

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16160 of 2016

ORDER :

This criminal petition is filed by the petitioner/accused under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to quash the order dated 19.10.2016 whereby the Judicial First Class Magistrate, Parchur, dismissed CrI.M.P.No.1546 of 2016 in C.C.No.182 of 2012 filed under Section 311 Cr.P.C. for recalling of DW.2, who is the Branch Manager, on the ground that the admission of DW.2 about the time limit for presentation is sufficient in view of the guidelines and the circular is not required in view of the admission etc.,

2. The reason assigned by the petitioner in the petition filed under Section 311 Cr.P.C. dated 30.09.2016 itself clear that the witnesses were already examined long back and the argument in the calendar case was heard by the Judicial Magistrate of First Class and after conclusion of trial except pronouncing judgment, the present petition is filed on the ground that the petitioner could not secure the circular during trial, therefore, he could not file the same. Thus, there is no willful default on his part and sought for recall of DW.2, to whom the petitioner has to examine as a witness.

3. Except making a bald statement that during trial and after conclusion of arguments, the petitioner could not secure the circular, however, in the petition itself it is mentioned that DW.2 also deposed

that their Bank also followed the same procedure as contemplated in the circular that would suffice to decide the issue before the Court.

4. The allegations made in the petition are that entire arguments were concluded in the calendar case and the matter was posted for judgment and that the petitioner filed the petition to recall his own witness DW.2, i.e., the Branch Manager of the Bank, though he admitted about following of the circular. Filing of application for recall of witness without filing a petition to reopen cannot be entertained. More over, filing of such an petition after conclusion of trial and the matter was reserved for judgment cannot be entertained that amounts to abuse of process of the Court and in the recent judgment reported in **Gayathri v. M.Girish**¹, the Hon'ble Supreme Court pointed out the institutional responsibility of an advocate in filing petitions one after the other without adopting un end practices though it is under Order XVIII Rule 17 C.P.C. the language used in Order XVIII Rule 17 C.P.C. and Section 311 is identical. Therefore, the same parameters are applicable to civil proceedings. On oral consideration of the material on record, filing of such application after conclusion of argument and the matter was posted for judgment, itself indicates the advocate does not have institutional responsibility as held by the apex Court in Gayathri's case supra. Therefore, at this stage, the petition cannot be allowed and the order passed by the trial

¹ 2016 (3) LS 17 (SC)

Court does not suffer from any illegality warranting interference by this Court.

5. Hence, the criminal petition is dismissed at admission stage.
6. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

22nd November 2016

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