

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.172 OF 2017

ORDER:

The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code'), requesting to quash the orders, dated 24.11.2016, in Criminal M.P. No.226 of 2015 in Criminal Appeal No.304 of 2015 on the file of II Additional Metropolitan Sessions Judge, Hyderabad.

2. The only submission made by the learned counsel for the petitioner is, that the learned counsel for the petitioner before the learned XIV Special Magistrate Court, Hyderabad, when the complainant was examined as PW.1 in Calendar Case No.39 of 2014 filed for the offence under Section 138 of the Negotiable Instruments Act, 1881, reported 'NIL' at the stage of cross-examination of PW.1 and, thereafter, judgment was pronounced convicting the petitioner - accused, he preferred the appeal in Criminal Appeal No.304 of 2015 on the file of the II Additional Metropolitan Sessions Judge, Hyderabad.

3. Now, the submission of the learned counsel is that along with the Criminal Appeal No.304 of 2015, the petitioner also filed Criminal M.P. No.226 of 2015 under Section 391 of the Code, requesting the Court to permit him to cross-examine PW.1, the said petition was dismissed on 24.11.2016. The present Criminal Petition

is filed to quash the said order and to give an opportunity to cross-examine PW.1.

4. Certainly, it is really strange, at this stage, to come forward with the present petition making a request of this nature. In fact, when cross-examination of PW.1 recorded 'NIL' on the representation of the learned counsel for the petitioner before the learned Magistrate's Court, there was an opportunity before pronouncing the judgment to make an application under Section 311 of the Code, and the learned counsel would submit that such an application was made and it was also dismissed and the learned Magistrate proceeded with the arguments. Of course, the learned counsel also would submit that the arguments were heard and matter was reserved by the learned Magistrate Court, and later judgment was pronounced. Certainly, nothing prevented the petitioner to approach during interregnum and get the dismissal order set aside in a petition, where the request was made under Section 311 of the Code, which was not done. Having preferred the appeal only, a petition under Section 391 of the Code was filed; that was dismissed; now he has come to this Court.

5. The request of this nature cannot be granted where a case is at appellate stage under Section 482 of the Code, though, power is unfettered, but looking at the conduct of the party, where he was not diligent at the relevant time, certainly, this Court cannot give a

helping hand to him. However, it is open to the petitioner herein to agitate whatever grievance he has projecting the ground of failure to cross-examine PW.1 and the serious consequence thereof, to the appellate Court.

Therefore, the present Criminal Petition is dismissed at the admission stage itself with the observation, as indicated in the above. As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand closed.

February 15, 2017.
Mgr

A. SHANKAR NARAYANA, J

