

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1388 OF 2017

ORDER:

This criminal revision is filed questioning the propriety and legality of the docket order dated 24.04.2017 in CrI.M.P.No.370 of 2017 in C.C.No.921 of 2015 passed by the Judicial Magistrate of First Class, Naidupeta, SPSR Nellore District.

The petitioner filed the said petition to recall P.Ws.1 and 2 for further cross-examination on the ground that the counsel did not cross-examine them thoroughly and they are crucial witnesses and their further cross-examination is essential to elicit the truth. The said petition was dismissed by docket order, dated 24.04.2017.

When the matter reached, Sri G.Gangarami Reddy, learned counsel for the petitioner did not appear and advance argument, but this Court cannot dismiss the revision case for default. However this Court can decide the revision on merits in view of the law declared in “**Nisha Sharma and others v. Vinod Kumar Sharma**¹” wherein it is made clear that the revision cannot be dismissed for default even the petitioner or his advocate did not appear before the Court and the Court shall examine the record and decide the revision on merits.

Persuaded by the law declared by the Delhi High Court, I would like to decide this revision, perusing the record.

The petitioner filed the said CrI.M.P. under Section 311 of Cr.P.C. to recall P.Ws.1 and 2. The trial Court by the impugned order dismissed the petition since it found no grounds to recall P.Ws.1 and 2.

The order under challenge is only the interlocutory order and no revision is maintainable in view of the bar under Section 397(2) of Cr.P.C. and in view of the law declared by the Apex Court in **Sethuraman v. Rajamanickam**² and **Mohanlad Shamji v. Union of**

¹ 1990 Cri.L.J. NOC 57 (Delhi)

² 2009 CrI.J.2247

India and another³. Hence, no revision is maintainable against an order passed under Section 311 of Cr.P.C. and consequently, the revision is liable to be dismissed.

In the result, the Criminal Revision Case is dismissed.

Miscellaneous petitions, pending if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 08.09.2017
ssp



³ AIR 1991 SC 1346