THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 4931 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to quash the order dated 19-04-2018 in Criminal M.P.No. 482 of 2018 in C.C.No. 154 of 2015 on the file of the Court of learned XVI Additional Judge – cum – XX Additional Chief Metropolitan Magistrate, Secunderabad (for short, 'the Court below'), whereby it dismissed the application filed under Section 311 of Cr.P.C. to recall P.W.1 for further cross-examination.

2. The main allegation made in the petition is that during trial, respondent No. 2 himself was examined as P.W.1 and got marked certain documents as exhibits and that during cross-examination on behalf of the petitioner, certain questions and suggestions were not put to P.W.1 which are essential to bring the true facts on record and that therefore it is essential to afford an opportunity to the petitioner to put certain questions and suggestions to P.W.1 by exercising power under Section 311 of Cr.P.C.

3. Respondent No. 2 filed counter affidavit denying material allegations *inter alia* contending that the petition is not maintainable without mentioning any proper reason or ground and prayed for dismissal of the petition.

4. The Court below, upon hearing argument of both learned counsel, concluded that the petitioner has not specifically mentioned what are the questions to be put to P.W.1 and that in the absence of any such questions, basing on a bald averment, a witness cannot be recalled and dismissed the petition.

5. Aggrieved by the same, the petitioner filed the present petition on the ground that a fair opportunity has to be accorded to the petitioner to bring the material on record to enable the Court to decide the case effectively and therefore dismissal of the petition by the Court below is erroneous and contrary to the principles laid down by the Apex Court consistently and placed reliance on ***State of Haryana Vs. Ram Mehar***[1] in support of his contention.

6. The specific reason mentioned in para No. 3 of the petition for recalling P.W.1 is extracted hereunder for better appreciation:

> *"It is submitted that during the course of the cross-examination on behalf of the petitioner, certain question and suggestions which all are essential for bringing out the true facts of the case as also to present the defence of the petitioner were not put, erroneously, as such it is but just and essential that an opportunity be accorded to the petitioner for further cross-examination of the complainant (PW 1)."*

In the counter affidavit, respondent No. 2 disputed the right of the petitioner to recall P.W.1 on the ground that no specific reason is mentioned for recalling P.W.1 which is accepted by the Court below. As seen from the reason extracted in the above para, it is an error of learned counsel to put certain questions and suggestions to P.W.1 during cross-examination as admitted in the petition duly signed by learned counsel for the petitioner. It is for learned counsel for the petitioner to complete the cross-examination as effectively as possible but for the reasons best known to him, he himself admitted the error committed by him in not putting certain questions and suggestions which amounts to disowning his duty as learned counsel for the petitioner and it is not even his case that he realized the mistake subsequently. It appears that he

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[1] 2016 (8) SCC 762

committed such error even at the beginning itself but for the mistake or error of learned counsel, a party should not suffer.

7. The Court can exercise power under Section 311 of Cr.P.C. at any time subject to recording satisfaction as to its desirability to cross-examine the witness further to do complete justice. According to Section 311 of Cr.P.C., any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case. Thus, it is clear from the Section that the Court is empowered to summon any person as a witness at any stage of any inquiry or recall and re-examine any person already examined either on the application of any of the parties or *suo motu*. In the case on hand, learned counsel for the petitioner failed to put certain questions and suggestions to P.W.1 when he was cross-examined. If an opportunity is denied to recall P.W.1, it would certainly amount to denial of justice. Therefore, the Court is not expected to deny such a fair opportunity. In ***Ram Mehar*** (*supra*), the Apex Court discussed the principles regarding the power of the Court under Section 311 of Cr.P.C. to recall a witness and held that a witness can be recalled for further cross-examination to elicit certain facts for establishing certain discrepancies and also to put certain suggestions.

8. Therefore, taking into consideration the law laid down by the Apex Court in ***Ram Mehar*** (*supra*), respondent No. 2, who was examined as P.W.1, is recalled by setting aside the order passed by the Court below for the limited purpose of putting certain suggestions and the Court below is directed to fix a

specific date for further cross-examination of P.W.1 to put certain suggestions, on payment of costs of Rs.1,000/- by the petitioner to P.W.1 payable within a week from today. In the event the petitioner fails to pay the costs of Rs.1,000/- as directed and complete the cross-examination on the date so fixed by the Court below, the petition shall automatically stand dismissed.

9. The criminal petition is accordingly allowed. Pending miscellaneous petitions, if any, in this criminal petition shall stand closed in consequence.

Date: 07-06-2018. ***M.SATYANARAYANA MURTHY, J.***

Note:

Issue C.C. by tomorrow.

B/O

JSK