

**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**CRIMINAL PETITION No.5209 OF 2018**

**ORDER:**

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code') to quash the order, dated 02.04.2018, passed in CrI.M.P. No.384 of 2018 in Calendar Case No.339 of 2015, by the learned VII Special Magistrate, Erramanzil, Hyderabad.

2. The petitioner herein, who is accused in the aforesaid Calendar Case, filed CrI.M.P. No.384 of 2018 under Section 311 of the Code to recall PW.1 to confront certain documents, which were filed subsequent to the cross-examination of PW.1. Respondent No.2 - complainant disputed the same on the ground there was delay, that the petitioner was aimed to drag on the proceedings for some more time at the stage of examination of the accused under Section 313 of the Code, and that the documents are not relevant since no details were mentioned in the petition as to the documents to be confronted to the witness.

3. The trial Court upon hearing the arguments of both counsel, dismissed the petition on various grounds. Aggrieved by the said order, the petitioner filed the present Criminal Petition on the ground that the documents were filed in other proceedings, and copies of the documents were obtained subsequent to the cross-examination of PW.1, but the trial Court did not consider the said contention, and to adjudicate the real controversy between the parties, the documents are to be confronted to

the witness to prove the innocence of the petitioner, but the trial Court committed an error in dismissing the petition.

4. During hearing, learned counsel for the petitioner, Sri K.V. Janardhan Rao, requested this Court to afford, at least, an opportunity to the petitioner to confront those documents to PW.1 on recalling so as to have fair trial and to prove her innocence for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

5. Of course, learned counsel for respondent No.2 opposed the petition on the ground that the petition was filed at the fag end of the proceedings with a view to protract the proceedings on one pretext or other.

6. As the documents were filed in other proceedings pending before the Court, the petitioner could obtain certified copies of those documents which are having bearing on the issue involved in the aforesaid Calendar Case, according to the learned counsel for the petitioner, and if an opportunity is given to the petitioner to confront those documents to the witness on recalling, she may substantiate her contention, and mere confronting though not serve any purpose except for marking those documents, will not cause any prejudice to PW.1. In fact, the petitioner is not entitled to introduce the documents without seeking prior permission under Section 254 (1) of the Code. But, till date, no such documents are filed to receive those documents by exercising power under Section 254 (1) of the Code.

7. Taking into consideration of these peculiar facts and circumstances of the case, the petitioner is permitted to confront the documents on recall of PW.1 if any available, or filed on the date of adjournment fixed by the trial Court, in order to afford a reasonable opportunity to the petitioner herein to have a fair trial in the case. Therefore, I find that it is a fit case to direct the learned VII Special Magistrate, Erramanzil, Hyderabad, to fix a date for recall of PW.1 for the specific purpose of confronting the documents, if any, filed along with a petition under Section 254 (1) of the Code by that date. If no such application is filed and witness is not confronted with those documents on recall, the learned Magistrate is directed to follow the procedure and dispose of the main Calendar Case in accordance with law.

8. With the above directions, the present Criminal Petition is disposed of at the stage of admission itself.

Consequently, Miscellaneous Petitions, if any, pending in the present Criminal Petition, shall stand closed.

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**JUSTICE M. SATYANARAYANA MURTHY**

**September 17, 2018**

**Note:**

Furnish C.C. of order by tomorrow.  
(B/O.) Mgr