

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.16898 OF 2016

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code'), by the petitioner - complainant aggrieved over the order, dated 30.08.2016, in CrI.M.P. No.2495 of 2016 in Calendar Case No.271 of 2015 passed by the learned X Special Magistrate, Hyderabad.

2. The aforesaid CrI.M.P. No.2495 of 2016 was filed by the petitioner under Section 311 of the Code requesting to recall him for marking a letter in the interest of justice.

i) It can be gathered from the grounds herein as well as the order that one Darshan Singh, who was examined as PW.3 in chief, has not turned up for cross-examination and he stated in his chief examination that he would produce a letter given to him by the accused, but has not turned up later and, thus, the evidence of petitioner's side was closed. The petitioner, therefore, wanted to recall him to introduce that letter by re-examining him and marking the said document on the ground that PW.3 has handed over the said letter to him.

3. The said request was resisted by the respondents - accused on the main ground that PW.1 is not the competent witness to mark the document, it is either the author, or the person, to whom the letter

was addressed, is competent to exhibit and speak about the said letter and that in fact the petitioner failed to secure the presence of the person, to whom it was addressed and, therefore, to reject the request with exemplary costs.

4. The learned Magistrate referred to the stage of proceedings in Calendar Case. According to the learned Magistrate, the Calendar Case reached the stage of arguments. Holding that PW.1 is not a competent person to mark the document; marking of any document before the Court should be through a person, to whom a document/letter is connected with, in recall petition, PW.1 stated that PW.3 in his evidence stated that he would produce one letter which was given by the accused to him and if the prosecution really wanted the said letter to be brought before the Court as an exhibit; the best legal course available is to mark through PW.3 and nobody-else to bring such letter before the Court as an exhibit; and in case, the said letter is marked through PW.1, it would cause prejudice to the respondents and ends of justice would suffer irreparable loss and injury; dismissed the aforesaid application.

5. Heard Sri Yasar Mamoon, learned counsel for the petitioner and learned Additional Public Prosecutor for the State of Telangana.

6. The argument of the learned counsel for the petitioner has been that, since PW.3 did not face cross-examination, and after his

chief-examination, he did not attend the Court, there was no occasion for the petitioner to get the letter now filed to mark through PW.3 and, therefore, it necessitated the petitioner to file the present petition.

7. Though, notice was ordered and served on respondent Nos.2 to 6, they did not enter their appearance.

8. The petitioner herein does not disclose even in the present petition as to who authored the said letter and to whom it was addressed. In case, PW.3 was really connected with the said letter, nothing prevented PW.1 in getting marked the said letter through PW.3 by seeking an adjournment deferring chief-examination of PW.3, which he did not resort to. Further, nothing prevented PW.1 from taking out summons to secure the presence of PW.3 and introduce the letter through PW.3. When it is the case of PW.1 that PW.3 gave that letter to him said to have written by the accused, cannot be said that it is beyond the control of PW.1 to secure the presence of PW.3. In such an event, certainly, PW.1 cannot be the competent witness to mark such letter. He, at the most, ought to have found out to whom it was addressed and ought to have examined the recipient, if the recipient is not PW.3. There is no clarity in the present criminal petition as to these details. Therefore, the finding recorded by the learned Magistrate in rejecting the request holding that the relevant witness is the person who received the letter or

connected there-with and rejecting the request of PW.1 cannot be faulted. There is no merit in the petition.

Therefore, the Criminal Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand closed.

A. SHANKAR NARAYANA, J

February 21, 2017.

Mgr

