

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Crl.P.No.10307 of 2017

ORDER

This criminal petition is preferred under Section 482 of Criminal Procedure Code, 1973 (for short 'the Code') questioning the order dated 07.01.2016 passed in Crl.M.P.No.472 of 2015 in C.C.No.11 of 2009 by the learned Special Judge for SPE & ACB Cases-cum-II Additional District and Sessions Judge, Nellore, rejecting the request of petitioner/accused to permit him to lead the defence by examining the witnesses cited in the list/memo filed along with the petition.

2. Precisely, the reasons for dismissing the application filed by petitioner/accused are that the prosecution closed the evidence having examined as many as 50 witnesses by 22.09.2014 and thereafter, on 17.11.2014, the petitioner was examined under Section 313 of the Code and he made it clear in the said examination that he has no defence to enter upon. This is one aspect of the case. Besides it, the petitioner also filed a memo in writing stating that he has no defence to enter upon. Thereafter, the examination of witnesses was closed and posted the case for arguments by the learned Special Judge. The learned Special Public Prosecutor had advanced his arguments on three different dates in March, 2015 and closed his arguments. Later, the petitioner took 16 adjournments for a period of 8 months and failed to tender

arguments. While observing so, the present application was dismissed by the learned Special Judge opining that the petitioner was deliberately postponing the matter. Learned Special Public Prosecutor has strongly resisted the request, but the learned counsel for petitioner seeks one chance to lead defence.

3. According to the learned counsel for petitioner, the petitioner earlier filed Crl.P.No.6171 of 2016 requesting this Court to permit him to recall P.Ws.5,6,9 and 49. It appears that the learned Special Judge partly allowed the application in Crl.M.P.No.7 of 2016 in C.C.No.11 of 2009 by ordering to recall P.Ws.1,2 and 4 while rejecting the request to recall P.Ws.5,6,9 and 49. The petitioner continued his request by filing said Crl.P.No.6171 of 2016. This Court, by order dated 29.08.2017, allowed the criminal petition in part permitting the petitioner to recall P.W.49 subject to payment of TA and DA. Now, the chance given by this Court has to be balanced with the rejection order, which is under challenge in the present petition.

4. It is, no doubt, true that the conduct of the petitioner does not warrant such relief normally. But, however, keeping in view the two aspects, the first that is it disproportionate assets and the second is that this Court allowed the request to recall P.W.49 besides the request granted by the Court below to recall P.Ws.1,2 and 4. So far as recalling of these

witnesses is concerned, learned counsel for petitioner would submit that they were recalled and examined. Since it appears that they were cross-examined further by the learned counsel for petitioner, the Court must have opined that there was no further examination of petitioner under Section 313 of the Code. However, when part of trial was opened by recalling and cross-examining P.Ws.1,2 and 4 by the orders passed by the Court below and P.W.49 by the orders passed by this Court, no prejudice would be caused to the prosecution in allowing to lead defence, with certain directions. Therefore, keeping in view that the ends of justice would be met by allowing the present application in a case of this nature exonerating the earlier option exercised by the petitioner before the Court stating that he has no defence to enter upon, a chance is afforded to him by allowing the present petition, but, however, subject to following conditions:

(i) Petitioner shall complete the examination by taking out summonses to the witnesses, within three months from the date of receipt of a copy of this order; and

(ii) he shall not postpone the event of tendering arguments and he shall tender arguments within a month thereafter having afforded further opportunity to the prosecution to tender further arguments.

With the aforesaid conditions, the Criminal Petition is allowed.

5. As a sequel thereto, miscellaneous petitions, if any, pending in this petition shall stand closed.

A. SHANKAR NARAYANA, J

7th December, 2017

Note:
Issue CC tomorrow

Registry is directed to send a copy of this order within three days.

sj



