

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.14464 of 2014

ORDER:

Heard learned counsel for the petitioners/accused Nos.1 to 3 and also the learned counsel for the 2nd respondent-complainant and also learned Public Prosecutor representing the 1st respondent-State and perused the impugned order of the learned Magistrate dated 31.07.2014 in CrI.M.P.No.1298 of 2014 in pending C.C.No.297 of 2013, which is an application of the petitioners/accused under Section 315 Cr.P.C. in seeking to adduce defence evidence for his coming to witness box which is after Section 313 Cr.P.C. examination from closure of prosecution evidence while the matter is coming for defence evidence.

The petition was dismissed by the impugned order saying though he stated in the course of Section 313 Cr.P.C. examination of he has no defence evidence on 22.10.2013, subsequently even he reported no defence evidence on 20.01.2014 and after 7 adjournments he filed petition, thereby not entitled, but for the petition with intend to drag the matter.

What he stated in the Section 313 Cr.P.C. examination he has got any defence or not is not the be all and end all for Court shown posted for defence evidence if any by recording the same to proceed by posting the matter for arguments. For more than 7 adjournments the matter was coming even according to the lower Court either for the defence evidence or for arguments including from the say in the impugned order that on 20.01.2014 the accused since stated no defence evidence at least till then coming for defence evidence. Once such is the case, from what is as per

Section 315 Cr.P.C. says no accused can be compelled by any person to come to witness box and give evidence by testimonial compulsion, but for if at all he wants to come to witness box as defence witness and Section 315 (1) Cr.P.C. clearly says the accused is competent defence witness. Once such is the case and it is not even a matter reserved for judgment after hearing arguments, the Court could have been permitted the defence evidence for the accused to come to witness box for he wanted to explain the conditions and terms of Ex.P9 agreement placed reliance by complainant.

Having regard to the above, the dismissal order of the lower Court is unsustainable. Accordingly, the Criminal Petition is allowed by permitting defence evidence of accused directing the lower Court to fix a date within one week from the date of receipt of this order and to complete the same to proceed further with the matter for final disposal by hearing arguments.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 03.10.2017
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