

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.4455 of 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") questioning the order dated 01.03.2018 passed in CrI.M.P.No.23 of 2018 in S.C.No.47 of 2016 on the file of the Assistant Sessions Judge, Markapur, whereby the petition filed under Section 311 of Cr.P.C. was dismissed.

The petitioners herein filed CrI.M.P.No.23 of 2018 in S.C.No.47 of 2016 under Section 311 of Cr.P.C. to recall P.Ws.1 to 3, who were present before the Court on 19.02.2018 as per the schedule fixed in the session case. Learned counsel for the petitioners though present in the Court on that day, was unable to cross-examine the witnesses as he had no proper instructions to cross-examine the witnesses as both the parties tried for compromise till last moment, but the witnesses deposed before the Court in favour of the prosecution and the attempt for compromise becomes in vain and requested the Court to allow the petition.

The respondent – complainant filed counter denying the allegations made in the petition and contended that the petitioners engaged their counsel since the date of hearing on charges, therefore, failure to give proper instructions is not a ground to recall the witnesses and that there was no proposal for compromise and as the petitioners intentionally evaded to cross-examine P.Ws.1 to 3, their right of cross-examination of P.Ws.1 to 3 is forfeited and requested to dismiss the petition.

Upon hearing both the counsel, the trial Court dismissed the petition based on the principle laid down by the Apex Court in ***“Rama Paswan and others v. State of Uttarkhand¹”***

Aggrieved by the order of the trial Court, the present petition is filed on the ground that the Court below did not exercise its discretion in proper perspective and committed error in denying opportunity to cross-examine P.Ws.1 to 3 when the petitioners explained reasons for their failure to cross-examine the witnesses and requested this Court to give fair opportunity to contest matter and to bring the entire evidence on record to enable the Court to decide the controversy between the parties.

Learned counsel for the petitioners would contend that the petitioners did not give proper instructions to their counsel on record before the Court below to cross-examine the witnesses though the witnesses present in the Court on the date of their examination-in-chief and that there was proposal for compromise.

As seen from the allegations made in the petition filed under Section 311 of Cr.P.C., counsel for the petitioners was present in the Court on the date of examination-in-chief of P.Ws.1 to 3, but he could not cross-examine them as he did not obtain proper instructions from the petitioners since they tried for compromise till last moment.

The offence allegedly committed by the petitioners is punishable under Sections 417, 376, 506 read with 34 of I.P.C. and the case is pending before the Sessions Court.

The reason assigned by the petitioners is that the counsel was not given proper instructions to cross-examine the witnesses is

¹ 2007 (8) SCJ 133

nothing but invention, more particularly, when the counsel was engaged on the date of examination of accused and framing of charges. When the counsel is continued even after fixing the schedule, he cannot now plead that he has no instructions to cross-examine the witnesses. The alleged attempt of compromise the matter till last moment is not all a ground to quash the order under challenge.

It appears from the record that sufficient opportunity was given to the petitioners and the petitioners being accused were standing in the accused dock and the counsel also readily present in the Court hall at the time of examination-in-chief of P.Ws.1 to 3, but failure to cross-examine the witnesses for one reason or the other is nothing but exhibiting callousness in conducting the defence by the counsel on the ground of lack of proper instructions. If such reason is accepted by the Court, it is difficult to proceed with the trial in sessions cases and it would impede the very purpose of speedy trial. Inventing one reason or the other and recalling the witnesses after winning over them is nothing but impeding fair trial. Therefore, the trial Court rightly dismissed the petition declining to afford the opportunity to the petitioners and the order under challenge cannot be interfered with by this Court. Consequently, the petition is liable to be dismissed.

In the result, the criminal petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

30.07.2018
Ksp