

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.15491 OF 2016

ORDER:

This Criminal Petition is filed to quash the order in CrI.M.P.No.499 of 2016 in Special .S.C.No.26 of 2016 passed on 29-9-2016 by the I Additional Sessions Judge, Warangal, denying recall of P.W.1 for cross-examination by the counsel for the accused on the ground that in Section 33 of Protection of Children from Sexual Offences Act, there is a bar under Section 33 to recall children repeatedly before the court.

It is the case of the petitioner that on the day when the matter is listed, counsel for the petitioner reported no objection and handed over the record to the accused/petitioner before the court and therefore, the petitioner counsel could not cross-examine on the same day and the court recorded the cross-examination of P.W.1 as no counsel for the petitioner-accused was present.

If really the counsel intends to report no objection and return the record to the counsel, at least, he must have informed the accused in the trial court on the day when the matter came up for cross-examination but it is nothing but prolonging the proceedings or avoiding cross- examination. However, it is the duty of the court to undertake fair trial affording reasonable opportunity to the petitioner-accused to defend himself. Therefore, dismissal of the application to recall P.W.1 under Section 11 Cr.P.C. by the trial court advertent to Section 33 of Protection of Children from sexual

offences Act amounts to denial of fair trial and consequently, I find that it is a fit case to direct the trial court to recall P.W.1 only for limited purpose of cross- examination fixing the specific date for cross-examination on appearance of P.W.1 and in case the petitioner counsel fails to cross examine P.W.1, the trial court is permitted to pass appropriate order in accordance with law.

With the above direction, this Criminal Petition is allowed directing the trial court to recall P.W.1 only for limited purpose of cross-examination fixing the specific date for cross-examination on appearance of P.W.1 and in case, the petitioner counsel fails to cross examine P.W.1, the trial court is permitted to pass appropriate order in accordance with law.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

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JUSTICE M.SATYANARAYANA MURTHY

Dated 1-11-2016.

Dvs.

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 1-11-2016.

Dvs