

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1827 of 2017

ORDER:

This revision is preferred under Sections 397 and 401 of Code of Criminal Procedure (fort short "Cr.P.C.") questioning the propriety and legality of the order dated 18.05.2017 passed in Criminal Revision Petition No.13 of 2016 by the IV Additional District and Sessions Judge, Tanuku, who allowed the application filed under Section 311 of Cr.P.C. to recall P.W.1 for marking certain documents.

Defacto complainant through Public Prosecutor filed application CrI.M.P.No.51 of 2015 in S.C.No.24 of 2011 before Assistant Sessions Judge, Tanuku under Section 311 of Cr.P.C. to recall her for the purpose of marking the photographs, CD and FIR in Cr.No.10/RCO-EWG/2015, ACB, Eluru Range, alleging that at the time of commission of offence, the reporter of Eenadu took photographs of the part of the incident and on her request and the request of her husband, the said photographer handed over the positive photos and CD to her, but the police have not filed them in the case. Therefore, they are necessary to prove the case and sought to recall P.W.1 by exercising power under Section 311 of Cr.P.C.

The said petition was dismissed by the trial Court assigning its own reason, but the Criminal Revision Petition

No.13 of 2016 preferred against the said order was allowed by the IV Additional District and Sessions Judge, Tanuku.

The present revision is filed to set aside the order passed by the IV Additional District and Sessions Judge, Tanuku and to restore the order passed by the trial Court in Crl.M.P.No.51 of 2015 in S.C.No.24 of 2011.

The objection raised about the maintainability as the order passed in the application filed under Section 311 of Cr.P.C. is an interlocutory in nature and against the order passed in a petition under Section 311 Cr.P.C., no revision is maintainable in view of interdict contained under Section 397(2) Cr.P.C. This question is clearly covered by the judgment of the Apex Court in “**SETHURAMAN v. RAJAMANICKAM**”¹

Therefore, entertaining revision and allowing the same by the IV Additional District and Sessions Judge, Tanuku is exercise of jurisdiction which is not conferred on him. The IV Additional District and Sessions Judge, Tanuku allowed the revision petition though the same is not maintainable as per settled law referred above. Hence, the order passed in Criminal Revision Petition No.13 of 2016 is liable to be set aside.

In the result, the revision is allowed setting aside the order dated 18.05.2017 passed in Criminal Revision Petition No.13 of 2016 by the IV Additional District and Sessions

¹ 2009 Cr.L.J. 2247

Judge, Tanuku restoring the order dated 13.01.2016 passed in Crl.M.P.No.51 of 2015 in S.C.No.24 of 2011 by the Assistant Sessions Judge, Tanuku.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

08.08.2017
Ksp

