

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE No.1835 of 2018

ORDER:

This Criminal Revision Case is arising out of the Docket Order dt. 31-052018 passed by XXIII Special Magistrate Court, Hyderabad, in C.C.No.127 of 2018 (Old C.C.No.258 of 2017 of XXII Special Magistrate Court, Hyderabad).

Heard both sides and perused the material on record.

The brief facts of the case are that originally Crl.M.P.No.1771 of 2018 was filed under Section 311 Cr.P.C. for recalling of PW.1 for cross examination. In spite of allowing the petition, the cross examination could not be done as the counsel was not available to conduct cross examination, as such the Court passed an impugned Order dt. 31.05.2018.

The petitioner No.1 herein has filed a petition in Crl.M.P.No.1771 of 2018 under Section 311 Cr.P.C. before XXIII Special Magistrate, Hyderabad, to recall PW.1 for

cross-examination on behalf of the accused and the same was allowed vide order dated 31.5.2018.

As per the orders passed in the recall petition, the revision petitioner has to cross-examine the witness-PW.1. The clerk of the petitioner Sri Venkatesh informed to the Court below that his counsel would come at 2.30 P.M., 3.30 P.M. or 4.30 P.M. But his counsel did not turn up till 4.10 P.M. Therefore the Court below has recorded the cross-examination of PW.1 as 'NIL' and posted the matter for 313 Cr.P.C. examination to 11.6.2018. Aggrieved by the impugned docket order, the present revision is filed.

The docket order passed by the trial Court reveals that the matter was posted for cross-examination of PW.1 on 31.5.2018. The Court below also waited for the counsel of the revision petitioner till 4.00 P.M., but, as nobody has turned up, the cross-examination of PW.1 was recorded as 'NIL'.

Admittedly, the case was posted for 313 Cr.P.C examination on 11.6.2018. The recalling of witness under Section 311 Cr.P.C. is an interlocutory order. The trial

Court has allowed the petition under Section 311 Cr.P.C. filed by the petitioner. But the petitioner could not avail the opportunity of cross-examining the witness. The petitioner was not diligent enough to prosecute his case. Therefore, it is not proper to interfere with the order passed by the Court below. However, liberty is granted to the petitioner to avail appropriate remedy available to him.

Accordingly, the Criminal Revision Case is disposed of.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

GUDISEVA SHYAM PRASAD, J

Date: 05-12-2018
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THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Crl.R.C. No.1835 of 2018
Dt. 05-12-2018

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