

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.1789 of 2018

ORDER:

Heard the learned counsel for the petitioner and the 2nd respondent.

The present revision case is filed questioning the orders dated 30.05.2018 passed in CrI.M.P.No.1433 of 2018 in C.C.No.98 of 2016 on the file of the learned Special Magistrate V, Hyderabad, dismissing the petition filed under Section 311 Cr.P.C. to recall PW.1 for cross-examination.

The facts in brief are that the 2nd respondent herein filed a private complaint vide C.C.No.98 of 2016 against the petitioner for the offence under Sections 138 and 142 of the Negotiable Instruments Act. During the course of trial, the 2nd respondent herself examined as PW.1 on 27.04.2017. On that day, the counsel for the petitioner herein sought adjournment for cross-examination of PW.1. Thereafter, though the matter underwent several adjournments till 23.04.2018 i.e., for a period of about one year, the petitioner has not chosen to cross-examine PW.1. In those circumstances, the right of the petitioner to cross-examine PW.1 was forfeited on 23.04.2018. Thereafter, the petitioner filed CrI.M.P.No.1433 of 2018 to recall PW.1 for cross-examination. The said petition was dismissed by the Court below on 30.05.2018. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioner would submit that on 23.04.2018 when the calendar case was called at call work, the counsel for the petitioner did not enter into the Court hall due to heavy traffic and by the time the counsel reached the Court, the Court treated cross-examination of PW.1 as nil and posted for further evidence of PW.1. As such, non-cross-examination of PW.1 on 23.04.2018 is neither willful nor wanton.

Per contra, learned counsel appearing for the 2nd respondent contended that though sufficient opportunity has been given to the petitioner to cross-examine the 2nd respondent i.e., for a period of one year, the petitioner has not chosen to cross-examine her. However, learned counsel fairly conceded that since the closure of cross-examination would affect the rights of the petitioner, requested this Court to give an opportunity finally.

Having heard both the counsel and a perusal of the material on record in the form of the impugned orders in the present revision case, it is clear that though PW.1 was examined on 27.04.2017, she was not cross-examined till 23.04.2018. This fact itself establishes that the petitioner was not interested to cross-examine PW.1. Be that as it may, to accommodate the petitioner, this Court deems it appropriate to give another opportunity to him to cross-examine PW.1.

Accordingly, the criminal revision case is allowed setting aside the orders passed in CrI.M.P.No.1433 of 2018 in C.C.No.98 of 2016 dated 30.05.2018 on the file of the learned Special Magistrate V, Hyderabad, and PW.1 is recalled for cross-examination by the petitioner, subject to paying an amount of Rs.20,000/- (Rupees Twenty thousand only) to the 2nd respondent. However, the learned Special Magistrate V, Hyderabad, is directed to fix a specific date and on that date the petitioner is directed to cross-examine PW.1 without taking further time. In default, this order stands automatically cancelled.

Miscellaneous petitions, if any, shall stand closed.



P. KESHA RAO, J

Date: 12.07.2018.
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