

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 10061 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to quash the proceedings dated 12-09-2017 in CrI.M.P.No. 1051 of 2017 in S.C.No. 147 of 2014 on the file of the Court of Principal District and Sessions Judge at Nalgonda (for short, 'the Court below') filed under Section 311 Cr.P.C. to recall P.Ws.1 and 3 for further cross-examination as per the questionnaire filed along with the petition.

2. The Court below after hearing both sides passed an elaborate order declining to recall P.Ws. 1 and 3 for further cross-examination.

3. The order under challenge is passed in an application filed under Section 311 Cr.P.C. against which no revision is maintainable in view of the bar under Section 397 (2) Cr.P.C. and therefore the petitioners approached this Court by way of filing the present petition under Section 482 Cr.P.C. and it is impermissible under law in view of the judgment in ***Girish Kumar Suneja Vs. C.B.I.***¹. The Apex Court in the above judgment made it clear that when Section 397 (2) Cr.P.C. prohibits interference in respect of interlocutory orders, Section 482 cannot be availed of to achieve the same objective. In other words, since Section 397 (2) Cr.P.C. prohibits interference with interlocutory orders, it would not be permissible to resort to Section 482 Cr.P.C. To set aside an interlocutory order, prohibition in Section 397 Cr.P.C. will govern Section 482 Cr.P.C. thereof. Further, the power being an extraordinary one, it has to be exercised sparingly. If these considerations are kept in mind, there will be no inconsistency between Sections 482 and 397 (2) Cr.P.C.

¹ AIR 2017 SC 3620

4. In view of the law declared by the Apex Court in the above judgment, the present petition is not maintainable and the same is accordingly dismissed. Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

Date: 01-11-2017.

M.SATYANARAYANA MURTHY, J.

JSK

