

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.6122 OF 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the order dated 12.02.2018 passed in CrI.M.P.No.248 of 2018 in C.C.No.588 of 2015 by the XVII Additional Chief Metropolitan Magistrate, Hyderabad, whereby the petition filed under Section 311 of Cr.P.C. was dismissed.

The petitioner herein filed CrI.M.P.No.248 of 2018 in C.C.No.588 of 2015 under Section 311 of Cr.P.C. to recall P.W.1, who was not cross-examined on 13.06.2017 though the matter passed over till 01.15 p.m. by the Presiding Officer of the Court. The reason assigned by the petitioner in the petition is that the learned counsel for the petitioner was held up in City Civil Court, Hyderabad arguing O.S.No.688 of 2017, due to such engagement in argument, he could not appear before the Court for cross-examination of P.W.1. But the Court treated cross-examination as NIL. Non-appearance of learned counsel for the petitioner is neither intentional nor wanton and prayed to allow the petition.

The Court below dismissed the petition on the ground that P.W.1 was examined long prior to filing of the petition and no steps were taken for examination of P.W.1 for six months, but filed the petition at belated stage after closure of the prosecution evidence.

Aggrieved by the said order, the present petition is filed on the same grounds as narrated in the petition filed before the Court below.

During hearing, learned counsel for the petitioner contended that the petitioner filed petition immediately after closure of cross-

examination of P.W.1., but on the assurance of Presiding Officer of the Court, the petition was taken back and presented the same after examination of other witnesses. Therefore, there was no abnormal delay in filing the petition and the delay, if any, is only due to assurance given by the Presiding Officer of the Court.

Learned Public Prosecutor pointed out the delay in filing the petition and requested this Court to dismiss the petition.

As seen from the material placed on record, the reason for failure to cross-examine the P.W.1 by the counsel is that he was engaged in arguing O.S.No.688 of 2017 before the City Civil Court, Hyderabad, consequently the cross-examination of P.W.1 was closed. Thereafter, several witnesses were examined, the petitioner did not take steps to file petition to recall P.W.1., but now the petitioner invented a different story that the Presiding Officer assured that he will recall P.W.1 at the end of the trial. This contention is not based on any material except correction of date in the 2nd page of the petition. But, that is not a ground to set aside the impugned order as the petitioner exhibited sheer negligence in prosecuting proceedings and filed a petition under Section 311 of Cr.P.C. to recall P.W.1 after examination of accused under Section 313 of Cr.P.C.

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 inventing one or other cause taking advantage of law laid down by Courts in various judgments, it became menace to trial Courts.

However, for the mistake of counsel, the party should not suffer. Therefore, keeping in mind that an opportunity be given to

have fair trial, I am of the considered view that it is a fit case to allow the petition on payment of Rs.2,000/- (Rupees Two thousand only) to P.W.1. On payment of Rs.2,000/- (Rupees Two thousand only) to P.W.1, the trial Court is directed to fix a date for appearance of P.W.1 for his cross-examination by the learned counsel for the petitioner herein and on appearance of P.W.1, leaned counsel for the petitioner shall cross-examine P.W.1 on the same day itself, in the event of failure to cross-examine P.W.1, the order shall stand vacated.

With the above, the criminal petition is disposed of. No costs.

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

15.06.2018
Ksp



JUSTICE M. SATYANARAYANA MURTHY