

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.5995 of 2013

ORDER:

Aggrieved by the order dated 17.10.2012 in CrI.R.P.No.8 of 2012 passed by the learned Metropolitan Sessions Judge-cum-I Additional District and Sessions Judge-cum-Special Judge to try offences under NDPS Act, Visakhapatnam, dismissing the CrI.R.P by confirming the order dated 15.02.2012 in CrI.M.P.No.92/2012 in C.C.No.683/1990 passed by the Chief Metropolitan Magistrate, Visakhapatnam, dismissing the petition filed by the prosecution under Section 311 Cr.P.C to reopen the case and permit the prosecution to examine LWs.1, 3, 4, 76, 77, 79, 80, 83 and 86, instant Criminal petition is filed by the State.

- 2) Heard both sides.
- 3) As can be seen, the Courts below dismissed the recall petition mainly on the ground that the High Court granted 12 months time to dispose of the case and already twice the extension was sought for showing the reasons and hence, allowing the recall petition would further delay the proceedings.
- 4) The submission of learned Assistant Public Prosecutor is that most of the witnesses who are proposed to be examined, are retired officers who are secured with much difficulty and their evidence is crucial to establish the case of the prosecution and therefore, in the interest of justice, an opportunity may be given.

5) Learned counsel for respondents opposed the petition stating that the prosecution failed to avail the opportunity earlier granted by the Court.

6) As can be seen from the record, the evidence of the proposed witnesses is crucial to prosecution case as submitted by the learned Assistant Public Prosecutor. It is true that the Trial Court has to honour the time stipulated by the High Court to dispose of the case. However, that does not mean the disposal can be at the expense of justice. By allowing the recall petition, the Trial Court could have addressed a letter to the High Court seeking further extension of the time.

7) In the interest of justice, this Criminal Petition is allowed setting aside the impugned orders of the Courts below and Trial Court is directed to permit the prosecution to examine LWs.1, 3, 4, 76, 77, 79, 80, 83 and 86 by fixing schedule convenient to both parties. Both parties shall cooperate with the Trial Court in completion of the trial at the earliest.

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

U. DURGA PRASAD RAO, J

Date: 05.07.2018

Note: Office to send copy of this order to the trial Court by Fax.

(b/o)
scs