

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.3700 of 2018

ORDER:

This petition is filed by the petitioners/A1 and A2 under Section 482 Cr.P.C challenging the marking of Exs.P2 to P11 by the Judicial First Class Magistrate-cum-Special Mobile Court, Kadapa in C.C.No.30 of 2016 in the absence of the accused.

2) Learned counsel for petitioners would submit that without affording an opportunity to the petitioners/accused the Court marked those documents, thereby great prejudice was caused to them.

3) It is seen that in CrI.M.P.No.2226 of 2017 and CrI.M.P.No.2651 of 2017 the trial Court passed a common order dated 23.11.2017 wherein the said Court permitted the prosecution to file certain documents on the observation the documents sought to be produced by the prosecution were the copies of service register of A1, pension payment particulars of deceased husband of A1 and other connected materials and as the said material was required for the case of the prosecution, the same could be allowed. Then, the docket proceedings dated 21.02.2018 of the said Court in C.C.No.30 of 2016 would read thus:

“Exs.P2 to P11. Accused absent. Petition filed and allowed. Learned defence filed memo stating that they are ready to file revision petition and sought time. As could be seen from record, the petitions to receive documents are allowed on 23.11.2017 and since then no revision was filed and as such, case is proceeded further PW1 is further examined in Chief. Ex.P2 to P11 marked. Cross-examination deferred at request. Call on 12.03.2018”

4) The above proceedings would show that on 21.02.2018 the accused were absent and the petition was filed by his counsel to condone the absence and the same was allowed. Then, it appears the learned defence counsel filed memo stating that they were going to file revision petition against the orders passed by the Court permitting the prosecution to produce the documents. On that the trial Court observed that as could be seen from the record, the petitions to receive the documents were allowed on 23.11.2017 and since there was no revision filed till then, the case is proceeded further, PW1 was further examined in chief and Exs.P2 to P11 were marked. The Court posted the matter for cross-examination to 12.03.2018. So, the above docket proceedings would show that on 21.02.2018 the accused were absent and since the accused did not prefer revision against the impugned orders even though sufficient time elapsed, the trial Court declined to stop the proceedings and accordingly further examined PW1 and received the documents produced by the prosecution and marked them as Exs.P2 to P11.

5) In that view of the matter, the submission of learned counsel for petitioners/accused that the documents were marked in the absence of the accused does not hold water. The defence counsel was very much present in the Court on 21.01.2018 and in fact he filed absence condonation petition on behalf of petitioners and it was allowed and he also filed a memo seeking time on the ground that accused were going to file revision which was denied. Therefore, the present contention of the petitioners that they had no occasion to submit their objection against the documents sought to be marked cannot be accepted. Of course, petitioners' right to challenge the validity of the documents in the cross-examination was preserved by trial Court by posting the matter for cross-examination. Hence there are no merits in the instant petition.

6) With this observation, this Criminal Petition is dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 04.04.2018
Murthy

U.DURGA PRASAD RAO, J