

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.391 of 2017

ORDER :

Aggrieved by the order dated 02.01.2017 in CrI.MP.No.1672 of 2016 in C.C.No.32 of 2016 passed by the Principal Junior Civil Judge, Bhimavaram, this revision is filed by the petitioner/ accused.

Heard the learned counsel for the petitioner and also the learned Public Prosecutor representing the State and perused the impugned order of the lower Court, wherein the application filed under Section 311 Cr.P.C. for recall of PW.1 for further cross examination was ended in dismissal.

The offence is under Section 338 I.P.C. outcome of Crime No.48 of 2014 of Bhimavaram II Town Police Station. On behalf of prosecution, more than three witnesses, it appears examined and the matter is at the stage of arguments by reporting no defence for 313 Cr.P.C. examination from the prosecution witnesses evidence completed. The only allegation, no doubt, is that accused could not give proper instructions by attending the Court on particular day of cross examination of PW.1 and certain material omissions in the cross examination arisen there from by the cross examination done on earlier witnesses,

thereby further to be cross examined by putting to his notice to test veracity on crucial aspects. These aspects are not so detail, but argument developed in the course of hearing, contained in the application filed before the lower Court. Undisputedly, as pointed out by the learned Public Prosecutor, after examination of PW.1, two more witnesses are examined, and if at all there is any truth, he could have been filed memo after PW.1 cross examination instead of waiting. In fact, the recall of PW.1 only sought for the reasons stated above and not the other two witnesses on that ground. No doubt, there are laches to some extent on the part of the petitioner. But keeping in mind, rendering to substantial justice and put questions in the cross examination of witnesses on behalf of prosecution is crucial, leave about any hostility if at all accepted to any original evidence. The evidentiary value depends on its vested power of appreciation of the lower Court. As per the settled law ends of justice is required to prove the further cross examination.

Accordingly, the Criminal Revision Case is allowed and the order dated 02.01.2017 in CrI.MP.No.1672 of 2016 in C.C.No.32 of 2016 passed by the Principal Junior Civil Judge, Bhimavaram, is set aside. CrI.MP.No.1672 of 2016 is allowed, directing the lower Court to recall PW.1 for further cross

examination by fixing date within a week from the date of receipt of copy of this order or any such other date, which is subject to deposit of Rs.5,000/- by the petitioner/ accused before the Superintendent of the trial Court by cash and the same to be remitted to the State owned any mentally challenged or physically challenged or visually challenged Home, failing which the impugned order holds good in all other respects.

Miscellaneous petitions, pending if any, shall stand closed.

Date:17-02-2017

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Dr. B. SIVA SANKARA RAO, J

