

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.4500 and 4587 OF 2018

COMMON ORDER:

The criminal petition No.4500 of 2018 is filed by the petitioners/accused under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the order dated 19.03.2018 passed in CrI.M.P.Nos.419 and 422 of 2018 in C.C.No.215 of 2015 by the XXV Special Magistrate at Hyderabad, whereby the petitions filed under Section 311 of Cr.P.C. for recalling of P.W.1 and reopening the defence evidence, were dismissed.

The criminal petition No.4587 of 2018 is filed by the petitioner/accused under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the order dated 19.03.2018 passed in CrI.M.P.Nos.420 and 421 of 2018 in C.C.No.214 of 2015 by the XXV Special Magistrate at Hyderabad, whereby the petitions filed under Section 311 of Cr.P.C. for recalling of P.W.1 and reopening the defence evidence, were dismissed.

The allegations in both the petitions and the impugned orders passed by the trial Court are almost identical, hence it is expedient to decide both the petitions by common order.

For convenience sake, I would like to advert to the facts as narrated in CrI.P.No.4500 of 2018.

CrI.P.No.4500 of 2018:

The respondent No.2 herein filed private complaint for the offence punishable under Section 138 of Negotiable Instruments Act, which is renumbered as C.C.No.215 of 2015. During trial, the complainant was examined as P.W.1 as early as in the month of

December, 2016. Later, at the stage of arguments, the petitioner herein filed a petition CrI.P.No.4332 of 2017 under Section 311 of Cr.P.C. to recall P.W.1 and the said petition was allowed on payment of costs. The petitioner paid costs and successfully avoided the cross-examination of P.W.1 and sought for adjournment of 10 days on the ground of ill-health of senior counsel. Later, on the day, on which the case was posted, the Counsel again sought for adjournment on the same ground of ill-health of senior counsel, but the Court closed the evidence.

The main contention before this Court is that the Court did not afford sufficient opportunity to the petitioners and the cause shown by the petitioners is sufficient cause to recall P.W.1, but committed an error in dismissing the petition.

Sri N.Venkateswara Rao, learned counsel for the petitioners contended that ill-health of senior counsel is just and sufficient cause and that too other proceedings are pending for investigation; at this stage, if the witness is not recalled, it would cause prejudice to the petitioners.

Sri G.Venkat Reddy, learned counsel for the respondent/complainant opposed the petition on the ground that sufficient opportunity was afforded to the petitioner for cross-examination of P.W.1, but the petitioners did not avail the same to cross-examine P.W.1. and none of the grounds urged in the petition are sufficient to exercise power under Section 311 of Cr.P.C.

As seen from the material on record, P.W.1 was cross-examined on 06.12.2016, later other witnesses were examined. The accused were also examined under Section 313 of Cr.P.C. When

the case was posted for arguments, conveniently the petitioners came up with petition CrI.M.P.No.4332 of 2017 to recall P.W.1 for further cross-examination by reopening the case. The Court below allowed the petition to afford a reasonable and fair opportunity to the petitioner to cross-examine P.W.1 on payment of costs. The costs as ordered by the Court were paid, but did not cross-examine P.W.1 on the ground that senior counsel was suffering from ill-health. On 22.12.2017, acceding to the request of the learned counsel for the petitioners, granted 10 days time and posted the matter to 17.01.2018. On 17.01.2018 also for one reason or the other, the learned counsel for the petitioners did not cross-examine P.W.1 on the same ground of ill-health of senior counsel, but the Court pleased to close the cross-examination of P.W.1.

It appears from the record that the conduct of the petitioners is blameworthy since the petitioners successfully dragged the trial for more than a year after examination of complainant as P.W.1. Even after affording opportunity to the petitioners sufficiently, not once or twice, they did not avail the opportunity to cross-examine the witness, hence the conduct of the petitioner itself indicates the intention of the petitioners to gain time by protracting the case for sometime.

Though the Judicial Officers are insisting the advocates and parties to cooperate with the trial for disposal of cases pending before Courts, for one reason or the other avoiding cross-examination of witnesses and filing petitions under Section 311 of Cr.P.C. inventing one or other cause by taking advantage of law laid down by Courts in various judgments and it became menace to trial Courts, but the Courts must adhere to the rules strictly.

Thus, the trial Court acted sternly, refusing the request of the learned counsel for the petitioner to adjourn the matter further on the ground of ill-health of counsel. Though the counsel contended that he was suffering from ill-health, it was not substantiated by any material, more particularly ill-health of counsel for prolonged period. Therefore, the alleged ill-health is only a cause to gain time to protract the proceedings for sometime. Hence, the order passed by the trial Court does not warrant any interference of this Court by exercising power under Section 482 of Cr.P.C., consequently, the petition is liable to be dismissed.

In the result, the criminal petition No.4500 of 2018 is dismissed. No costs.

CrI.P.No.4587 of 2018:

In view of the detailed order passed in CrI.P.No.4500 of 2018, this petition is also dismissed. No costs.

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

JUSTICE M. SATYANARAYANA MURTHY

25.06.2018
Ksp