

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Petition No.539 of 2019

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioners/A.1 & A.2, to quash the order, dated 08.01.2019, passed in CrI.M.P.No.4501 of 2018 in C.C.No.94 of 2017 on the file of IV Special Magistrate, Kukatpally at Prashanthnagar, whereby, the petition filed by the petitioners/A.1 & A.2 under Section 311 of Cr.P.C. to recall P.W.1 to P.W.5 for further cross-examination, was dismissed.

2. Heard Sri Mahesh Raje, learned counsel for the petitioners/A.1 & A.2, Sri Mohd. Muzafferullah Khan, learned counsel for the 2nd respondent/de-facto complainant and perused the record.

3. The learned counsel for the petitioners/A.1 & A.2 would submit that one Praveen Reddy, who is the husband of Smt.Bharathi Devi, advocate on record for the petitioners/A.1 & A.2 before the trial Court, had cross-examined the P.W.1 to P.W.5. In fact, said Praveen Reddy is not a qualified advocate. Material questions were not put to P.W.1 to P.W.5. A criminal case was also registered against said Praveen Reddy for acting as an advocate without qualification. Since a qualified advocate had not cross-examined P.W.1 to P.W.5 and some material questions were not put to them, grave injustice would be caused to the petitioners/A.1 & A.2, if the impugned order is not set aside and if P.W.1 to P.W.5 are not further cross-examined and ultimately prayed to allow the application.

4. On the other hand, the learned counsel for the 2nd respondent/de-facto complainant would contend that one Smt.Bharathi Devi was the advocate on record for the petitioners/A.1 & A.2 before the trial Court. She conducted cross-examination of P.W.1 to P.W.5. These petitioners/A.1 & A.2 have changed four advocates for one reason or the other. The matter was posted for judgment before the trial court twice. Even then, the proceedings in the subject Calendar Case could not culminate. This application is filed to protract the proceedings and ultimately prayed to dismiss the same.

5. In view of the above rival contentions, the point that arises for determination in this Criminal Petition is whether the impugned order, dated 08.01.2019, passed in CrI.M.P.No.4501 of 2018 in C.C.No.94 of 2017 on the file of IV Special Magistrate, Kukatpally at Prashanthnagar, is liable to be set aside.

6. It is evident from the record that the subject Calendar Case was filed in the year 2015 and was numbered as C.C.No.194 of 2015. Thereafter, the case was renumbered as C.C.No.94 of 2017. It is also apparent from the record that P.W.1 to P.W.3 were examined on 24.08.2016. D.W.1 and D.W.2 were also examined on 03.03.2017 and 17.03.2017 respectively. There is no dispute with regard to the change of number of advocates by the petitioners/A.1 & A.2. Though it is contended that Praveen Reddy had conducted cross-examination of P.W.1 to P.W.5, there is no material to substantiate the same. It is also pertinent to state that a criminal case is also registered against the said Praveen Reddy on 13.02.2017 (Crime No.211 of 2017 of Miyapur Police Station, Cyberabad Commissionerate). This

application is filed at a belated stage. As per the records and on a perusal of impugned order, the petitioners/A1 & A.2 have filed number of applications from time to time in order to protract the proceedings, including an application under Section 45 of the Indian Evidence Act, 1872, to send the disputed documents to the handwriting expert for examination and report. Smt. Sheetal Agarwal, who is the proprietor of the 2nd respondent/de-facto complainant Industry, had filed an affidavit before this Court, wherein, she has stated that she has filed her affidavit in lieu of examination in chief on 08.03.2016 before the trial Court and she was cross-examined on 02.09.2016. It indicates that she was cross-examined by Smt. Bharathi Devi, advocate on record for the petitioners/A.1 & A.2 before the trial Court. Under these circumstances, there is no substance in the submissions made on behalf of the petitioners/A.1 & A.2 that P.W.1 to P.W.5 were cross-examined by Praveen Reddy. As far as the merit of the case is concerned, this application is filed belatedly, in order to protract the proceedings. The trial Court had assigned number of reasons in dismissing the application filed to recall P.W.1 to P.W.5 for further cross-examination. There is no impropriety or illegality in the impugned order. The Criminal Petition is devoid of merit and is liable to be dismissed.

7. Accordingly, the Criminal Petition is dismissed.

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

Dr. SHAMEEM AKTHER, J

09th April, 2019
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