

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.4381 of 2017

ORDER:

The petitioner is the defacto complainant of C.C.No.198 of 2014 pending on the file of Principal Junior Civil Judge, Avanigadda. The respondent Nos.2 & 3 are the accused Nos.1 & 2 therein. It is during trial at the fagend the Public Prosecutor representing the State filed recall of Pws.10 to 12 for further chief examination on some material aspects and it is after contest the trial Court dismissed the petition. The averments in support of the petition before the trial Court in seeking to recall of them that these official witnesses before examining I.O.-LW.14 were that there are certain crucial aspects to be elicited in the chief examination of them that could not be done. Therefrom it is just to recall. The accused filed their counter in opposing the same saying PW.10 was examined in July 2016 and Pws.11 & 12 in September 2016, PW.13 was also examined later and it is coming for examination of LW.14-IO and having taken 6 adjournments for examination of IO the petition for recall of Pws.10 to 12 saying some facts could not be elicited in the chief examination is nothing but baseless and intended to drag on the proceedings and the date of cognizance is in 2012. The observation of the learned Magistrate in dismissing the application were that even by the time of examination of PW.13 much less before the prosecution did not seek for recall of Pws.10 to 12 if at all anything left in the chief examination on the material aspects for clearing any ambiguity and 5 months after their examination in seeking for their recall there are no bonafide grounds appearing for the recall of a witness

seeking of matter of course as per the settled expressions unless the Court feels it is necessary for the purpose of rendering justice within the judicial discretion from the wording of Section 311 CrPC and it is not even mentioned of the specific aspect and for material reasons the said recall of them is required. The prosecution went unsuccessful even maintained revision against the order in Crl.R.P.No.14 of 2017, that was dismissed on 27.03.2017 with observation that the trial Court assigned cogent reasons having not convinced for recall of them in exercise of the discretionary power and the order is interlocutory in nature otherwise and a revision is a bar, thereby dismissed as the revision is a bar. Practically in the revision Court order he did not go into the merits, but for observation of given reasons in exercise of the discretion to recall and revision not maintainable against interlocutory order.

Heard learned counsel for the petitioner/defacto complainant and the respondent Nos.2 & 3/accused even served failed to attend, hence taken as heard and also learned Public Prosecutor.

In fact from the very order of the learned Magistrate, the recall of a witness can be permitted to sub serve the ends of justice where it is necessary of such recall. In fact from the very wording of Section 311 Cr.P.C. where it is necessary to sub serve the ends of justice of recall of any witness the Court can permit. Here the witnesses were already examined in chief and cross examination and the prosecution wants to elicit certain further questions by recall by further chief or re-examination in chief as the case may be. In the recall application, the prosecution could have been

disclosed what are the other areas of the further examination left for the cross examination of the opponent witness, of any disclosure will alert the witness with incapacity of ascertaining the truth.

Having regard to the above, while setting the dismissal order of the trial Court confirming if any in the revision Court, the application before the trial Court is restored and the learned Public Prosecutor or the defacto complainant is at liberty to give in a sealed cover what are the further relevant questions to be put to the witnesses and therefrom the trial Court can consider to allow and permit only such of those relevant questions which are necessary for further recall of these witnesses and not otherwise.

Accordingly and in the result, the Criminal Petition is allowed in part.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.09.2017
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