

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.6901 of 2017

ORDER:

Heard learned counsel for the petitioner/complainant and also learned Public Prosecutor for the 1st respondent State. The 2nd respondent served including the partner of the 2nd respondent i.e., the 3rd respondent whose notice un-served as left is sufficient service and perused the grounds urged in the petition impugning the dismissal order of the learned V Special Magistrate, Erra Manzil, Hyderabad, dated 26.08.2016 in CrI.M.P.No.642 of 2016 of the pending C.C.No.358 of 2015, which is an application for recall of DW.1 for cross-examination that was recorded on 28.01.2016 of the chief examination and thereafter time to time adjourned at request and ultimately closed on 08.03.2016 for called absence with no representation to cross examine the DW.1 by the complainant or his advocate as the case may be and it is therefrom posted the matter to 09.03.2016 and while the matter was coming, application on 24.03.2016 was filed before the lower Court and the lower Court dismissed the same as the complainant was not diligent and there are no grounds to recall.

Undisputedly there is no cross examination, even the grounds urged in the petition are that due to the differences with the advocate on record from his non-cooperation and not deliberately conducted trial of the case, he changed the advocate that was the reason for non cross examination.

Having regard to the above, instead of keeping the matter pending with no progress and to sub serve the ends of justice, it is just to allow the recall of DW.1 and permit his cross examination

by complainant by imposing costs of Rs.5,000/- and out of the same, Rs.1,000/- to DW.1 and another Rs.4,000/- to be paid to the State owned Orphanage.

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

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 21.08.2017
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