

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

CRIMINAL PETITION No.13674 OF 2018

ORDER:

The criminal petition is filed impugning the dismissal of the petition in CrI.M.P.No.4623 of 2018, dated 03.12.2018, by the learned III Additional Chief Metropolitan Magistrate, Hyderabad, of the petition to recall P.Ws.3 & 4 filed by the petitioners/A-1 to A-3, in C.C.No.1523 of 2012, which is outcome of Crime No.16 of 2012 of Shah-Ali-Banda Police Station, for the offences punishable under Sections 406, 420 IPC and Section 5 of the A.P. Land Grabbing (Prohibition) Act, 1982.

2. The sum and substance of the averments in seeking recall of P.Ws.3 & 4 are that there was no cross-examination of them inadvertently even the prior witnesses 1 & 2 and the subsequent witnesses 5 & 6 of the prosecution were already cross-examined. It was happened mistakenly because of the long gaps from witness to witness and due to inadvertence and *bona fide* impression as if examined and when came on verification, found no cross-examination at all.

3. Learned Public Prosecutor opposed the said petition before the trial Court and the same was ended in dismissal by the impugned order.

4. Heard learned counsel for the petitioners and the learned Public Prosecutor for the respondent State and perused the material record.

5. As per the Evidence Act, particularly with reference to Sections 134 to 137, without cross-examination, the evidence is not a complete one. Cross-examination is one of the rights of the accused. It is the averment that it was happened inadvertently and not deliberately. The

Court got a power as it is not recall of a witness for further examination to know the area of what is left and what is relevant if at all to permit.

6. Having regard to the above, to sub-serve the ends of justice, subject to bearing of the costs of the P.Ws.3 & 4 being imposed by the trial Court, the Criminal Petition is allowed subject to further costs of Rs.5,000/- (Rupees five thousand only) payable to Army Welfare Fund and filing of proof before the trial Court.

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

DR.B.SIVA SANKARA RAO, J

Date: 29th January, 2019

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