

HONOURABLE JUSTICE G. SRI DEVI
CRIMINAL PETITION No.7677 of 2019

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. aggrieved by the docket order dated 22.10.2019, passed by the learned XXVI Metropolitan Magistrate, Ibrahimpatnam, Ranga Reddy District, in CrI.M.P.No.1197 of 2019 in C.C.No.217 of 2018.

2. The grounds on which the present Criminal Petition is filed are that the impugned order passed by the Court below is illegal, improper and contrary to the evidence on record; and that the Court below ought to have seen the version of the petitioners that there was no negligence on the part of the petitioners when the case was posted for cross-examination of P.W-1 on 07.11.2019 and because of the unavailability of the learned counsel for the petitioners, the petitioners sought an adjournment which was turned down. Aggrieved thereby, the present Criminal Petition is filed.

3. Heard learned counsel for the petitioners and perused the material available on record.

4. Admittedly, the petitioners have filed an application under Section 311 Cr.P.C. before the Court below stating that the aforesaid C.C. was posted on 07.11.2019 for examination of P.W-1 and on that day, P.W-1 was present and his chief-examination was recorded and that due to the absence of the petitioners and their counsel, the cross-examination of P.W-1 was treated as 'NIL' and the case was posted for further proceedings on 14.11.2019.

On 14.11.2019, the petitioners filed an application under Section 311 Cr.P.C. stating therein that on 07.11.2019, their counsel

was held up in the District Court at L.B.Nagar, Ranga Reddy District, in another case due to which he could not cross-examine P.W-1 on the said date, which was neither willful nor wanton. It was further stated that the cross-examination of P.W-1 is very much essential to elicit the real facts and accordingly requested to recall P.W-1 for the purpose of cross-examination.

The petitioners filed the aforesaid petition before the Court below showing the *bona fide* reason for not cross-examining P.W-1 on 07.11.2019. The said petition ought to have been allowed by the Court below instead the same was rejected only on a technical ground that the Court is not satisfied by the contents of the petition.

For the aforesaid reasons, the impugned order passed by the Court below is without application of mind and the same is liable to be quashed.

5. Accordingly, the Criminal Petition is allowed and the docket order dated 22.10.2019, passed by the learned XXVI Metropolitan Magistrate, Ibrahimpatnam, Ranga Reddy District, in CrI.M.P.No.1197 of 2019 in C.C.No.217 of 2018, is hereby quashed. The Court below is directed to recall P.W-1 for the purpose of cross-examination on a specific date and the petitioners are directed to cross-examine P.W-1 on the said date without fail.

6. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

27th November, 2019
dr