

HON'BLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.7349 of 2018

ORDER:

Heard the learned counsel for the petitioner/complainant and the learned Public Prosecutor representing the 1st respondent-State for notice issued to the learned counsel for the accused/respondents 2 and 3 failed to attend taken as sufficient service and taken as heard them and perused the impugned order and the grounds of the petition.

In the two petitions filed in CrI.M.P.Nos.4171 and 4172 of 2017 respectively one is to receive tax invoice bill book and the other is recall P.W.1 whose evidence including cross-examination already completed for further examination with reference to the proposed additional evidence to be received and those were allowed by conditional orders respectively dt.07.06.2018 by the learned III Addl.Judl.Magistrate of First Class, Kothagudem, Khammam district, permitting recall of P.W.1 subject to condition of the witnesses shall be examined and seeking of no further adjournments and the defacto-complainant is directed to appear on the next date fixed for leading the evidence and with observation of document stated is essential to prove the case of the complainant and from the reason explained, allowed to receive and to exhibit by recall of P.W.1.

Instead of appearance on the date fixed, the complainant filed adjournment application to condone the absence of P.W.1/complainant u/sec.256CrPC vide CrI.M.P.No.2063 of 2018 that was dismissed by the learned Magistrate holding that as the P.W.1 failed to appear despite the conditional order dt.07.06.2018 and failed to comply with the orders, there are no grounds to condone absence of the complainant/P.W.1.

The docket order of the Court in C.C.No.31 of 2015 dt.13.06.2018 shows as P.W.1 failed to comply with the orders supra dt.07.06.2018 in CrI.M.P.No.4172 of 2017, P.W.1's evidence was closed and his petition to

condone his absence was dismissed and posted for arguments to 20.06.2018. In the grounds impugning the said order what is stated is the trial Court should have been liberally considered to condone the absence of the P.W.1 instead of dismissal by closing the evidence.

Undisputedly, the conditional order once passed, it is the duty of the party to appear and comply with the condition but it is not even his case that even on that day he was present but filed application u/sec.256CrPC, to condone his absence for that day. Once the petition u/sec.256CrPC was rightly dismissed, for this Court while sitting against that order, there is nothing to interfere. It is also for the reason that in Section 311 CrPC application to receive tax invoice book what is stated is the cheque was not disputed and the ledger was disputed by the accused and it is necessary to file the tax invoice book. In fact, the burden is on the accused, once the cheque admitted was routed from the account of the accused under reverse onus clause. Once such is the case, the document once exhibited by this Court there is also any necessity as it can even be confronted to the accused if at all comes to witness box.

With these observations the Criminal Petition is dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

Date:05.02.2019
VVR