

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.7072 of 2018

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed challenging the Order Dt.08.06.2018 in CrI.M.P.No.1189 of 2018 in C.C.No.102 of 2018 passed by VI Special Magistrate, Erramanzil, Hyderabad, allowing the petition filed under Section 311 of Cr.P.C. to summon the documents i.e., Exs. A.1 to A.6 marked in O.S.No.335 of 2011 on the file of III Additional Chief Judge, City Civil Court, Hyderabad, as the certified copies of those documents were marked as Exs. A.1 to A.6 in C.C.No.102 of 2018 while negating the relief to cross examine Pw.1 further.

The petitioners contested the petition by filing Counter. But the Magistrate passed an order observing that the documents were summoned only for limited purpose for verification and allowed the petition while refusing to grant permission to cross examine Pw.1 further, as requested by the learned counsel for the accused before the trial Court.

Aggrieved by the Order, the present Petition is filed on various grounds, but mainly on the ground that the Court cannot verify the documents unless they are marked as exhibits and the refusal to afford an opportunity to cross examine the witness Pw.1 based on the originals on summoning from O.S.No.335 of 2011 on the file of III Additional Chief Judge, City Civil Court, Hyderabad, is denial of an opportunity to cross examine the witness, which is against the

principle of natural justice, and requested this Court to set aside the Order passed by the Court below.

During hearing, learned counsel for the petitioners reiterated the said contention and mainly demonstrated that the Court is not supposed to verify the documents unless they are marked before it. It is also contended that denial of an opportunity to cross examine Pw.1 further is nothing but violation of right to cross examine Pw.1 and it is against the principle of natural justice and requested to pass appropriate orders setting aside the Order passed by the Court below.

During hearing, learned counsel for the petitioners virtually reported no objection for summoning the documents, but consideration of those documents by verifying them by the Magistrate is erroneous for the reason that unless those documents are marked as exhibits, they cannot be verified by the Magistrate, but such argument can be advanced only at the end of the trial. If such point is raised, the Magistrate is bound to answer the point raised by the petitioner during the course of argument in C.C.No.102 of 2018 in the judgment. Leaving it open to raise such objection during the course of argument in C.C.No.102 of 2018, this contention is rejected for deciding the present petition.

The other contention of the learned counsel for the petitioners is that denial of an opportunity to cross examine PW.1 is virtually violation of principles of natural justice.

Section 137 of Evidence Act deals with examination in chief and according to it, examination of a witness by the party who calls him shall be called his examination in chief. Therefore, the party who shall be examined-in-chief, or who is to be summoned who shall produce the document, becomes a witness and he can be cross examined. But, when no examination in chief is taken place, the question of cross examining Pw.1 further does not arise, except on the application filed under Section 311 Cr.P.C. Therefore, refusal to grant permission to cross examine Pw.1, further, is not a ground to set aside the Order dt. 08.06.2018 in CrI.M.P.No.1189 of 2018 in C.C.No.102 of 2018 passed by VI Special Magistrate, Erramanzil, Hyderabad,

Leaving it open to the petitioners to raise objection as to the consideration of the documents summoned from O.S.No.No.335 of 2011 on the file of III Additional Chief Judge, City Civil Court, Hyderabad, at the stage of argument, this Criminal Petition is dismissed.

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

M. SATYANARAYANA MURTHY, J

Date: 13-08-2018
Note: Issue C.C. by 16.08.2018
eha

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



eha