THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL PETITION No.1347 of 2017

ORDER:

The present petition, under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), is filed by the petitioners/Accused Nos.1 & 2 requesting to quash the order dated 09.02.2017 passed by the Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad, in Crl.M.P.No.353 of 2017 in C.C.No.194 of 2013, whereunder, the petition filed by the petitioners herein under Section 311 of Cr.P.C to recall PW.3, was dismissed.

Heard Sri M.Phani Kumar, learned counsel for the petitioners.

The petitioners are facing trial in the aforesaid Calender Case on the complaint of the respondent – Income Tax Officer. From the order under challenge, it appears, there was some sort of ambiguity with regard to which, the petitioners intend to recall i.e., whether PW.1 or PW.3. However, the Court below, having assessed the propriety of the request of the petitioners, dismissed the petition recording the submission of learned counsel for the petitioners that he cannot reveal the reasons and purpose in the petition filed for recall of PW.3 and, in that context, the Court opined that in the absence of any reasons given, if not in the petition, at least, at the stage of arguments and also the case being old and several adjournments were granted after conclusion of recording of examination under Section 313 Cr.P.C and it was more than a year thereafter, the request was made by the petitioners.

Now, learned counsel for the petitioners raises a similar ground that the defence, which the petitioners intend to proceed with by recalling PW.3 and to suggest to PW.3 in the cross-examination, cannot be revealed. Such a ground is not sustainable for one reason that the offence alleged is not under IPC provisions, but the same is under contravention of the provisions of Income Tax Act and proof or otherwise of the contravention would be by way of documentary evidence, which has to be proved by the complainant. The ground, that in case the defence is revealed, PW.3 would get alerted, would not fit into the present situation. It appears, the said ground is taken only to further delay the disposal of the Calender Case itself. It is obvious, that one year after conclusion of examination under Section 313 Cr.P.C., the petitioners made such a request. There is no merit in the present petition.

Accordingly, the Criminal Petition is dismissed at the stage of admission itself.

Miscellaneous applications, if any pending in the present petition, stand closed.

JUSTICE A.SHANKAR NARAYANA

17.02.2017
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