

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.6592 OF 2017

ORDER:

Heard learned counsel for the petitioners and also learned Public Prosecutor, representing the State and perused the impugned order of the lower court dated 05.07.2017 in CrI.M.P.No.1693 of 2017, which is the application for recall of P.W.2; the application was filed on 14.06.2017 of the closure of P.W.2 evidence was on 26.04.2017, for more than one and half months later to the closure of cross-examination of P.W.2; the application is filed for recall by the counsel for the accused persons.

2. Now, it is the contention of the counsel for petitioner, impugning the dismissal order, that he could come late on that day and before his arrival the cross-examination was closed. Had there been any truth it is unknown as to what prevented the party or the advocate to file application atleast on next day instead of waiting for one and half months. Thus, there is nothing to invoke Section 311 Part-I of Cr.P.C. for recall of P.W.2. However, Section 311 Part-II of Cr.P.C. mandates, where it is necessary, to recall any witness by the court and in this case there is no cross-examination by accused of P.W.2 to test credibility of the P.W.2 and veracity of his evidence, which is essential.

3. Having regard to the above and to sub-serve the ends of justice and subject to costs of Rs.1000/- to P.W.2, the petition to

recall P.W2 for cross-examination can be allowed by directing the lower court to fix a day by securing P.W.2 to cross examine him. The petitioner within one week after receipt of copy of the order shall deposit the amount of Rs.1000/- before the Head Clerk of the Court for payment to P.W.2 on the date of his evidence.

4. Accordingly and with the above directions, this criminal petition is allowed. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

01.08.2017
SS

DR.B.SIVA SANKARA RAO,J

