

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.8691 OF 2017

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the order dated 28.08.2017 passed in Crl.M.P.No.1923 of 2017 in C.C.No.19 of 2013 by the Principal Special Judge for CBI Cases, Hyderabad, wherein the petition filed under Section 309 of Cr.P.C. to cancel the trial schedule mainly on the ground that the order is cryptic and no reasons were recorded by the trial Court and that Section 309 Cr.P.C. only deals with power to adjourn the examination of witness deny trial, but not to cancel trial schedule.

Upon hearing arguments of the learned Special Public Prosecutor and defence counsel, the trial Court passed the following three line order:

“Heard. Despite vehement opposition for the respondent, since further investigation is stated to have had continued, time is granted to the petitioner till 06.07.2017. This petition is allowed.”

During hearing, learned senior counsel Sri Gangaiah Naidu, drawn the attention of this Court to Section 309 of Cr.P.C to contend that it is imperative for the Court to record reasons, then only adjourn the schedule fixed by it to next date, but no such reasons were recorded by the trial Court and requested this Court to pass appropriate orders since the matter was posted to this day.

Learned Special Public Prosecutor on instructions brought to the notice of this Court that the trial Court adjourned the matter to 09.11.2017 for fixing trial schedule from today.

Section 309 Cr.P.C. conferred power on the Court to postpone or adjourn the proceedings in every enquiry or trial. The proceedings shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds that adjournment of the same beyond the following day to be necessary for reasons to be recorded. As

per the last sentence of Section 309(1) Cr.P.C., it is the duty of the Court to record reasons for adjournment of trial beyond the following day. Pendency of further investigation is not a ground for postponement or cancellation of schedule fixed by the Court once. At best, the Court may postpone the commencement of trial schedule recording satisfactory reasons for postponing of commencement of trial as fixed in the schedule, but cannot cancel. The trial Court recorded reasons that the investigation is continuing and adjourned the matter to 06.10.2017, while allowing the petition. When the petition is allowed, it amounts to accepting the request for cancellation of trial schedule already fixed and the said power cannot be exercised under Section 309 Cr.P.,C. and at best the Court may postpone the commencement of trial schedule.

As the order impugned is not in accordance with law as provided under Section 309 Cr.P.C., the same is liable to be set aside. As per the instructions of the Special Public Prosecutor, the trial schedule was cancelled, no orders need be passed again to fix trial schedule since, it is for the trial Court to find out convenient date and fix trial schedule in the calendar case and proceed in accordance with law.

With the above observation, the criminal petition is allowed setting aside the order dated 28.08.2017 passed in CrI.M.P.No.1923 of 2017 in C.C.No.19 of 2013 by the Principal Special Judge for CBI Cases, Hyderabad.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

06.10.2017
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