

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.4490 OF 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the order dated 29.03.2018 passed in Cr1.P.No.1391 of 2018 in C.C.No.144 of 2017 by the XXIII Special Magistrate, Hyderabad, whereby the petition filed under Section 311 of Cr.P.C. to recall P.W.1 for cross-examination, was dismissed.

The petitioner filed petition under Section 311 of Cr.P.C. alleging that the counsel appearing on his behalf was ill for the last two months; as such P.W.1 was not cross-examined and sought for an opportunity to recall the witness for cross-examination.

Respondent filed counter denying the material allegations *inter alia* contending that the Court gave sufficient and reasonable time, but the petitioner did not cross-examine the P.W.1. The petitioner took time on the ground that a criminal petition was pending before this Court and delayed the prosecution of the case for several months. Though sufficient opportunity was given, he did not avail the same as he is interested to seek several adjournments. Thus, he successfully avoided the disposal of the matter by the Court for one reason or the other and that there is no ground to recall P.W.1 for further cross-examination.

The trial Court dismissed the petition on the ground that no reason was assigned as to why the accused has not cross-examined the P.W.1 from 06.09.2017 to 21.11.2017 and the reason assigned by the petitioner is not proved and dismissed the petition.

Aggrieved by the order, the present petition is filed under Section 482 of Cr.P.C. since no revision is maintainable in view of

the bar under Section 397 of Cr.P.C. and reiterated the grounds urged in the petition and relied on the judgment of the Apex Court rendered in Crl.A.No.1307 of 2014 “Mannan Sk. V. State of West Bengal” and requested this Court to recall the witness setting aside the order passed by the Court below.

As seen from the material on record, it is alleged that the reason for failure to cross-examine P.W.1 is illness of the counsel for the petitioner for last two months i.e. prior to filing of the petition. The petition under Section 311 of Cr.P.C. was filed on 27.03.2018 to recall the witness. If two months is calculated prior to 27.03.2018, it would be 27.01.2018. Even if the ground mentioned in the petition is true, the counsel for the petitioner was unable to cross-examine the witness during the said period of two months commencing from 27.01.2018 to 27.03.2018 due to his ill-health. But the affidavit of the counsel for the petitioner was not produced to substantiate the said contention, but as seen from the deposition of P.W.1, P.W.1 was called and sworn on 21.11.2017 for cross-examination by Sri M.Anand Naidu, advocate, but he was absent. Therefore, the Court recorded the cross-examination of P.W.1 as “NIL”. When the cross-examination of P.W.1 was recorded as “NIL” on 21.11.2017, the illness of the counsel from 27.01.2018 till the date of filing of petition, is not a ground to permit the petitioner to cross-examine P.W.1. The practice adopted by the petitioner is to file petition one after another. Previously, the petitioner filed Crl.M.P.No.3566 of 2017 on 28.11.2017 to recall P.W.1 and the complainant filed counter in the said petition on 14.12.2017, but the petitioner himself took time from 20.12.2017 to 21.02.2018 for advancing arguments in the said petition, but the counsel for the petitioner was absent inspite of imposing costs of Rs.1000/- from 20.12.2017 to 21.02.2018. In the

Crl.M.P.No.3566 of 2017 the accused raised a ground that he filed quash petition Crl.P.No.10422 of 2017, but no order was received in the said petition granting stay of proceedings. When there was no stay granted by the Court, the petitioner was bound to proceed with the proceedings, and the said petition Crl.M.P.No.3566 of 2017 was dismissed. Again the petitioner filed another petition inventing a different ground that the counsel for the petitioner was ill for the last two months, but the ground urged in the petition is not sufficient to recall P.W.1 as the cross-examination of P.W.1 was recorded as “NIL” on 21.11.2017 i.e. almost 2 months 7 days prior to commencing illness of the counsel for the petitioner. Therefore, the ground urged by the petitioner is not sufficient to recall P.W.1 for cross-examination.

Learned counsel for the petitioner relied on the judgment of the Apex Court rendered in Crl.A.No.1307 of 2014 “Mannan Sk. V. State of West Bengal”, wherein it is held as follows:

“Objection of section is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.”

Even if the said principle is applied to the present facts of the case, when the petitioner himself is guilty and negligent in prosecuting the proceedings and filing petition one after another, he does not deserve any sympathy. Therefore, I find that the ground urged in the petition is neither true nor correct. Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed, confirming the order dated 29.03.2018 passed in Crl.P.No.1391 of 2018 in C.C.No.144 of 2017 by the XXIII Special Magistrate, Hyderabad

Consequently, miscellaneous petitions pending, if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

01.05.2018
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