

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7035 of 2017

ORDER:

Heard learned counsel for the petitioner/accused and also learned Public Prosecutor representing the State.

This petition filed under Section 482 Cr.P.C. impugning the order of the learned Sessions Judge dated 02.08.2017 in CrI.M.P.No.206 of 2017 in S.C.68 of 2016.

The Section 311 Cr.P.C. recall petition of PW.3-Singidi Appa Rao filed subsequent to the examination of him on 04.07.2017. The crux in the cross examination evidence for the purpose of recall is that the witness in the cross examination by accused on that day i.e., 04.07.2017 deposed that "We will allow any person on confirmation by flat owners. I was in 'B' shift i.e., from 2.00 pm to 10.00 pm, I was called over phone on arrival of relatives of Radha. Police came to Apartment at about 8 pm. The police took away Nagaraju/accused at about 9.30 pm or 10.00 pm."

The impugned order reads that as per the petition averments this aspect of the cross examination version supra not stated by the witness-PW.3 during investigation under Section 161 Cr.P.C. examination statement and not even in his chief examination and his recall is necessary being un-friend for prosecution. Whereas the accused opposed the petition saying the cross examination need not be confined to the version of the witness during investigation covered by Section 161 Cr.P.C. statement and there are no grounds to permit for recall. The learned Judge observed that the prosecution is entitled for re-examination as to give an opportunity to demonstrate truth or otherwise of the said version

and placed reliance on the expression of the Delhi High Court in **Prosecutrix Vs. State of NCT Delhi and Another** by order dated 12.02.2016 observing trial Court declined to recall PW.12 under Section 311 Cr.P.C. on the factual matrix of the timings mentioned, leaving of house by accused and hugging her and text messages incorporated in the evidence in allowing the recall examination by setting aside the trial Court's dismissal order and thereby inclined to hold the necessity by affording opportunity for recall of PW.3. Needless to say in deciding the impugment regarding the correctness of the order, under Section 154 of the Evidence Act also own witness with permission of the Court can be cross examined, not only not chosen to depose in chief examination, but also from any changed version or other version in the cross examination by re-examination. However, the prosecution did not avail that opportunity immediately after the said cross examination seeking the permission of the Court for re-examination including under Section 154 of the Evidence Act of own witness permission for cross examination regarding that aspect of the statement, but for later filing the application may be with no lapse of more days to it.

Having regard to the above, this Court is not inclined to interfere, but for to say if at all there is any further examination by the prosecution by virtue of recall or either by chief or cross examination with permission under Section 154 of Evidence Act, the accused is also entitled to further right of cross examination and the ultimate decision must in the touch stone of the well appreciation with attending facts and circumstances to that version.

Accordingly and in the result, the Criminal Petition is disposed of.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 09.08.2017
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