

THE HON'BLE SRI JUSTICE P. KESHA RAO
CRIMINAL REVISION CASE NO.1255 OF 2018

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State.

2. The present Criminal Revision Case is filed questioning the orders passed in CrI.M.P.No.1221 of 2018 in CC.No.46 of 2010 dated 6.4.2018 on the file of the Court of VI Additional Chief Metropolitan Magistrate, Hyderabad, dismissing the petition filed under Section 311 Cr.P.C. to recall PWs 1 to 5, PW7 and PW42 for cross-examination.

3. The facts in brief are that the petitioner who is Accused No.1 has been charged for the offence under Sections 406, 408, 420 and 120-B IPC. The prosecution has commenced its evidence and examined PWs 1 to 42. At that stage, the petitioner filed a petition under Section 311 Cr.P.C. to recall PWs 1 to 5, 7 and 42 for cross-examination since they were not cross-examined by the earlier counsel. The said petition has been dismissed by the learned Magistrate by order dated 6.4.2018. Aggrieved by the said orders, the present Criminal Revision Case is filed.

4. Learned counsel appearing for the petitioner would contend that the learned Magistrate committed an error in

dismissing the petition without appreciating the fact that PWs 1 to 5 and 7 were not cross-examined by the petitioner. The petitioner should be given an opportunity to cross-examine the prosecution witnesses, otherwise, the petitioner will be deprived of his valuable right of cross-examination and his valuable rights and interest in the case would be prejudiced.

5. Per contra, learned Public Prosecutor appearing for the respondent State has fairly conceded that PWs 1 to 5 and 7 were not cross-examined by the earlier counsel appearing for the petitioner. Though in the petition the recall was sought even in respect of PW.42 also, but the fact remains that he was cross-examined by the petitioner. He also submitted that if PWs 1 to 5 and 7 are being recalled for cross-examination, the petitioner may be put to heavy terms.

6. Having heard both the counsel and from the material on record, it is revealed that the petitioner has been charged for the offence under Sections. 406, 420, 408 and 120-B IPC. Though the prosecution has examined PWs 1 to 42, PWs 1 to 5 and 7 were not cross-examined by the earlier counsel appearing for the petitioner. In that view of the matter if the petitioner is not given an opportunity to cross-examine the prime witnesses, any amount of prejudice will be caused to the

petitioner. But at the same time, the petitioner ought to have cross-examined when they were present before the Court.

7. Be that as it may, to meet the ends of justice, this Court deems it appropriate to allow the petition permitting the petitioner to cross-examine PWs 1 to 5 and 7.

8. Accordingly, the Criminal Revision Case is allowed by setting aside the orders passed in CrI.M.P.No.1221 of 2018 in C.C.No.46 of 2010 dated 6.4.2018 on the file of the Court of VI Additional Chief Metropolitan Magistrate, Hyderabad and PWs 1 to 5 and 7 are hereby recalled for cross-examination, subject to the petitioner paying a sum of Rs.1,500/- each to PWs 1 to 5 and 7 at the time of their examination.

9. Learned VI Additional Chief Metropolitan Magistrate, Hyderabad is directed to fix a specific date and the petitioner is directed to cross-examine them without taking any further adjournment.

Pending miscellaneous petitions, if any, shall stand closed.

P. KESHA RAO,J

Date: 10.8.2018

KPM