

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.15479 of 2014

ORDER:

Heard learned counsel for the petitioner/defacto complainant and the respondent Nos.2 to 4 are the accused of C.C.No.1295 of 2010 pending on the file of XV Additional Chief Metropolitan Magistrate, Hyderabad.

The complainant earlier filed CrI.M.P.Nos.2788 & 2789 of 2013 for recall of PWs.2 & 3 and to examine 2 more witnesses as PWs.5 & 6, both the petitions by common order dated 25.10.2013 were ended in dismissal. Against the dismissal order, the State through SHO maintained CrI.R.P.Nos.432 & 433 of 2013 and those were also dismissed confirming the order of the learned Magistrate on 31.10.2014. It is impugning the concurrent dismissal orders, the present petitions filed for the bar of 2nd revision, invoking Section 482 Cr.P.C.

Heard learned counsel for the petitioner/complainant and also learned Public Prosecutor, for the notice served on the respondent Nos.2 to 4/accused returned as left, is a sufficient service and taken as heard.

It is one of the contentions that the evidence of 2 additional witnesses to examine as PWs.5 & 6 and it is also necessary to recall PWs.2 & 3. The ground for dismissal for the examination of 2 additional witnesses by the learned Magistrate is that their names were not shown as witnesses to the police investigation and final report and there is no reason for non-mention of these witnesses during investigation by citing in the charge sheet and so

far as recall of PWs.2 & 3 concerned, the learned counsel for the accused contended it is only to fill up the lacunas and it will cause prejudice to the accused though the said finding is confirmed in revision by the III Additional Metropolitan Sessions Judge, Hyderabad, by the impugned order.

A reading of Section 311 Cr.P.C. particularly part II clearly says it is the duty of the Court from use of the word shall to summon and examine or recall or re-examine any such person if his evidence appears to be essential for just decision of the case. The same principle equally applies for proposed 2 witnesses. No doubt if the witnesses statements were there in investigation as part of the police final report, accused got liberty with reference to the earlier statements to confront to say if there is new version and that is not be all and end all even police not seeking for further investigation to cite by filing additional charge sheet under Section 173(8) Cr.P.C. because not only Section 311 Part II Cr.P.C. but also Section 165 of the Evidence Act enables the Court to examine any witness who is not even cited as witness to the prosecution or by the complainant, where it is just and necessary for just decision of the case. Thereby the Court has to consider objectively as to their examination is necessary or not and none of the Courts below drawn attention to the legal requirements in dismissal of the petitions and the revisions supra. Thereby the impugned orders are unsustainable.

Having regard to the above, instead of keeping the matter pending, the Criminal Petition is disposed of by giving liberty to the petitioner to file fresh petition before the lower Court within one

week from the date of receipt of this order for a common petition to recall of the 2 witnesses and examination of 2 additional witnesses for the Court to consider any necessity subject to giving in a sealed cover by the petitioner what are the necessary questions and the area of further examination of PWs.2 & 3 remained to ask if at all therefrom to consider so also on what area of the examination of PWs.5 & 6 proposed witnesses is required to consider.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 06.09.2017
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