

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Crl.R.C.No.1345 of 2013

ORDER:

Heard both sides.

2) At the outset, I do not find any perversity or illegality in the order impugned. The Trial Court having found that the answer given by PW.5 in her cross-examination is quite contrary to her 161 Cr.P.C statement which is hostile to the case of prosecution, allowed Crl.M.P.No.147/2013 in C.C.No.7/2010 filed by the prosecution under Section 311 Cr.P.C to recall PW.5 for cross-examination. It is true that as argued by learned counsel for petitioner and as held in *Public Prosecutor, High Court of A.P v. Thummala Janardhana Rao and others*¹ relied upon by him, when the prosecution witness does not give a total go-by to what he has stated in the chief examination and he has not exhibited any element of hostility to the prosecution, he cannot be declared hostile on the ground that he blurted out in the cross-examination something which is not favourable to the prosecution. However, as rightly observed by the Trial Court, the circumstances are different in the case on hand. In her 161 Cr.P.C statement, PW.5(LW.6) stated that “Smt.G.Sakunthala Bai, Supervisor (accused) has attended my office on 26.05.2008 to weekly meeting”. Ofcourse in the cross-examination of the defence, the witness with reference to Ex.D.7—copies of the tour diary stated

¹ 1998 (2) ALD (Crl.) 447 (AP)

that on 26.05.2008, the AO was touring at 7th ward Siripuram veedi, Bobbili. To a Court question, the witness further answered that when the Supervisors were touring in any particular area they had no occasion to attend ICDS office and if they attended, they should sign in the attendance register. So in a way, PW.5 answered in the cross-examination as if on 26.05.2008 the AO had not attended the office but she was touring at Siripuram veedi at Bobbili. When her evidence in the cross-examination is juxtaposed with her 161 Cr.P.C statement, both would go diametrically opposite to each other and her evidence in cross-examination would exhibit a sort of hostility towards prosecution. As rightly pointed out by the Trial Court, whether the version in her 161 Cr.P.C statement is a gospel truth or not is not relevant at this stage. What is germane for consideration is, in order to decide the hostility of the witness, her 161 Cr.P.C statement can certainly be looked into. Therefore, the prosecution is entitled to request the Court to recall the PW.5 for cross-examination and the order of the Trial Court was right in acceding to the request of the prosecution. The impugned order is thus impregnable.

3) Accordingly, this Criminal Revision Case is dismissed.

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

U.DURGA PRASAD RAO, J

Date: 28.11.2018

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