

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.12703 of 2018

ORDER :

Heard the learned counsel for the petitioner/accused and the learned Public Prosecutor and perused the impugned order of the learned Magistrate, dt.05.11.2018 in CrI.M.P.No.1511 of 2018 in S.C.No.52 of 2015 dismissing the application u/ sec.311 CrPC for recall of P.Ws.1 to 3 and P.W.11. It is as pointed out by the learned Public Prosecutor not as a matter of course including by invoking Section 311 CrPC for recall of witnesses as and when the defence or prosecution chooses. The very wording of Section 311 CrPC running into 2 parts, first part speaks 'may' and the second part speaks 'shall'. So far as the 2nd part concerned, if the Court which recorded the evidence where the trial is pending feels further examination is necessary for just decision of the Court for its effective disposal and not otherwise. The order of the lower Court clearly spelt out of no valid or bonafide reason to note down in the petition mentioned even to invoke Section 311-part-1 CrPC and what is the area of the further examination supposed to be made out not even mentioned. The learned Public Prosecutor contends that there is every possibility of manoeuvring the witness by not to stand to the original chief-examination.

There is no quarrel that the Court got discretion for a just decision of the case if necessary for recall of any witness to put any questions by the Court to do so from the use of words 'shall' under Second part of Sec.311 CrPC and so far as the first part any use of the word 'may' if any application filed for recall it is not either routine or a matter of course but for a case should be made out. Practically there is nothing to interfere with the conclusion arrived by the Court below, but for to say, it did not consider whether it can put any questions for just

decision of the case from hearing of the parties as to there is any material aspects omitted, that are essential to ascertain. One of the core of contentions herein is that the contradictions and omissions not exhibited in the evidence of P.Ws.1 to 3 to put to P.W.11-the Investigating Officer and without those contradictions and omissions cause exhibited from the witnesses and put to the Investigating Officer, those cannot be used and law is also very clear in this regard.

Having regard to the above, the order of the learned Magistrate, dt.05.11.2018 in CrI.M.P.No.1511 of 2018 in S.C.No.52 of 2015 is set aside and the matter is remitted back to the Court below to consider subject to giving of the questions to be put to the witness in a sealed cover as to what are the omissions and contradictions that were not put to the witnesses earlier and what to be put equally to the Investigating Officer-P.W.11. Then it is power of the Court below either u/ sec.311 CrPC or u/ sec.165 of the Indian Evidence Act to put the questions and not the right of the party. Thereby the trial Court can put any questions out of those given in a sealed cover if any of those found relevant and admissible. If the trial Court feels just, instead putting questions by itself permit the counsel for the accused only those questions or out of it subject to its relevancy and admissibility, that too only if found essential for just decision of the case and not otherwise.

Accordingly and in the result, the Criminal Petition is disposed of. Consequently, miscellaneous petitions, if any, pending shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:06.12.2018
b/ o.vvr.