

THE HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.4396 of 2017

ORDER :

Heard the learned counsel for the petitioner/ Revision Petitioner and also the learned counsel for the 2nd respondent and perused the grounds urged in the quash petition including the order,dt.18.04.2017 of the lower Revision Court in CRP No.42 of 2016 and the trial Magistrate dt.17.02.2016 in CrI.M.P.No.185 of 2016 in M.C.No.31 of 2013 in dismissing the application with concurrent findings of the recall of P.W.1/M.C.Petitioner for further cross-examination to put some questions regarding her means which he could secure subsequently.

Impugning the said orders of the lower Courts, the present petition is filed and the contention of the learned counsel for the MC respondent/ Revision Petitioner is that even from the decision of the Apex Court in Chaturbhuj Vs. Sta Bai¹ referred by the trial Court, the means of the parties also relevant for consideration.

Once the petitioner stated that he secured further information about her means and recall only for the limited purpose of putting questions relating to her means, what she stated in her counter, the dismissal of the application by the lower Court saying what was stated in the counter can be placed reliance is unsustainable including to confirm the same by the lower revision court. Whereas, it is the submission of the learned counsel for the 2nd respondent that the impugned order with concurrent findings no way requires interference including Section 482 or 311

¹ (2008)(1) ALD(CrI)97 SC

CrPC much less to subserve the ends of justice filing is based on jurisdiction. Hence to dismiss.

Heard and perused the material on record.

The very limited aspect involved is on the scope of Section 311CrPC. The first part of Section 311CrPC gives a discretion provided a case is made out for recall of a witness is not as of a matter of course for any party. Whereas, second part is concerned, it is within the suo-moto power of the Court dutybound irrespective of petition filed or not which is akin to Section 165 of the Indian Evidence Act, whether it is necessary for the just decision of the case for recall or re-examination or further examination of any witness including to summon any witness.

Here the crux involved is whether there is any necessity of putting further questions relating to the means of the M.C.petitioner by seeking to recall for the limited purpose. Once the petitioner says he got further information relating to her means and what was disclosed by her is not correct, the Court should have permitted for further examination with reference to said securing of information relating to the means of the MC petitioner at best when the matter is at the stage of arguments by imposing costs to subserve the ends of justice.

Having regard to the above and in the result, the Criminal Petition is allowed by setting aside the concurrent findings of the Courts below by directing the lower Court to permit the recall of P.W.1-MC petitioner to put questions only on the limited aspect of the means of the M.C.Petitioner in the cross-examination of her to

be done by the M.C.Repondent subject to his payment of costs of Rs.2,000/- (Two thousand rupees only). If costs not paid on the day of recall, the lower Court can confirm its order by ignoring this order without any further reference to the Court.

Consequently, pending miscellaneous petitions, if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:24.10.2017
vvr

