

THE HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL PETITION No.4959 of 2011

ORDER:

Heard the learned Standing counsel-cum-Special Public Prosecutor for ACB Cases-petitioner State.

The present criminal petition is filed questioning the orders passed in CrI.MP.No.360 of 2011 in C.C.No.32 of 2007 dated 11.5.2011 on the file of the Court of the I Additional Special Judge for SPE & ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad for dismissing the application filed under Section 311 Cr.P.C. to recall PW.3 for further chief examination.

The facts of the case are that on 27.11.2006, the respondent-accused officer was trapped by the A.C.B. officials on demand and acceptance of bribe amount of Rs.20,000/- from the *de facto* complainant. During the course of trap on 27.11.2006 at 11.40 a.m., the respondent-accused officer accepted the bribe amount of Rs.20,000/- from PW.1 and the phenolphthalein test on both hand fingers of the respondent-accused proved positive. The bribe amount of Rs.20,000/- was seized from the possession of the respondent-accused. After investigation, charge sheet was filed. The Special Court has taken cognizance of the offences for which the respondent-accused was charged. During the course of trial, PW.3, who was the mediator, was examined in chief on 4.5.2011. On that day, after completion of the chief examination, the cross examination of PW.3 was deferred on the ground that the defence counsel was not available. On 11.5.2011, the petitioner has filed

an application in CrI.MP.No.360 of 2011 under section 311 Cr.P.C. to recall PW.3 on the ground that during the course of chief examination, the sample from remaining sodium carbonate powder, which was seized during post trap proceedings, attested by the mediators, could not be marked through him and the contents of post trap proceedings regarding the version of PWs.1 and 2, inmates of the jeep of respondent-accused officer at the time of trap, staff of office of the Dy. Executive Engineer and office of the Executive Engineer and the spontaneous explanation of the respondent-accused officer to the trap laying officer and recording their version in the post trap proceedings were not deposed by PW.3 and those aspects are vital for adjudication of the issue to be decided in the case. However, on the very same day, the Special Judge for SPE & ACB Cases, dismissed the petition by observing that PW.3 has spoken all the details in chief examination and there are no grounds to permit the prosecution for further chief examination.

During the course of hearing on the last occasion, this Court has asked the learned Special Public Prosecutor to place on record a copy of the chief examination of PW.3. In pursuant thereto, a xerox copy of the chief examination of PW.3 is placed on record. Perusal of the same would indicate that the purpose for which the prosecution wants to recall PW.3 regarding marking of remaining sodium carbonate powder, the spontaneous explanation of the accused officer, the version of PWs.1 and 2 at the time of trap, is not deposed by PW.3. Learned Public Prosecutor would submit that in a trap case spontaneous explanation given by the accused officer assumes much importance apart from marking of the

remaining sodium carbonate powder which was seized during the post trap proceedings and attested by the mediators. In order to bring on record the above said aspects, CrI.MP.No.360 of 2011 was filed. However, the Court below without properly perusing the chief examination of PW.3, simply dismissed the petition by observing that there are no grounds to permit the prosecution for further chief examination.

The issue to be decided in the present criminal petition is very narrow as to the power of the trial Court in summoning any person as a witness or recall or reexamine any person already examined. This Court and the Hon'ble Apex Court while dealing with the power under section 311 of Cr.P.C. held that any person can be summoned as a witness or recall or reexamine at any stage of the proceedings where it is essential. Looking into the facts of the present case, PW.3 has not deposed on the vital aspects of the versions given by PWs.1 and 2, spontaneous explanation given by the accused officer during the post trap proceedings as well as marking of the remaining sodium carbonate powder which was seized during the post trap proceedings and attested by the mediators. It is brought to the notice of this Court that the cross examination of PW.3, was not even completed. In such circumstances, if PW.3 is recalled, it is always open for the respondent-accused officer to cross examine PW.3 and elicit answers in this regard. Therefore, if the Criminal Petition is allowed, no prejudice would be caused to the respondent-accused officer.

Accordingly, the Criminal Petition is allowed and the petitioner is permitted to recall PW.3 for further chief examination.

Interim order granted earlier in Crl.P.MP.No.5032/2011 stands vacated.

Miscellaneous petitions pending, if any, in this Criminal Petition shall stand closed.

JUSTICE P.KESHA RAO

Date: 03/04/2018

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