

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.3161 OF 2018

ORDER:

Heard learned counsel for the petitioner/A-2 and the learned Public Prosecutor representing the 1st respondent State. From the endorsement, the 2nd respondent – *de facto* complainant is not necessary party to the present petition.

2. Impugning the order in Crl.M.P.No.2088 of 2017 passed by the learned Magistrate permitting P.W.10 further examination, covered by docket order, dated 02.02.2018, where the main impugment is without notice and opportunity the order was passed by the learned Magistrate. In fact a perusal of the docket order filed with the petition shows the petition was filed under Section 311 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') to reopen the evidence of P.W.10 for his further examination. The typed order copy shows notice as if not given to other side. It appears not is a mistaken outcome of the docket continuation clearly shows 'At request for counter call on 26.12.2017'. Same request for counter made by learned counsel for the accused continued in the further steps of the docket order on 26.12.2017, 03.01.2018, 10.01.2018, 19.01.2018, 24.01.2018 and finally to 02.02.2018. It was on 02.02.2018 ordered that A-2, A-4 called present. Other accused called absent. Petitions to condone their absence filed and allowed. Counter not filed in spite of several adjournments. Hence, filing of counter forfeited. Considering the reasons stated in the petition, P.W.10 evidence is essential for just decision of the case. Hence, petition is allowed. The accused cannot take any advantage of the said order even

taken for arguments sake. No notice given specifically on 19.12.2017. They were taking time to file counter. Thereby they got knowledge of the petition.

3. A perusal of the petition filed on 19.12.2017, without docket order, to ascertain there is any endorsement of service, in sum and substance, for the prayer speaks from the first para itself that concerned document was not marked through P.W.10, thereby his recall is essential for just decision of the case. It is the same that was considered and it is very clear from the order that the purpose of recall is only to mark the document and to speak any facts in relation thereto and not to fill up any further lacunas, thereby there is nothing to interfere with the order of the Court, as the Court even got *suo moto* power to recall P.W.10 under Section 165 of the Evidence Act and Section 311 Part-II of Cr.P.C. and the accused got absolute right and opportunity to cross-examine the witness on the further chief examination with reference to documents.

4. Accordingly, the Criminal Petition is disposed of instead of giving life to the litigation. Needless to say the documents to be marked must be served in advance to the learned counsel for accused on record.

Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

Date: 22nd January, 2019

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