

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

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**CRIMINAL REVISION CASE No.989 OF 2016**

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**ORDER:**

Heard learned counsel for the petitioner and learned Public prosecutor.

2. This criminal revision case came to be filed aggrieved by the order dated 24.03.2016 passed in CrI.M.P.No.888 of 2016 in C.C.No.163 of 2009 on the file of Additional Judicial First Class Magistrate, Kakinda.

3. The facts in issue show that a private complaint through General Power of Attorney was filed against the accused for the offences punishable under Sections 417, 418, 420, 498-A, 506 r/w. Section 34 of Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act.

4. The said case was numbered as C.C.No.163 of 2009. During the course of trial, the prosecution filed an application under Section 311 of Code of Criminal Procedure to examine Tammineedi Kavitha (Betina Kavita) wife of A.1 and Lw.6-Dr. Bethina Sarojini who is close relative of LW.1. According to the prosecution they could not be examined earlier as they were residing at U.S.A. It is said that recently they have come to India and it will be appropriate to examine them, since their evidence is very much necessary to prove the prosecution case.

5. A counter came to filed opposing the application filed by the prosecution. It is stated that LW.1 filed a private complaint through power of Attorney-LW.2 in the year 2004 and there after she has not pursued the matter for about a decade. It is said that LW.1 cannot give evidence as and when she likes and no explanation is forth coming as to why the complainant has not pursued the matter, having lodged the report. It is further stated that even accepting the evidence of LW.1 as true, no offence

is made out against the accused as LW.1 gave divorce prior to lodging of the report.

6. Learned Public Prosecutor opposed the application contending that the evidence of LW.1 and LW.6 is very much essential as LW.1 is the victim and suffered harassment in the hands of the accused and LW.6 being a close relative of LW.1.

7. In so far as the arguments of learned counsel for the petitioner is concerned, the evidence of LWs.1 and 6 cannot be accepted, since she filed an application for divorce much prior to lodging of the report and the same cannot be gone into at this stage. It is for the trial Court to decide as to the reliability or otherwise of the evidence of PW.1, while deciding the case. Definitely the evidence of LW.1, who is the wife of A.1, is necessary for a just decision of the case.

8. The Apex Court in ***P. Sanjeeva Rao Vs State of Andhra Pradesh***<sup>[1]</sup> held that opportunity can be given to lead evidence and the same should not be curbed on the ground of technicality. Truth or otherwise all the allegations made in the evidence of LW.1 can only be tested during the course of trial as held by the Apex Court and one should not shun the evidence, more so, that of LW.1.

9. Having regard to the same, I see no reason to interfere with the order passed by the trial Court and the same is liable to be dismissed.

10. Accordingly, the Criminal revision case is dismissed. It is needless to mention that LWs.1 and 6 shall appear before the Court on the next date of hearing on which date the counsel shall proceed with the cross-examination.

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

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**JUSTICE C. PRAVEEN KUMAR**

11.04.2016  
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**Dated : 11.04.2016**

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