

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2652 of 2017

ORDER:

The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') aggrieved over the order, dated 02.03.2017, in CrI.M.P.No.27 of 2017 in Sessions Case No.599 of 2012 on the file of the XVI-Additional Sessions Judge, Nandigama, Krishna District.

2. Heard Smt. C. Vasundhara Reddy, learned counsel for the petitioner/accused No.4 and learned Additional Public Prosecutor for the State of Andhra Pradesh.

3. Substantially, the request made before the Court below under Section 91 of the Code is to direct the Station House Officer, Nandigama, to cause production of the General Diary, dated 11.09.2011, and permit accused No.4 to cross-examine PW.30 on the premise that PW.30 was not the Station House Officer when the crime was registered and he was incompetent to register the F.I.R. as he was only a police constable then.

4. Learned Additional Public Prosecutor would resist the request contending that the order itself would speak that the questions were already put to PW.30 in the cross-examination on that aspect and PW.30 has given definite answers that he was functioning as the Station House Officer when PW.1 presented the report to him and registration of First Information Report was done by exercising power of the Station House Officer.

5. The learned Sessions Judge observing that the learned counsel for the petitioner/accused No.4 cannot be permitted to cross-examine PW.30 or any other witness basing on the entries in the General Diary, particularly, after lapse of ten months of cross-examination of PW.30 and also observing thus:

“However, while advancing the arguments in the case of the learned counsel for the petitioner placed in before the Court any specific ground and if the Court feels that perusal of the G.D., is necessary for dispose of case, certainly the Court can call for the G.D. With the above observation and as the petitioner failed to show any reason why PW.30 was not cross-examination with regard to the facts narrated in this petition, on 29.04.2016 is not stated and as recall of a witness is not a matter of routine, this Court is declined to allow this petition.”

dismissed the petition.

6. The order passed by the learned Sessions Judge does not suffer from patent illegality nor the same is projected by the petitioner herein. Certainly, the General Diary entries cannot constitute basis for cross-examining a witness, more particularly, the Station House Officer or the Investigating Officer. However, as per the observations made by the learned Sessions Judge, though, not clear, still, the learned Sessions Judge is not precluded from perusing the General Diary entry relating to the relevant date. To that extent the scope of the petition can be restricted or confined.

7. Accordingly, the criminal petition is dismissed. However, the learned Sessions Judge is directed to peruse the General Diary entries

made on 10.09.2011 so as to appreciate the submissions made by the learned counsel for the petitioner/accused No.4 that PW.30 being subjected to cross-examination, in regard to which the Court has tendered the opinion in paragraph (6).

8. Miscellaneous Petitions, if any, pending in the Criminal Petition shall stand closed.

A. SHANKAR NARAYANA, J

March 31, 2017.

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