

THE HONOURABLE SRI JUSTICE P.KESHA RAO

CRIMINAL PETITION No.8365 of 2017

ORDER:

Heard the learned counsel for the petitioner as well as the learned Special Public Prosecutor for the respondent-State.

The prayer sought for in the present Criminal Petition is as under:

“..... to call for the records pertaining to the Order, dated 18.04.2017 passed by the Hon’ble I Additional Special Judge for Trial of SPE& ACB cases cum V Additional Chief Judge, City Civil Court at Hyderabad in Crl.M.P.No.915 of 2016 in C.C.No.84 of 2013 and to quash the same by dismissing the application of the respondent filed under Section 311 of Cr.P.C.”.

The present Criminal Petition is filed against the orders passed in Crl.M.P.No.915 of 2016 in C.C.No.84 of 2013, dated 18.04.2017 on the file of the Court of I Additional Special Judge for Trial of SPE and ACB cases-cum-V Additional Chief Judge, City Civil Court at Hyderabad allowing the petition filed under Section 311 of Cr.P.C. by the respondent herein by recalling the PW-1 for further chief examination.

The facts of the case are that originally, the *de facto* complainant lodged a complaint on 16.11.2007 before the ACB authorities against the petitioner (AO) herein stating that he obtained permission in the Grampanchayat and started

construction of the house in the plot. The said construction was made upto the lenth level. Since there were electric wires passing over the house, the workers were expressing fear that they will suffer shock and they stopped the work. Further, on 22.10.2007, the complainant met the Assistant Engineer (AO) APCPDCL i.e., petitioner in Gajwel and gave application for removal of wires passing over the construction of the house. The complainant again met him two to three times. However, as the petitioner (AO) was busy with the work, he asked complainant to meet him later. On 02.11.2007, the complainant met the Superintending Engineer and explained the problem. Thereupon, the S.E. telephoned to the petitioner (AO) and asked him to attend the work. On 6.1.2007, when the complainant met the petitioner (AO) in his Office, the petitioner (AO) informed that he requires Rs. 10,000/- for expenses. On enquiry as to why he requires Rs.10,000/-, he informed that for the purpose of preparing estimation and also for required Demand Draft, the amount of Rs.10,000/- is required. When the complainant expressed his inability to pay such huge amount, the petitioner (AO) herein informed that unless the amount is given, the work will not be done. Since the complainant was not interested to pay the said amount, he lodged a complaint. Pursuant to the complaint, a trap was conducted and it was successful. Thereupon, after investigation, charge sheet was filed. After taking cognizance of the offences, the Court below has taken the case on file *vide* C.C.No. 84 of 2013 (old C.C. No.6 of 2011). The prosecution has examined the PW-1 and he was also cross examined by the petitioner herein. At that stage, the respondent herein filed a petition *vide* CrI.M.P.No.915 of 2016

under Section 311 Cr.P.C. to recall PW-1 for further evidence.

In the said petition, it is stated as under:

“ The case of the prosecution is that the de facto complainant was examined as PW-1 but he did not elicit anything about the crux of the case which is very important in view of the fair trial and just decision of the case.”

In reply to the said petition, the petitioner herein filed a counter affidavit stating that no reasons are mentioned in the petition to recall PW-1. It is also stated that PW-1 cannot be recalled after cross examination and re-examination to nullify the effect of cross examination or to fill up the lacuna in the above case. The Court below, after hearing, allowed the above said petition by orders dated 18.04.2017. In the said orders, the Court below observed that recalling of witnesses under Section 311 of Cr.P.C. is discretionary and the power has to be properly exercised for the just decision of the case. The case of the prosecution is that the *de facto* complainant was examined as PW-1, and anything about the crux of the issue which is very important was not elicited for fair trial and just decision of the case. Further, no prejudice will be caused to the respondent/accused officer, if the petition is allowed. After hearing both sides, the Court below allowed the Criminal Miscellaneous petition. Aggrieved by the said orders, the present criminal petition is filed.

A perusal of the material on record would disclose that except stating that the prosecution did not elicit anything about the crux of the case through PW-1, no reasons are mentioned in the petition as to why the witness was sought to be recalled.

However, the petitioner herein, in the counter, has stated that no reasons are mentioned to recall the PW-1. The chief and the cross examination of PW-1 was filed in the material papers. A perusal of the same would indicate that the PW-1 has deposed every point on the issue of demand of Rs.10,000/-, the procedure followed during the course of trap proceedings etc. A reading of the same would indicate that the prosecution has not missed any point so as to say that the prosecution could not elicit anything about the crux of the case. The observations made by the Court below relying on the Judgments of the Hon'ble Supreme Court regarding the principles for exercising the power under Section 311 Cr.P.C., is not in dispute. However, when the prosecution is coming up with a petition under Section 311 for recalling of PW-1, the basic ingredient for recalling of PW-1 has to be mentioned i.e., what are the points to be elicited and which aspects go to the very root of the matter for arriving at the just decision in the case and that in the absence of the same, prejudice will be caused to the prosecution. However, in the case on hand, except stating that the prosecution did not elicit the crux of the case through PW-1, nothing is mentioned. Therefore, this Court feels that in the light of the evidence of PW-1, no further clarification is needed. As such, this Court is of the opinion that there are no merits in the criminal miscellaneous petition filed before the lower Court by the respondent herein *vide* CrI.MP.No.915 of 2016 and is liable to be set aside.

Accordingly, the criminal petition is allowed and thereby, the orders passed by the Court below in CrI.MP.No.915 of 2016 in

CC No.84 of 2013, dated 18.4.2017 are set aside. No order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.KESHA RAO

Date: 04.04.2018

Slk



THE HONOURABLE SRI JUSTICE P.KESHA RAO



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