

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.13114 of 2011

ORDER:

This petition is filed by the petitioner, who is the revision petitioner/accused, seeking to quash the order, dated 02.09.2011, passed by the court of II Additional District Judge, Kadapa at Proddatur, in CrI.R.P.No.45 of 2011, which was dismissed confirming the order, dated 17.09.2011, passed by the court of II Additional Judicial magistrate of First Class, Proddatur, in CrI.M.P.No.770 of 2011 in C.C.No.25 of 2010, by virtue of which the trial court allowed the petition filed to summon the son of PW1 as additional witness.

2. Heard the counsel for the petitioner and the Public Prosecutor appearing for the respondent.

3. The petition viz., CrI.M.P.No.770 of 2011 in CC.No.25 of 2010, was filed by the Public Prosecutor under Section 311 CrPC seeking for summoning the son of the complainant, on the grounds that the said witness is necessary to identify the signature of the plaintiff on the plaint and also to speak about the transactions since he was present during the transaction. The trial court in its order, observing that since the plaintiff, who was examined as PW1 died and since it is the contention of the son of the plaintiff that he was present during the transaction, it would meet the ends of justice and to bring the true facts to the light, allowed the said petition. In the revision

filed by the petitioner also, the court below, by the impugned order, also made the same observations.

4. The orders of both the courts below do not suffer from any infirmity as they rightly observed that since there was no need for the investigating officer to examine the son of the plaintiff at that time, he was not cited as a witness and since the plaintiff died, it has become necessary for the prosecution to examine this witness in order to prove the transactions.

5. Hence, this court opines that there is need to interfere with the order passed by the courts below. The son of the plaintiff shall be examined to identify the signature of the plaintiff and also to speak about the transactions that took place in his presence.

6. With the above observations, the Criminal Petition is dismissed. Interim stay granted by this court in CRLP MP No.14922 of 2011 dated 15.12.2011, shall stand vacated.

As a sequel, the miscellaneous applications pending, if any, shall stand closed.

T. RAJANI, J

November 5, 2018
LMV