

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.413 of 2018

ORDER :

Heard the learned counsel for the petitioners/accused in C.C.No.83 of 2014 for the offences punishable under Section 498-A IPC and under Sections 3 and 4 of the Dowry Prohibition Act on the file of the learned Addl.Judl.Magistrate of First Class(for short, 'AJFCM'), Kovur of SPSR Nellore District, The Court after framing charges put the parties to trial from they pleaded not guilty and in the course of trial, after examination in chief and cross-examination of P.Ws. 1 to 4 at length, the accused petitioners filed OrI.M.P.No.3127 of 2017 before the learned trial Magistrate for recall of the P.Ws. 1 to 4 on the ground of further cross-examination saying it is by mistake and oversight did not put some questions in the cross-examination of them relating to dowry and P.W.1 filed M.C.No.25 of 2015 pending before the Spl.AJFCM, Kovur and they came to know only after cross-examination of P.W.1, therefrom could not put suggestions in this regard, thereby it requires recall of the witnesses supra.

The 2nd respondent-defacto-complainant opposed the same also the learned Public prosecutor with a counter saying no grounds to recall and on that contention learned trial Judge dismissed the application under Section 311 CrPC for the recall sought.

What are the questions to be put not even mentioned much less in a sealed cover that too when seeking for recall, it cannot be accepted in a case where the very offence with cruelty and dowry harassment as if not put questions relating to dowry harassment not all the witnesses for their recall but for to say so far as P.W.1 concerned who filed M.C.No.25 of 2015 allegedly not known and came to know after P.Ws 1 and 5 Cross-examination if at all to permit. Leave about the difficulty to believe

when the accused was respondent to the M.C. with no knowledge when participating in the M.C. proceedings, rightly thereby the learned Public prosecutor and the counsel for the 2nd respondent opposed the said petition supporting the order of the lower Court. So far as recall of P.W.1 concerned, there is some force as referred supra to permit invoking either part-1 at least part-2 of Section 311 CrPC read with Sec.157 of the Indian Evidence Act (for short, 'the IE Act'), for putting such questions only in relation to M.C.proceedings and other than representing on whatever cross-examination questions to be put to the witness by giving in a sealed cover what are the questions to be put to P.W.1 for the trial Court to put only such of those questions subject to the relevancy and admissibility under Section 156 of the IE Act, and subject to costs of Rs.2,000/- (Rupees two thousand only) payable to the P.W.1 by the accused persons on the date of recall and giving of further evidence.

With these observations, the Criminal Petition is allowed to that extent only. Pending miscellaneous petitions, if any, shall stand closed.

Date:30.10.2018
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Dr. B.SIVA SANKARA RAO J,