

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.986 OF 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code' for brevity) is filed by the petitioner/accused assailing the order, dated 09.02.2017, passed in CrI.M.P.No.2669(a)/2016 in C.C.No.65 of 2016 on the file of the Court of the learned III Special Magistrate, Cyberabad, Malkajgiri.

2. I have heard the submissions of Sri K.V.Janardhan Rao, learned counsel for the petitioner/accused, and of Sri K.Rama Koteswara Rao, learned counsel for the first respondent. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The petitioner is the accused in the case filed by the first respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. During the pendency of the said case, the petitioner filed the afore-stated M.P., requesting to recall PW1 for cross-examination. The said petition was resisted by the first respondent-complainant. By the order impugned in this revision, the trial Court dismissed the said petition. Therefore, the petitioner is before this court.

4. The case of the petitioner in support of the request for recall of PW1 for cross-examination, in brief, is this: "The former counsel

of the petitioner was not present at the time of recording of the evidence. Therefore, he failed to cross-examine PW1. Hence, the trial court closed the cross-examination of PW1. The petitioner has got strong case. Hence, cross-examination of PW1 is crucial for adjudication of the issue involved in the matter. For the said reasons, it is necessary to recall PW1 for the purpose of cross-examination by the counsel for the petitioner/accused. Otherwise the petitioner-accused would be put to irreparable hardship and loss; and, great prejudice would be caused to her.'

5. The case of the complainant is this:

The petitioner having sought several adjournments requested the complainant to permit her to repay the cheque amount by way of installments. In fact, the petitioner paid Rs.50,000/- in cash, on 31.08.2016, and filed a Memo of compromise before the trial Court; and, she further credited Rs.49,000/-, on 13.10.2016, and Rs.25,000/-, on 02.11.2016 or 03.11.2016, directly to the account of the first respondent-complainant. Thus, she paid Rs.1,24,000/- towards the amount due under the cheque. The said facts disclose that the petitioner-accused is admitting that the debt is a legally enforceable debt. The petitioner has failed to cross-examine PW1 inspite of the trial Court granting four adjournments. Ultimately, the right of the petitioner to cross-examine PW1 was forfeited. The present petition is filed to drag on the matter. The petition is liable to be dismissed.

6. A perusal of the impugned order shows that the trial Court dismissed the petition as the petitioner-accused failed to comply

with the earlier conditional order and as the trial Court did not see any merit in the request of the petitioner.

7. At the hearing, the learned counsel for the petitioner-accused while reiterating the case of the petitioner would submit that in the case on hand, no opportunity was provided to the petitioner to cross-examine PW1 and that, after the change of counsel, the present application is filed seeking an opportunity to cross-examine PW1 and that it is in the interest of justice to provide an opportunity to cross-examine PW1 and that in the facts circumstances also stated by the 1st respondent-complainant no prejudice would be caused to him and that the petitioner-accused undertakes to abide by any conditions that may be imposed while granting the request.

8. However, learned counsel for the first respondent-complainant having forcefully opposed the request of the petitioner brought to the notice of this Court the order, dated 27.03.2017, of this court in CrI.R.C.No.706 of 2017, whereby the very same request of the petitioner for reopening of the evidence for recalling PW1 for further cross-examination was not considered.

9. A perusal of the said order discloses the following facts and events: 'At the stage of examination of the accused under Section 313 of the Code, the petitioner/accused filed CrI.M.P.No. 2669/2016 and the trial Court allowed the said petition, on 09.12.2016, subject to payment of costs of Rs.500/- and completing cross-examination of PW1, on 23.12.2016. Nevertheless, the petitioner failed to comply with the said condition due to the absence of PW1. Therefore, the case was posted to

05.01.2017. On that day, the petitioner/accused was not ready and the case was again adjourned to 17.01.2017 for cross-examination of PW1. Thereafter, three adjournments were granted and ultimately the case was posted to 09.02.2017. On that day even though PW1 was present, the learned counsel for the petitioner-accused did not come forward to cross-examine PW1. Therefore, the trial Court did not grant the earlier request of the petitioner-accused. Having considered all the said facts and events, this Court dismissed the said revision case.'

10. Except stating that no opportunity was provided to cross-examine and that the petitioner changed her counsel before filing the present petition, no special circumstances or changed circumstances or new grounds are urged in support of the present request. It is no doubt true that the Power under section 311 of the Code is available at any stage and can be exercised by the Court at any stage of enquiry or trial or other proceeding initiated under the Code for the purpose of recalling a witness. However, such widest power, as per settled law, shall be exercised judiciously and with extreme care and caution. Change of counsel is no valid ground, more particularly in the present facts and circumstances of the case, as the petitioner-accused failed to avail the reasonable and fair opportunities liberally granted to her by the trial Court to cross-examine PW1 and filed this revision case. Hence, this Court finds that there are no *bona fides* on the part of the petitioner and that the revision case is devoid of merit and is liable to be dismissed.

11. In the result, the Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

June 20, 2017
LMV

