

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.10333 of 2017

ORDER

This petition under Section 482 Cr.P.C., is filed to quash the docket order dated 10.10.2017 in C.C.No.265 of 1997 on the file of V Additional Munsif Magistrate, Guntur, on the ground that the petitioner/A1 filed application under Section 294 Cr.P.C. in Crl.M.P.No.2303 of 2006 in C.C.No.265 of 1997 to receive the documents and the same was allowed by the Court on 31.08.2006, and after completion of trial, the petitioner was examined under Section 313 Cr.P.C. explaining the incriminating evidence that appeared against him in the testimony of complainant witnesses and thereafter, the petitioner proposed to examine the witness and accordingly, examined one Velu Swamy Nayakar as D.W.1 on 09.10.2017 and requested the Court to post the matter for further evidence and accordingly, the matter was adjourned to 10.10.2017 for further evidence. On 10.10.2017, the Magistrate passed the following order”

“Complainant absent. A1, A5, A6, A8, A9, A11 to A13 absent. Petition filed and allowed. A14 present. Further evidence not adduced. Hence the same is treated as nil, though passed over till 5.00 PM. Posted for arguments call on 13.10.2017.”

2. As the aforesaid docket order was passed closing the evidence of the defence, the petitioner is now seeking quashment of the said order.

3. It is also the contention of petitioner that he filed a petition under Section 311 of Cr.P.C. to issue summons to the Sub-Inspector of Police, Punjagutta, Hyderabad, for production of the FIR in Cr.No.348 of 1994, but the same was returned with the following objections:

“(1) How this petition is maintainable at this stage shall be explained.

(2) What are the steps taken to obtain certified copies shall be explained”

4. During hearing, learned counsel for petitioner contended that when the petitioner proposed to examine the Sub-Inspector of Police and filed an application under Section 311 of Cr.P.C., the Court took objections as stated above, but he did not represent the same since the evidence of the defence was already closed by order dated 10.10.2017. Immediately, the petitioner approached this Court seeking quashment of the docket order dated 10.10.2017 and requested this Court to direct the Magistrate to mark the documents and consider the same during the course of arguments and pass appropriate orders.

5. Admittedly, the Calendar Case is of the year 1997 and in the said case, the evidence of prosecution was closed long back. The petitioner filed a petition under Section 294 Cr.P.C., which was allowed by order dated 31.08.2006 and he also filed an application on 11.10.2017 under Section 311 Cr.P.C., to summon the Sub-Inspector of Police, Punjagutta, Hyderabad, for production of FIR in Cr.No.348 of 1994 and the same was returned as per the endorsement extracted above. Instead of complying with the

objections raised by the Office, the petitioner straightaway approached this Court to quash the order dated 10.10.2017. As seen from the docket orders produced before this Court, certifying it as true copy, it discloses that on 03.10.2017, summons to the witness was not served and again posted to 06.10.2017 and also to 09.10.2017, on which date Velu Swamy Nayakar was examined as D.W.1 and the matter was adjourned to next day i.e., 10.10.2017, on which date, no further evidence was adduced. Therefore, after waiting till 5.00 PM., the Magistrate noted that further evidence was not adduced. Thereafter, the petitioner filed a petition on 11.10.2017 under Section 311 Cr.P.C., to summon the Sub-Inspector of Police, Punjagutta, to produce the FIR in Cr.No.348 of 1994 and the same was returned with objections and the matter was posted to 13.10.2017 for arguments.

6. This is a peculiar case where the offence allegedly took place long back on 02.07.1994 and either of the parties is able to protract the proceedings for a considerable period and that the charge sheet was numbered as Calendar Case No.265 of 1997. Even now, the petitioner, who is A1, did not adduce evidence and is seeking time to adduce further evidence. Merely because the documents were received allowing an application filed under Section 294 Cr.P.C., the Court is not required to accept and consider those documents while deciding the calendar case, unless, they are marked as exhibits by examining any witness. But, in the present case, the petitioner obtained the certified copy of FIR in Cr.P.No.348 of 1994 of Punjagutta Police Station, but without representing the petition filed

under Section 311 Cr.P.C., to summon the Sub-Inspector of Police, Punjagutta, he is now seeking quashment of the docket order. If any petition is filed to summon the witness prior to 10.10.2017, there is any amount of justification in accepting the request of the counsel for petitioner, but when the petition was filed on 11.10.2017 i.e, after closer of the defence evidence, and it was returned, without representing the same, the request of petitioner cannot be accepted and it appears from the record that the matter is sufficiently protracted for long time. But the contention of learned counsel for petitioner is that the matter was posted to 03.10.2017 for defence evidence, that does not mean that the petitioner can avail time at his convenience. Therefore, there is no error in the order passed by the Magistrate on 10.10.2017 in closing the evidence. In the peculiar facts and circumstances of the case, more particularly, when a petition under Section 311 of Cr.P.C., was returned, this Court cannot permit the petitioner to adduce any evidence when no petition is filed to reopen the evidence before the Magistrate.

7. Hence, I find no grounds to quash the order impugned. The Criminal Petition is accordingly dismissed. However, liberty is given to the petitioner to take appropriate steps to reopen the evidence of the defence, before the Magistrate, and on filing such application, the Magistrate is directed to decide the same in accordance with law as it is a matter of pre 2012.

8. Miscellaneous Petitions, if any, pending in this criminal petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

8th November, 2017

Note:
Issue CC tomorrow

sj

