

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.5805 OF 2016

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the order dated 11.11.2016 in I.A.No.981 of 2016 in HMOP.No.21 of 2015 passed by the Senior Civil Judge, Chirala, Prakasham District, dismissing the application filed under Section 151 C.P.C. to eschew examination in chief of PW.2 on the ground that on the day PW.1 was cross-examined, PW.2 was present in the Court hall while examining PW.1.

The respondent filed counter before the trial Court alleging that the he is not aware about the presence of PW.2 in the Court hall on the date of examination of PW.1 and in fact he sought to leave the Court hall when the evidence of PW.1 was being recorded, and if the petitioner had any objection for the presence of PW.2, she would have asked PW.2 to leave the Court hall. Mere presence of PW.2 in the Court hall at the time of recording the evidence of PW.1 is not sufficient to eschew the evidence of PW.2.

Upon hearing argument of both counsel, the trial Court dismissed the petition assigning its own reasons more particularly that no prejudice would be caused to any party though the petition is dismissed since PW.2 was already examined and his evidence can be appreciated at the time of dictating judgment.

Aggrieved the said order, the present revision is filed contending that when PW.2 was present in the Court hall while recording evidence of PW.1, it amounts to abuse of process of the Court and such evidence should be eschewed exercising inherent power under Section 151 C.P.C. But the trial Court did not consider the same in right perspective and

dismissed the petition. Therefore, requested this Court to set aside the impugned order by allowing the petition and eschew the evidence of PW.2.

During hearing, learned counsel for the petitioner reiterating the above contentions, placed reliance on judgment of Allahabad High Court in **Lal Mani v Bejai Ram Chaudhari and another**¹ and judgment of Madras High Court in **Salvamony v M.Mercy Roselt** (C.R.P.(PD) No.2969 of 2008) and requested this Court to set aside the impugned order and direct the trial Court to eschew the evidence of PW.2.

Learned counsel for the respondent supported the impugned order in all respects.

The contention of learned counsel for the petitioner before this Court is that PW.2 was present while recording evidence of PW.1 in the Court hall and it is an abuse of process of the Court and such evidence cannot be permitted to remain. Even according to the principles laid down in **Salvamony** referred supra, in case the witness was present during examination of other witness before his examination, based on examination in chief and cross examination of the proposed witness and the evidence of the petitioner, and if the Court finds that the witness was present in the Court hall before his examination and recording examination of other witness, the evidentiary value of such witness, who was present in the Court hall prior to his examination while recording evidence of other witness would get reduced significantly. But none of the above referred judgments did lay down any law that evidence of witness should be eschewed by exercising power under Section 151 C.P.C. Therefore, even accepting the law declared by the Courts, relied upon by the petitioner, referred supra, it is for the Court to record a fact finding

¹ 1934 SCC All 153

whether the witness was present or not before his examination in the Court hall, while recording evidence of other witness and if the Court concludes, based on evidence that he was present, the Court has to appreciate the evidence and reduce the evidentiary value, significantly. Moreover, none of the judgments states that evidence has to be eschewed by exercising power under Section 151 C.P.C. Consequently, the evidence of PW.2 cannot be eschewed from the record. But the Court can appreciate the evidence, keeping in mind the principle laid down by the Madras High Court.

With the above observation, the revision petition is dismissed as I find no merit. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

31.01.2018
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JUSTICE M. SATYANARAYANA MURTHY

