

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

**CRIMINAL PETITION NO.5437 OF 2018**

**ORDER:**

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in CrI.M.P.No.412 of 2018 in C.C.No.363 of 2016 dated 06.04.2018, passed by the XVI Additional Judge-cum-XX Additional Chief Metropolitan Magistrate, Secunderabad, dismissing the application filed under Section 311 Cr.P.C to reopen the case for the purpose of adducing evidence.

The petitioner filed CrI.M.P.No.412 of 2018 under Section 311 Cr.P.C for the relief stated above, on the ground that, the petitioner has to adduce evidence to substantiate his defence with reference to the suits and other transactions pending before other Courts i.e. O.S.No.556 of 2015 on the file of I Junior Civil Judge, City Civil Court, Secunderabad and O.S.No.139 of 2015 before the III Senior Civil Judge, City Civil Court, Secunderabad, between the same parties pertaining to the same transactions. But, the Trial Court dismissed the petition assigned its own reasons, mainly on the ground that the case is coming on for arguments and at that stage, evidence cannot be reopened.

Aggrieved by the said order, the present criminal petition is filed to quash the order in CrI.M.P.No.412 of 2018 in C.C.No.363 of 2016 dated 06.04.2018, passed by the XVI Additional Judge-cum-XX Additional Chief Metropolitan Magistrate, Secunderabad, on the ground that, an opportunity should be afforded to the petitioner to prove his defence set up in the calendar case with reference to the material produced before the Court in two different suits referred above. But, the Court denied an opportunity to disprove the case of the complainant and committed an error.

The relief claimed in the petition is to “reopen” the above case for the purpose of adducing evidence under Section 311 Cr.P.C.

According to Section 311 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.

Section 311 Cr.P.C contains two limbs. The first limb is discretion of the Court and the second limb does not confer any discretion and it is obligatory for the Court to summon, recall and re-examine a witness, if the Court finds that the evidence of the proposed witness is necessary to decide the real controversy between the parties, effectively.

But, reopening of the **case** is not contemplated under Section 311 Cr.P.C, irrespective of the grounds or reasons assigned by the Trial Court and the petition for reopening the case is not maintainable under Section 311 Cr.P.C. Therefore, the criminal petition is liable to be dismissed on that ground alone.

In the result, criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

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**JUSTICE M. SATYANARAYANA MURTHY**

Date:11.09.2018

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