

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.10500 of 2018

ORDER :

The petitioners are A.1 to A.3 of C.C.No.396 of 2008 on the file of the XI Additional Chief Metropolitan Magistrate, Secunderabad. It is a police warrant case out come of Crime No.262 of 2006 of Mahankali Police Station, registered for the offence punishable under Section 406 read with 34 IPC and after investigation police filed final report, that was taken cognizance for the offence supra by allotting C.C.No.396 of 2008 and after hearing and framing of charges, the trial was proceeded with and in the progress of the trial, after examination of three witnesses PWs.1 to 3, who are L.Ws.1 to 3 out of 20 witnesses cited in the charge sheet, in chief sought for differing of the cross-examination till completion of the evidence of other witnesses up to LW.10 by invoking Section 242 (3) Cr.P.C. in Crl.M.P.No.1876 of 2018. The same was ended in dismissal by order, dated 25.08.2018, which is the subject matter of impugment. The observation of the learned Magistrate was that the case is mainly depending upon documentary evidence for the offence of criminal breach on trust. Though the Court got a power to permit to differ the cross-examination of any witness till other witnesses are examined under Section 138 of the Indian

Evidence Act, considering the nature of the offence, which squarely based on documentary evidence, the prayer cannot be accepted and all the more the learned Public Prosecutor after cross-examination of witnesses completed, can decide any necessity to examine or not of the other witnesses within his prerogative as also held in this regard by the High Court in **Nanduri Ramakrishna and another v. Penakati Narsimha Murthy @ Avatharam**¹. No doubt, Section 242(3) Cr.P.C. provides as part of the adjective law as a rule of evidence, conferring discretion on the trial Magistrate/trial Judge where ends of justice required to differ the cross-examination of the witnesses or permit any re-examination even. In fact, there is no duty bound by the learned Public Prosecutor representing the prosecution to examine all the witnesses nor accused is entitled to compel examination of all witnesses cited by the prosecution in the final report and if at all there is any non-examination of a witness unless shown material witness omitted fatal to the prosecution case, the accused is entitled either to ask to examine as a defence witness or Court witness. Once such is the law, the accused cannot compel by invoking that provision to differ the cross-examination of PWs.1 to 3 by compelling the prosecution

¹ AIR 2013 AP 73

to examine LWs.4 to 10 also in asking to cross-examine all witnesses at a time.

2. Having regard to the above, there is nothing to interfere with the impugned order, but for to say after completion of cross-examination of PWs.1 to 3 by accused, if at all any corroboration is required, it can be asked to differ cross-examination of one witness to seek corroboration by cross-examination of two witnesses at a time.

3. With these observations, the criminal petition is disposed of, rather than dismissal.

Miscellaneous petitions pending, if any, shall stand closed.

23rd October 2018.

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Dr. B. SIVA SANKARA RAO, J