

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.16455 OF 2016

ORDER:

Heard Sri D. Bhaskar Reddy, learned counsel for the petitioner - accused No.2 in C.C. No.886 of 2013 on the file of XIV Additional Chief Metropolitan Magistrate, Hyderabad, and Sri Rajagopallavan Tayi, learned counsel for respondent No.2 - *de facto* complainant.

The present Criminal Petition is filed under Section 482 of Code of Criminal Procedure 1973, to set aside the order passed by the learned XIV Additional Chief Metropolitan Magistrate in CrI.M.P. No.3745 of 2016, dated 08.09.2016, by which, the request made by the petitioner herein to recall PWs.2 and 3 by affording a chance to cross-examine him was rejected by dismissing the said petition.

The learned counsel for the petitioner would submit that PWs.2 and 3 were examined in chief on 21.03.2016, and since there was no representation for accused Nos.1 to 3, as accused Nos.1 and 3 as one set and accused No.2 as another set were being represented by different counsel, the Court below has recorded NIL closing the cross-examination of PWs.2 and 3. He also would submit that on 30.03.2016, a petition was filed by the petitioner herein which was assigned as S.R. No.1915 of 2016, but it was misplaced and, therefore, the petitioner was compelled to file CrI.M.P.No.3745 of 2016 in which the order under challenge was passed. The learned

counsel would represent that the petition which was dismissed for non-compliance of orders referred to in the present order relates to the petition filed by accused Nos.1 and 3, and now seeks an opportunity being provided for cross-examination of PWs.2 and 3 by accused No.2 as it was not his fault and it was the mistake of the office in misplacing the S.R. filed by him.

The learned counsel for respondent No.2 - *de facto* complainant would fairly submit that an opportunity can be afforded for cross-examination of PWs.2 and 3 to the petitioner - accused No.2 by fixing a date on which the petitioner shall positively cross-examine PWs.2 and 3.

Since respondent No.2 accedes to the request and there is justification in his submission to fix a date, while allowing the petition setting aside the order under challenge, the learned XIV Additional Chief Metropolitan Magistrate, Hyderabad is directed to proceed with the cross-examination of PWs.2 and 3 by accused No.2 on 13.02.2017 by issuing summons to PWs.2 and 3 and get them served through the concerned police. It is also observed that the petitioner herein - accused No.2 would get ready to cross-examine PWs.2 and 3 on that date. In case there would be any inconvenience for production of PWs.2 and 3, the learned Magistrate may afford yet another opportunity which the petitioner - accused No.2 shall avail positively.

Accordingly, the Criminal Petition is allowed with the aforesaid direction.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the petition, stand closed.

A. SHANKAR NARAYANA, J

January 19, 2017.

Note: Furnish C.C. of Order by 21.01.2017.
(B/O. Mgr)

