

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CrI.R.C. No.2112 of 2016

JUDGMENT:

This criminal revision case is filed under Sections 397 and 401 Cr.P.C. challenging the orders dated 02.07.2016 passed in CrI.M.P.No.28 of 2016 in SC No.104 of 2015 on the file of the Assistant Sessions Judge, Anakapalle.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor.

3. A perusal of the record reveals that the petitioner is facing trial in SC No.104 of 2015 on the file of the Assistant Sessions Judge, Anakapalle, for the offences punishable under Sections 498-A, 306 of IPC and Sections 3 and 4 of the Dowry Prohibition Act. During pendency of the trial, learned Public Prosecutor filed a petition to recall PWs.1 to 3 and 5 on the sole ground that they have not supported the prosecution case. The trial court after affording reasonable opportunity to both parties dismissed the application. Feeling aggrieved by the orders, the *de-facto* complainant therein filed the present petition.

4. Learned Additional Public Prosecutor submitted that no revision lies against the orders passed in a petition under Section 311 Cr.P.C. Learned counsel for the petitioner submitted that revision lies against the orders passed in a petition under Section 311 Cr.P.C.

5. In order to appreciate the rival contentions, this court placed reliance on the decision of the Apex Court in 'Sethuraman vs. Rajamanickam¹', wherein, the Apex Court at para 4, held as follows:

¹ 2009(1) ALD 871

“4. Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C. The Trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent/ accused and the only defence that was raised, was that his signed cheques were lost and that the appellant/ complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e., one on the application under Section 91 Cr.P.C. for production of documents and other on the application under Section 311 Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397(2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction”.

6. As per the principle enunciated in the above case, no revision lies against the orders passed by the trial court under Sections 311 Cr.P.C. In the instant case, the impugned order was passed in a petition filed under Section 311 Cr.P.C. The principle enunciated in the case cited supra is squarely applicable to the facts of the case on hand.

7. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the present revision case is not maintainable under law.

8. The criminal revision case is, accordingly, dismissed. Miscellaneous petitions, if any pending in this case, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 11.11.2016.
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