

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRI.P.Nos.12699 and 9479 of 2018

COMMON ORDER:

One is filed by State represented by Public Prosecutor and other by the defacto complainant impugning the order of the learned XII Additional Chief Metropolitan Magistrate, Hyderabad in Cri.MP.No.2088/2018, dated 09.04.2018 in the pending Criminal Case in CC.No.227/2009.

PW3-defacto complainant was examined in chief twice and was cross examined at three sittings as can be seen from the very record undisputedly. It is the grievance that it appears against the Public Prosecutor in addressing letter to the Director of Prosecutions from the change of another Public Prosecutor to conduct the case. The new Public Prosecutor filed the petition for recall of PW3 for further examination. The petition dated 04.04.2018 filed on 04.04.2018 reads that by then 11 witnesses were examined including victim as PW3 and after completion of cross examination of PW3, she filed affidavit in Court praying to re-examine saying that she could not explain certain crucial issues during cross examination and could not state certain important facts during chief-examination and it was returned as not maintainable. Meanwhile, proceedings issued by Director of Prosecutions changing the Public Prosecutor and PW3 contacted and sent an affidavit that he or she could not explain certain crucial facts in the cross-examination and could not depose certain crucial issues in chief-examination.

On perusal of the affidavit of PW3 it shows that PW3 could not elicit certain crucial facts before the Court. It is unfold therefore to drive the Court it is just and necessary to re-examine.

This is in crux in further saying one N.Purushotam-GPA holder of PW3, earlier, who is acquainted with the facts and necessary witness to be examined thereby necessary to examine the said N.Purushotham as a prosecution witness not cited besides recall and further examination of PW3.

That was opposed by the accused persons and the order of the learned trial Magistrate reads that the evidence of PW3, LW1 in chief conducted on 21.11.2017 and 04.11.2017 and cross-examined on 23.11.2018, 25.01.2018 and 29.01.2018, respectively and by the time of the order dated 09.04.2018, 13 witnesses of the prosecution among 16 witnesses in the charge sheet examined and her evidence is also already a lengthy one and Investigating Officer also examined and already LW2 was cited as GPA holder of PW3. The summoning of the GPA holder of PW3 again cannot be entertained and at this stage prosecution filed the petition appears only to cover-up the lacunaes and there are no grounds.

No doubt as pointed out by the learned Public Prosecutor and the counsel for the defacto complainant in the two petitions as petitioners, the order no way discusses as to why recall of PW3 can or cannot be permitted within the scope of Section 311 Cr.P.C either to exercise the discretion from any

foundation under part-I or if at all found any necessary for a just decision of the case or effective disposal of the case from the use of word 'shall' under part-II. What all the order speaks is only the Purushotham who is the GPA holder of PW3 sought to be examined cannot be permitted to be examined at this stage from closure of prosecution evidence. Now the crux is whether PW3 can be recalled for further examination.

The counsel for the defacto complainant in the course of hearing the petition tries to make out a case by drawing attention of the Court to the charge sheet contends saying certain crucial facts in relation there to could not be elicited in her chief-examination Public Prosecutor to bring on record that not even there atleast in the petition to consider what are those facts and what is the relevancy and recall of a witness is not a matter of course. Atleast it is the duty of the Public Prosecutor or the complainant or the defector complainant in filing petition to recall any witness to submit in a sealed cover what are the relevant areas that are missing and necessary in relation to the specific question to be put further for the Court to consider and that is not even contained in the case on hand.

Having regard to the above there is nothing to interfere with the impugned order but for to say it is not a bar by virtue of this order to file a fresh petition under Section 311 Cr.P.C. if at all necessary only for the recall of PW3 by giving in a sealed cover what are the relevant questions specifically to be put to allow if necessary only to such or some of those questions by

not mentioning the contents of the questions but for mentioning question numbers in the order.

With these observations petitions are disposed of. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

31.01.2019
tk.