

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.2938 of 2016

ORDER:

The accused Nos.2 and 3 of C.C.No.6 of 2007 on the file of learned Special Judge for CBI Cases, Hyderabad, where cognizance taken for the offences under Section 109 IPC and Section 13 (2) read with Section 13(1)(e) of Prevention of Corruption Act, maintained an application in CrI.M.P.No.334 of 2016 before the learned trial Judge under Section 311 Cr.P.C. for recall of one of the investigating officers viz., PW.40 saying for further examination. The petition since ended in dismissal on contest on 25.02.2016, the present criminal petition is maintained.

It shows from the submissions across the bar that meantime the prosecution agency also maintained an unnumbered petition on 11.02.2016 for recall of PW.24 – K.Ramulu and PW.37 – G.S.Mittal for their further examination under Section 311 Cr.P.C. In view of the interim stay granted by this Court in the present criminal petition against the impugned dismissal order in CrI.P.M.P.No.8248 of 2016, said application of CBI for recall of PWs.24 & 37 is still pending without any orders.

From the hearing of both sides, this Court feels that there is a requirement for recall of not only PW.40 for further examination by accused, but also PWs.24 & 37 for further examination in chief and cross examination if any, by the prosecution and accused.

Having regard to the above, by withdrawal of pending application before the lower Court, that application along with

present petition are disposed of by this common order as following:-

The Criminal Petition is allowed by setting aside the impugned dismissal order of the lower Court by allowing the said application for recall of PW.40 subject to condition of the completion of the cross-examination further by the accused on the same day of production of said witness by the prosecution agency, unless the trial Court for any impracticability to complete considers to continue on next day. Needless to say in view of allowing the application of the CBI for recall of PWs.24 & 37 for further chief examination and also cross examination, the production of witness PW.40 is immediately after the completion of the examination of PWs.24 & 37. The lower Court by virtue of this order close the pending petition with it for no more orders are required on the pending application for recall of PWs.24 & 37 since allowed herein.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 13.04.2017
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