

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.7610 OF 2018

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code'), is filed by the petitioner - accused Nos.1 to 4, to quash the order, dated 20.06.2018, passed in CrI.M.P. No.1321 of 2018 in Calendar Case No.138 of 2017, by the learned VI Additional Metropolitan Magistrate at Bheemunipatnam, Visakhapatnam District, Andhra Pradesh State.

2. The petitioners herein filed a petition under Section 311 of the Code to recall PWs.1 to 4 and 7 for cross-examination, alleging that the petitioners engaged a counsel, who did not cross-examine the witnesses due to ill-health and he was not attending the Court. Thereafter, they proposed to obtain legal aid from the Legal Services Authority being members of poor family, unable to continue the counsel on record, but they could not apply for providing legal aid and continue the same advocate, but the learned counsel did not cross-examine the witnesses and, therefore, requested to permit them to recall PWs.1 to 4 and 7 for their cross-examination.

3. The learned Public Prosecutor before the trial Court reported no objection, however, the trial Court dismissed the petition on the ground that PW.1 was cross-examined about a month ago and later other witnesses were examined and at the stage of examination of accused under Section 313 of the Code, the aforesaid petition was filed.

4. During hearing, the learned counsel for the petitioners herein reiterated the contentions while requesting to afford an opportunity to cross-examine the witnesses - PWs.1 to 4 and 7, so as to have fair trial and to prove the innocence of the petitioners, whereas, the learned Public Prosecutor for the State of Andhra Pradesh opposed the petition.

5. Taking into consideration of the facts and circumstances of the case and ill-health of the learned counsel on record before the trial Court, I deem it appropriate to recall PWs.1 to 4 and 7 for their cross-examination by the counsel appearing for the petitioners, to afford a sufficient opportunity to cross-examine the witnesses, irrespective of the stage of proceedings. Hence, the learned VI Additional Metropolitan Magistrate, Bheemunipatnam, is directed to fix two dates specifically for cross-examination of PWs.1 to 3 on one day and PWs.4 and 7 on the following day, recall the witnesses to appear before the trial Court for cross-examination on the respective dates fixed by the Court. In the event of failure of the learned counsel for the petitioners to cross-examine the witnesses, the Magistrate shall record their cross-examination as NIL and follow the procedure and dispose of the Calendar Case in accordance with law.

6. With the above directions, the present Criminal Petition is disposed of at the stage of admission itself.

Consequently, Miscellaneous Petitions, if any, pending in the present Criminal Petition, stand closed.

M. SATYANARAYANA MURTHY, J

September 17, 2018

Mgr

