

HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL PETITION No. 8097 of 2019

ORDER:

The present Criminal Petition is filed by the petitioners/A-1 to A-3, under Section 482 of Cr.P.C., seeking to quash the order, dated 08.07.2019 passed in CrI.M.P.No.546 of 2019 in C.C.No.322 of 2016 on the file of the XXVI-Additional Metropolitan Magistrate, Cyberabad at Ibrahimpatnam, Ranga Reddy District, and also the consequential docket order, dated 21.11.2019 passed in CrI.M.P.No.1176 of 2019 in C.C.No.322 of 2016.

The facts of the case, in brief, are that the 2nd respondent/complainant lodged a private complaint, under Section 200 of Cr.P.C., against the petitioners/A-1 to A-3, which was referred to Police, Yacharam Police Station, under Section 156 (3) of Cr.P.C. for investigation and report. Basing on the said reference, a case in Crime No.284 of 2015 of Yacharam Police Station, came to be registered. After completion of investigation, the police filed charge sheet against the petitioners/A-1 to A-3 for the offences punishable under Sections 468, 471, 419, 420 and 506 of I.P.C., which was taken on file as C.C.No.322 of 2016.

When the matter was posted for further evidence of the prosecution, the petitioners/A-1 to A-3 filed CrI.M.P.No.546 of 2019, under Section 311 Cr.P.C. seeking to recall P.Ws.1 to 3 for

the purpose of further cross-examination. It is stated in the petition that at the instance of P.Ws.2 and 3, P.W.1 filed the case with all sorts of false allegations and P.Ws.1 to 3 in a conspired manner converted the civil dispute into criminal case by lodging false complaint. It is also stated that P.Ws.2 and 3 are only the relevant persons to know the real facts about Ex.P6. It is also stated that the petitioners/A-1 to A-3 failed to get all relevant documents pertaining to the mischievous acts of P.W.3 and further due to lack of legal knowledge failed to inform all the real facts and also to hand over all relevant documents to their previous Counsel on record, as such, the previous Counsel on record has not completely cross-examined P.Ws.1 to 3 to elicit the real facts in dispute and to prove the innocence of petitioners/A-1 to A-3, conspired acts of P.Ws.1 to 3, concealed and hidden intention of P.Ws.2 and 3 in lodging the false case against the petitioners/ A-1 to A-3. Hence, to meet the ends of justice and for proper adjudication of the case, it is just and necessary to recall P.Ws.1 to 3 for further cross-examination, otherwise, the petitioners/ A-1 to A-3 will be put to irreparable loss, which cannot be compensated by any means.

Learned Additional Public Prosecutor opposed the petition and submitted that the evidence of P.W.1 was recorded in the

month of April, 2018, evidence of P.W.2 was recorded in the month of July, 2018 and the evidence of P.W.3 was recorded in the month of April, 2018, as such the petition is neither maintainable nor tenable. He also submitted that the witnesses were cross-examined at length by the previous Counsel for the petitioners/A-1 to A-3 and in order to delay the proceedings, the present petition is filed.

After considering the rival submissions, the trial Court partly allowed Crl.M.P.No.546 of 2019 by recalling P.Ws.2 to 3 on costs of Rs.500/- each and refused to recall P.W.1 on the ground that P.W.1 was suffering from Alzheimer since 2016. After recording further cross-examination of P.Ws.2 and 3, the petitioners/A-1 to A-3 again filed Crl.M.P.No.1176 of 2019 to recall P.W.1, which was dismissed by the learned Magistrate on the ground that there are no changed circumstances. Aggrieved by the same, the present Criminal Petition is filed.

Heard learned Counsel for the petitioner/A-1 to A-3, learned Counsel for the 2nd respondent/complainant and learned Additional Public Prosecutor appearing for the 1st respondent/State.

Learned Counsel for the petitioners/A-1 to A-3 reiterating the contents of the petition filed under Section 311 of Cr.P.C.,

submit that the trial Judge ought to have considered the intention of the petitioners/A-1 to A-3 to recall P.Ws.1 to 3, who are very crucial witnesses to put forth the real facts of the case. He further submits that the learned trial Judge dismissed the said petition on the ground that P.W.1 is suffering from Alzheimer since 2016. He further submits that P.W.1 is the prime witness and party to the present disputed document, as such to elicit the real facts and hidden intention of P.Ws.2 and 3, it is just and necessary to recall P.W.1 for further cross-examination. He also submits that during further cross-examination of P.Ws.2 and 3, they clearly deposed that P.W.1 is the relevant person to know the real facts about Ex.P6 as he is the party to the said document. Therefore, the presence of P.W.1 is required for his further cross-examination. He further submits that the petitioners/A-1 to A-3 have a right of fair investigation, fair inquiry and fair trial, as such recall of P.W.1 for further cross-examination is just and necessary, otherwise it will affect the legal rights of the petitioners/A-1 to A-3.

Learned Counsel for the 2nd respondent/complainant would submit that P.W.1 is suffering from Alzheimer since 2016, as such the trial Court has rightly dismissed the petition. He further submits that now the matter was posted for the examination of the petitioners/A-1 to A-3 under Section 313

Cr.P.C. and the present Criminal Petition is filed only to gain time.

From a perusal of the material on record, it reveals that in the petition filed under Section 311 of Cr.P.C., the petitioners/ A-1 to A-3 took a plea that at the instance of P.Ws.2 and 3, P.W.1 has filed the case with all sorts of false allegations and P.Ws.1 to 3 are the relevant persons to know the real facts about Ex.P6 and P.W.1 is proceeding with the case against the petitioners/ A-1 to A-3 on the instructions of P.W.2, more particularly at the instigation of P.W.3. The learned Magistrate, by order dated 08.07.2019, on perusal of the evidence observed that P.W.2, who is the son of P.W.1, stated that his father (P.W.1) was suffering from Alzheimer since 2016 and his father has executed AGPA in favour of 1st petitioner/A-1 to the extent of Ac.7.31 guntas, and that he also identified his signature on AGPA.

The record further reveals that the evidence of P.W.1 was recorded in the month of April, 2018, which clearly goes to show that the plea taken by P.W.2 that his father, P.W.1, was suffering from Alzheimer since 2016 and he cannot come to the Court for the purpose of further cross-examination cannot be believed. The trial Court without examining the documentary evidence pertaining to the so-called disease of P.W.1 and simply based on

the oral statement of P.W.2 refused to recall P.W.1, thereby curtailing the valuable right which has been accrued to the petitioners/A-1 to A-3 to cross-examine the said witness. In the facts and circumstances of the case, further cross-examination of P.W.1 is highly necessary for proper adjudication of the matter.

For the foregoing reasons, the learned XXVI-Additional Metropolitan Magistrate, Cyberabad at Ibrahimpatnam, is directed to recall P.W.1 for his further cross-examination and issue witness summons to him by fixing a date. It is made clear that P.W.1 shall appear before the trial Court on the date fixed by the trial Court and on which date the learned Counsel appearing for the petitioners/A-1 to A-3 shall complete his cross-examination and the trial Court shall not give any further adjournments on the said date.

Accordingly, the Criminal Petition is disposed of.

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

JUSTICE G.SRI DEVI

14.02.2020
gkv/Gsn

