

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.1185 OF 2018

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioner seeking to quash the order dated 17.01.2018 passed in CrI.M.P. No.2239 of 2017 in D.V.C. No.204 of 2015; on the file of the IV Metropolitan Magistrate, Hyderabad (for short, 'the Court below'), wherein the Court below dismissed the application filed under Section 311 Cr.P.C. to recall P.W.1 for the purpose of cross-examination.

2. Heard the learned counsel for the petitioner and the learned Assistant Public Prosecutor for the 1st respondent-State and the learned counsel for the 2nd respondent-*de facto* complainant, apart from perusing the material on record.

3. Learned counsel for the petitioner would submit that the petitioner is working as Personnel Officer in APGENCO, Vidyut Soudha, his services are allotted to State of Andhra Pradesh and he shifted to the State of Andhra Pradesh and settled down; due to pressure of work, he could not give instructions to his advocate to cross-examine P.W.1; the cross-examination of P.W.1 is essential to determine the allegations made in this case; an opportunity may be given to the petitioner to cross-examine P.W.1 and for that a date may be fixed and if required some costs may also be imposed.

4. Learned Assistant Public Prosecutor opposed the grant of relief sought for by the petitioner.

5. Learned counsel appearing for the 2nd respondent-*de facto* complainant would submit that several opportunities were given to the petitioner to cross-examine P.W.1; in spite of that he did not proceed with

the cross-examination; the Court below rightly dismissed the application of the petitioner; and ultimately, prayed to dismiss the petition.

6. In view of the contentions putforth by both sides, the point for determination is, whether the request of the petitioner can be acceded to?

7. As per the record placed before this Court, the chief-affidavit of P.W.1 was filed on 11.04.2017. Thereafter, the matter had been adjourned on several occasions for cross-examination of P.W.1 at the request of the counsel appearing in the Court below on behalf of the petitioner herein. On 07.08.2017, cost of Rs.300/- was also imposed when cross-examination was not conducted. Thereafter, the proceedings were adjourned for one reason or the other. Ultimately, on 11.09.2017, when P.W.1 was ready for cross-examination, no cross-examination was undertaken and no costs were paid. Therefore, the Court below was pleased to record the cross-examination as 'Nil'. Thereafter, on 23.11.2017, the chief-affidavit of P.W.2 is filed after serving a copy of the notice on the other side. In the course of submissions, it is brought to the notice of this Court that P.W.2 is also not yet cross-examined. While dealing with the subject matter, the Court below had given several reasons in dismissing the application filed on behalf of the petitioner under Section 311 Cr.P.C. The petitioner has not given instructions to his counsel to cross-examine P.W.1. The mandate given under Section 12(5) of the Protection of Women from Domestic Violence Act is to complete the proceedings within a period of sixty (60) days. It goes to show that for no justifiable reasons, the enquiry in the impugned case is protracted. It is also apt to refer the decision of a Full Bench of the Hon'ble Supreme Court in **Girish Kumar Suneja v. C.B.I.**¹, wherein it is held that when there is a specific bar to prefer a revision against the interlocutory order of

¹ AIR 2017 SC 3620

the Subordinate Court expressly under sub-section (2) of Section 397 Cr.P.C., the inherent powers contained under Section 482 Cr.P.C. are not be available to the aggrieved person. Under these circumstances, this Criminal Petition is not maintainable as well as lacking merits.

8. Accordingly, the Criminal Petition is dismissed. Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

21st February, 2018
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