

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.4533 of 2017

ORDER:

Impugning the dismissal order dated 18.05.2017 passed by the learned Special Magistrate-V, Hyderabad at Erramanjil in CrI.M.P. No.984 of 2017 in C.C. No.344 of 2015, which is filed for recall of PW.1 for cross examination, the petition is filed.

2) Heard learned counsel for petitioner and learned public prosecutor representing the 2nd respondent—State and perused the impugned order and also grounds urged in seeking to set-aside the same

3) Undisputedly, part heard matter is posted to November, 2017 and the said petition of recall of PW.1 was dismissed as the petitioner did not avail the opportunity of cross examining PW.1, which is coming from September, 2014 including by filing an application for adjournment by CrI.M.P. No.910 of 2017 on 12.04.2017 is the sum and substance of the impugned order of the lower Court, thereby the latches cannot be considered to afford further opportunity of dragging the matter for cross examination for nearly three years. It is a case of no cross examination by accused.

4) No doubt, the cross examination is a valuable right, that too, the presumptions are against the accused persons under Sections 139 and 118 of Negotiable Instruments Act, 1881 in recognition of such valuable right including from the expression of the Three Judge bench of the Apex Court in ***Rangappa vs Mohan***¹.

¹ 2010 (11) SCC 441

5) Having regard to the above and also from the provisions of Section 311 Cr.P.C, at any stage of the matter, for effective disposal of the case, the Court may permit recall of any witness for further examination to sub-serve the ends of justice, it is just and necessary to allow the petition subject to payment of costs of Rs.2,000/- (Rupees two thousand only) payable by the accused to PW.1. Subject to payment of the said costs, the trial Court shall advance the hearing from November, 2017 to 18.09.2017 by virtue of this order and secure the presence of PW.1 and complete the cross examination within a time frame to be fixed.

6) Accordingly, the Criminal Petition is allowed. No order as to costs.

7) Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 04.09.2017
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