

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.1076 OF 2017

ORDER:

Heard before admission, the learned counsel for sole accused and also the public prosecutor representing the State and perused the impugned order.

2. The prosecution evidence was closed on 08.03.2017 with nine witnesses including P.W.9. The case was posted for 313 Cr.P.C. examination to 10.03.2017. It is on that day, the petitioner filed the application for recall of P.W.9, saying on 08.03.2017 certain crucial questions could not be asked in the cross-examination of P.W.9 and thereby it is required for his recall. The impugned dismissal order of the lower court shows what are the material facts to be ascertained from P.W.9 is not disclosed.

3. The crucial aspect to be considered in a pragmatic approach is if he discloses the questions to be asked, definitely the witness being alerted. If he has not chosen to give under that guise, the court may not understand for what purpose the witness to be recalled and whether any further material cross-examination is required to be done or not. The only recourse to sub-serve the ends of justice, in such event, is to give in a sealed cover the relevant questions to be asked for the court to open and consider such application, if at all

relevant to permit only among those without disclosing the questions to be permitted in the order but for at best the question numbers.

4. Having regard to the above, the dismissal order is unsustainable and remedy left open to the petitioner to file fresh application subject to costs of Rs.2,000/- to allow, if given in a sealed cover the relevant questions to be put to the witness on considering if at all material to so permit and the costs to be deposited with the superintendent to the court to pay to any orphanage running by the government in the Town or District or the State as the case may be by the court. Such an application to be filed, within one week from date of receipt of the copy of this order.

5. In the result, this criminal revision case is allowed. Miscellaneous petitions pending, if any, in this case shall stand closed.

DR.B.SIVA SANKARA RAO, J

18.04.2017
SS