

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.8373 of 2017

ORDER :

Impugning the dismissal order of the learned V Special Magistrate in Erramanzil in Crl.M.P.No.1139 of 2017 in C.C.No.73 of 2016, dated 27.06.2017, present criminal petition is filed. It was the dismissal order of the re-call of PW.1 under Section 311 Cr.P.C. for cross-examination of PW.1 by the accused that was sought after hearing both sides.

2. A perusal of the impugned order running in three pages in six paras including the result portion shows in the application it is averred that on that day when cross-examination of PW.1 treated nil, neither counsel nor accused could attend being out of station and there was no willful default, thereby it is required to re-call PW.1 for cross-examination. It is the duty of the accused to appear before the Court and represent the matter in person or through Advocate and both admittedly failed to attend the Court and not chosen to cross-examine PW.1. The counter of the complainant shows PW.1 chief-examination was recorded on 22.08.2016 on affidavit taken on oath and the cross-examination treated nil was on 21.03.2017 for not chosen to cross-examine in the seven months period all through between. The lower court is thereby justified in dismissal of the petition on that ground. However, the fact remains from the second part of Section 311 Cr.P.C., the Court shall re-call the witness where it is essential for the just decision of the case. Here the cross-examination is a valuable right. No doubt, the accused earlier not availed and without that the evidence is incomplete even for

appreciation of the facts before the Court. Thereby, such cross-examination is essential for a just decision of the case. Thereby, the trial Court on imposing some costs could have been permitted rather than dismissal by virtue of mandate of second part of Section 311 Cr.P.C.

3. Having regard to the above, the criminal petition is allowed by setting aside the dismissal order, dated 27.06.2017, of the learned V Special Magistrate in Erramanzil in CrI.M.P.No.1139 of 2017 in C.C.No.73 of 2016, by allowing the PW.1's cross-examination on costs of Rs.5,000/- (Rupees five thousand only) payable to the Army Welfare Fund on the day fixed by the trial Court and if failed to avail, the impugned order of the lower Court impugned holds good for all purposes.

Miscellaneous petitions pending, if any, shall stand closed.

19th December 2018.

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Dr. B. SIVA SANKARA RAO, J