

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No. 5366 of 2019

ORDER :

1. The present Criminal Petition is filed under Section 482 of Cr.P.C. aggrieved by the order, dated 04.07.2019 passed in CrI.M.P.No.860 of 2019 in C.C.No.837 of 2018 on the file of the II Additional Chief Metropolitan Magistrate, Hyderabad, wherein an application filed under Section 311 Cr.P.C., to recall LWs.4 to 7 for examination, was dismissed.

2. Heard learned Additional Public Prosecutor appearing for the petitioner and learned Counsel appearing for the respondents/ accused.

3. The facts in issue are that a charge sheet came to be filed against the respondents/ accused for the offences punishable under Sections 447, 427 and 506 of I.P.C., which was taken on file and pending vide C.C.No.837 of 2018. During pendency of the C.C., the State represented by Public Prosecutor filed an application under Section 311 of Cr.P.C., to recall LWs.4 to 7 stating that on 20.12.2018, the evidence of LWs.4 to 7 was closed by the trial Court as they did not attend the Court. It is also submitted that the evidence of the above witnesses is very crucial for not only to bring home the guilt of the accused but also for better adjudication of the case. It is further submitted that summoning and examination of the said

witnesses would not cause any prejudice to the accused as the valuable right of cross-examination would be available to them. After considering the material on record, the learned Magistrate dismissed the said application. Challenging the same, the present Criminal Petition is filed.

4. Learned Additional Public Prosecutor appearing for the petitioner would submit that the evidence of LWs.4 to 7 is very much essential to prove the prosecution case.

5. Learned Counsel appearing for the respondents/ accused would submit that the case is posted for arguments and only to drag on the proceedings, the State preferred the said application.

6. The Criminal jurisprudence requires sufficient opportunity to be afforded either to the prosecution or the accused to put forth their case. In the present case, the evidence of LWs.4 to 7 was closed as they were not attended the Court on 20.12.2018. It is submitted by the learned Public Prosecutor that now the witnesses are ready to attend the Court to give evidence and they are very crucial witnesses to bring home the guilt of the accused.

7. Having regard to the facts and circumstances of the case and in view of the nature of offence, I feel that an opportunity may be given to the prosecution to examine LWs.4 to 7.

8. Accordingly, the Criminal Petition is disposed of directing the prosecution to produce LWs.4 to 7 before the trial Court on 28.11.2019 and examine all of them on the same day. It is made clear that the learned Counsel appearing for the accused shall complete his cross-examination on the same day. No further adjournments will be given on the said date. Since the case is of the year 2013, the learned II Additional Chief Metropolitan Magistrate, Hyderabad, shall conclude the trial within a period of two months from today.

9. Miscellaneous petitions, if any, pending, shall stand closed.

18.11.2019
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JUSTICE G. SRI DEVI

