

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION Nos.6976 AND 6990 OF 2017

COMMON ORDER:

Heard learned counsel for the petitioners, who are accused 1 and 2 of C.C.No.297 of 2015, pending on the file of XV Additional Judge-cum-XIX Additional Chief Metropolitan Magistrate, Hyderabad, which is outcome of the private complaint of the 2nd respondent, for the offence punishable under section 138 N.I.Act.

2. The impugment is from the dismissal of the two applications viz., CrI.M.P.Nos.1174 and 1175 of 2017, by orders dated 31.07.2017. The above said applications were for recall of P.W.1 by reopen the evidence for purpose of further cross-examination of P.W.1 with reference to Exhibits P1 to P8. The earlier recall petitions filed for further cross-examination with reference to Exhibits P9 to P12 in CrI.M.P.Nos.150 and 151 of 2017, were ended in dismissal on 22.02.2017. The dismissal of the said two applications mainly is only on the ground for similar relief not tenable. In fact the very page Nos.8 and 9 of the order supra speaks there is no bar from dismissal of the earlier application for recall of a witness for the subsequent petition, apart from that the court got the unlimited power where it is necessary to permit such recall of witnesses. Even a very reading of Section 311 Cr.P.C., so far as first part speaks may: "Where

from the reasons shown for recall to permit”, whereas the second part speaks shall “where it is necessary for effective disposal of the case”. Once such is the case, the earlier dismissal of the application is no bar where there is relevancy to permit for further cross-examination for the effective disposal of the case. These documents were put on trial and evidence was let in in relation to it when not in dispute, the only thing to be considered is irrespective of non-mention of further cross-examination with reference to Exhibits P1 to P8 also in the applications filed in Crl.M.P.Nos.150 and 151 of 2017 of further cross-examination only in relation to Exhibits P9 to P12, so far as the application of the second part of Section 311 Cr.P.C. r/w 165 Evidence Act power of the court concerned, the court shall permit where it is necessary for the effective disposal.

3. The allegation is that the earlier advocate not properly conducted and from change of advocate he felt that the further cross-examination on vital aspects not covered and is necessary.

4. Having regard to the above and to sub-serve the ends of justice, the dismissal orders of the lower court is set aside and reopen the evidence is no way required and it is closed and the recall of P.W.1 is allowed subject to the following conditions:

“The petitioners/accused shall submit within four days from date of receipt of the order in sealed cover to the trial court, what are the further questions to be put from the change of advocate felt necessary of the some area not covered by cross-examination. The lower court without supply of those questions to the P.W.1 or his counsel shall consider the relevancy with reference to it while permitting further cross-examination only in relation to the questions and within the scope where it is necessary within the scope of section 311 Part II Cr.P.C. It is no doubt subject to costs of Rs.5,000/- payable by accused persons to the complainant on the date of giving his evidence, for which within one week from date of receipt of the order, they have to deposit the said amount before the Superintendent of the Court.”

5. Subject to the above observations, these criminal petitions are allowed in part. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

28.08.2017
SS

DR.B.SIVA SANKARA RAO,J