witness can be said to be reliable and his statement on oath be regarded as truthful. It is for the trial Court to appreciate as to whether PW.1 is a person who has any regard to the oath he has taken and whether it is a case which warrants initiation of appropriate proceedings against a person who has given contradictory versions in a statement recorded by the jurisdictional Magistrate. Therefore, it cannot be said that merely because the complainant/PW.1 has given different version in the statements recorded by the jurisdictional Magistrate under Section 164 Cr.P.C., one of the statements needs to be eschewed from consideration. The entire material will be before the trial Court such as the statement of a particular witness under Section 164 Cr.P.C, the statement of the

witness under Section 161 Cr.P.C., and the sworn statement of the witness in the Court which is substantive evidence. Therefore, I see no substance in the submission of the learned Counsel appearing for the petitioner/accused that the subsequently recorded statement of PW.1 under Section 164 Cr.P.C., is to be taken out of the record more particularly when the same has been marked through PW.1 as a exhibit and PW.1 has been elaborately cross-examined not once but on several occasions even by invoking Section 311 Cr.P.C., and PW.1 was recalled for the purpose of further cross-examination. There are no merits in the petition and the same is liable to be dismissed.

10. In the result, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending in this petition shall stand closed.

M.S.K.Jaiswal, J

Date: 25th July, 2016
Dsr/Smr