

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.6355 OF 2018

ORDER:

This criminal petition, under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to set aside the order dated 17.05.2018 in CrI.M.P.No.262 of 2018 in S.C. No.231 of 2016 passed by the Assistant Sessions Judge, Medchal, Ranga Reddy District, whereby the learned Assistant Sessions Judge dismissed the petition filed under Section 311 Cr.P.C. for recall of P.W.1.

2. The petitioner is the accused in S.C.No.231 of 2016 pending on the file of Assistant Sessions Judge, Medchal, Ranga Reddy District. He filed a petition under Section 311 Cr.P.C. for recall of P.W.1 - Smt.N.Priya, who was examined on 16.06.2017, on the ground that she was not confronted with the previous statements recorded by the police and failed to put the omissions during her cross-examination by the earlier counsel. Now he changed the counsel. At the time of preparing for argument, the counsel found that previous statements of P.W.1 which were recorded by the police during investigation, were not confronted to her and failed to put the omissions during her cross-examination and therefore, sought for recall of P.W.1 for further cross-examination to the limited extent.

3. Learned Public Prosecutor for the State (TG) opposed the petition and contended that the reason assigned by the petitioner is not bonafide, P.W.1 was cross-examined at length

on 16.06.2017 by the earlier counsel on record. Hence the reason assigned by the petitioner due to oversight certain statements were not confronted to the witness/P.W.1 is not a ground and prayed to dismiss the petition.

4. On hearing the argument of both the counsel, the learned Assistant Sessions Judge dismissed the petition following the principle laid down by the Apex Court in **A.G. v. Shiva Kumar Singh Yadav and Others**¹.

5. Aggrieved by the same, the present petition is filed on the ground that for the mistake of counsel, the party should not suffer, the counsel on record by oversight failed to confront the previous statements of P.W.1 recorded by the police during investigation and failed to mark the omissions, during her cross-examination. It is also contended that the Doctor, who treated the injured/P.W.1 allegedly received bleeding injuries, was also not cited as a witness. In the absence of any treatment by competent Doctor, the case of the prosecution cannot be believed and to elicit those aspects, further cross-examination of P.W.1 is necessary, but the learned Assistant Sessions Judge did not consider the request, though the earlier counsel by oversight failed to discharge his duties effectively and prayed to set aside the order under challenge.

6. During hearing, learned counsel for the petitioner reiterated the contentions raised in the petition while contending that the court can exercise power under Section 311 Cr.P.C. to

¹ AIR 2015 SC 3501

have fair trial and to do complete justice to the parties, and denial of opportunity to cross-examine the witness would amount to denial of justice, and therefore, if for any reason, the witness is not recalled for the limited purpose i.e. confronting previous statement recorded by the police, with regard to omissions, the petitioner will be put to serious loss and prayed to set aside the order.

7. The Public Prosecutor for the State (TG) has supported the order under challenge in all respects.

8. Considering rival contentions perused the material available on record, the sole point that arises for consideration is,

Whether the witness/P.W.1, who was examined on 16.06.2017 be recalled for the purpose of confronting her previous statement recorded by the police and to elicit certain omissions, exercising power under Section 311 Cr.P.C.?

9. **POINT:**

Undisputedly, the witness/ P.W.1 was examined on 16.06.2017 i.e. about a year ago and the counsel was cross-examined her at length. But the reason for filing of the present petition is that due to oversight, earlier counsel on record failed to elicit certain facts with regard to previous statements recorded by the police and the same was detected by the counsel who was engaged at the time of argument. Though the petitioner is not directly disclosing that change of the counsel as a ground, but virtually it is a ground urged in the petition. This

contention cannot be accepted, since it is virtually due to change of counsel, not otherwise.

10. The power of this Court under Section 311 Cr.P.C. is purely discretionary, 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.

11. It is an admitted fact that the matter at the stage of argument of both the counsel. At this stage the present petition was filed before the trial court. In **GAYATHRI v. M.GIRISH²** and **AG v. SHIV KUMAR YADAV & ANR.³** the Apex Court held deprecated the practice of filing petitions for recall of witnesses one after the other and on change of counsel.

12. In view of the law declared by the Apex Court, and the reasons assigned by the petitioner for recalling of the witness under Section 311 of Cr.P.C., I find no ground to recall of P.W.1 and the order is free from any legal infirmity, warranting interference while exercising power under Section 482 Cr.P.C. Therefore, the criminal petition is liable to be dismissed at the stage of admission.

² 2016(3) L.S. 17 (SC)

³ AIR 2015 SC 3501

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13. In the result, the criminal petition is dismissed at the stage of admission.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 21.06.2018
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