

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.631 OF 2017

ORDER:

The revision petitioner is the accused in C.C.No.378 of 2016 on the file of XX Additional Chief Metropolitan Magistrate, Hyderabad-cum-XIV Additional Judge, Hyderabad.

2. The case filed by the revision 1st respondent/ complainant, for the offence under Section 138 N.I.Act, in the course of trial, P.W.1 was examined in cross on 24.10.2016, having earlier taken adjournments for cross-examination from the chief affidavit already filed was taken on, from 24.10.2016, again taken time to 22.11.2016 and again to 29.11.2016, then P.W.1 was cross-examined in part and sought time for further cross-examination to 14.12.2016 and on that day, for no representation and for no further cross-examination, it was closed. Subsequently, from the complainant reported no further evidence; the complainant's evidence was closed and the present stage is, after section 313 Cr.P.C. examination of the accused, it is coming for defence evidence. It was before section 313 Cr.P.C. examination of accused, impugning said order of the lower court in CrI.M.P.No.33 of 2017, dated 30.01.2017, present revision is maintained.

3. The impugned order reads that what the accused is intended to put forth the omissions and contradictions to examine further of P.W.1, not at all even mentioned in the petition and simply recalling P.W.1, without proper purpose, is unreasonable and a perusal of the cross-examination of P.W.1 shows, there was lengthy cross-examination already conducted and having taken time for further cross examination on 14.12.2016, it was not done, thereby, could not consider any just ground.

4. The learned counsel for revision petitioner impugned the order, whereas the learned counsel for revision first respondent supports the order of the lower court.

5. The question that arises for consideration of this Court is:

“Whether there are any just grounds to permit recall of P.w.1 for further cross examination, by sitting against the dismissal application under Section 311 Cr.P.C.?”

6. No doubt, a revision itself is not maintainable. But for the power of the court to convert the same under Section 482 Cr.P.C., if at all, either to sub-serve the ends of justice or to prevent abuse of process of the case, as the case may be, the revision is maintainable.

7. Here, fundamentally, if the accused gives what are the questions or omissions in his affidavit petition, it is nothing

but alerting the complainant to avoid answers touching the issues. Thereby the court cannot expect giving of what omissions and contradictions wanted to be elicited by disclosure in the petition affidavit. But for, at best, to ask, to give in a sealed cover for the reference of court, only to permit in that area and in relation to the questions beyond that the court could not have been dismissed on the ground. Furthermore, there are latches, no doubt on the part of the accused, however, it is posted to 14.12.2016, for further cross-examination, it itself shows on the date of said closure the cross-examination was not completed. One such is the case, at best, for the latches subject to giving in a sealed cover what are the questions to be posed or asked could have been allowed by imposing costs to sub-serve the ends of justice.

8. Having regard to the above, the revision is allowed, setting aside the dismissal order, however, by affording only one opportunity to fix a date by the trial court for the P.W.1's presence and cross examination further by the accused at any date, within one week from date of receipt of the order. However, before two days before commencement of cross-examination, the accused shall give in a sealed cover what are the relevant questions to be put to the witness in relation to any omissions or contradictions or otherwise in a sealed cover for the court therefrom to consider and only permit to that

limited extent, that too subject to costs of Rs.2000/- by the accused to the complainant. Any conditions are not complied with, the order of the court impugned herein holds good without any further reference to the court.

9. Accordingly, Criminal Revision Case is allowed only to the above said extent. Miscellaneous petitions pending, if any, in this case shall stand closed.

DR.B.SIVA SANKARA RAO,J

27.03.2017
SS

