

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.2836 OF 2021

ORDER:

Seeking the Court to quash the order dated 02.03.2021 that is rendered by the Court of XII Additional Chief Metropolitan Magistrate, Hyderabad, in CrI.M.P.No.706 of 2021 in C.C.No.58 of 2017, the present Criminal Petition is filed.

2. Heard the submission of Sri P.Rana Kamalasan, learned counsel for the petitioner as well as the learned Assistant Public Prosecutor representing Respondent-State.

3. Learned counsel for the petitioner by filing the present criminal petition has questioned the propriety of the order by which costs of Rs.2,000/- was imposed and ordered to be paid to each witness. Learned counsel for the petitioner contends that ordering to pay costs of Rs.2,000/- to each witness is exorbitant and indeed a sum of Rs.8/- per day is payable to each witness as traveling allowance and Batta as per the Criminal Rules of Practice and therefore, the order is unsustainable in the eye of law.

4. On the other hand, learned Assistant Public Prosecutor contends that basing on the delay caused and necessities of the witnesses such costs were imposed.

5. Chapter-XII of the Criminal Rules of Practice and Circular Orders, 1990 indicates the rules regarding Collection of Process Fee and Payment of Batta to be paid to Complainants and Witnesses. The expenses, which are payable to the witnesses for their attendance before the Court by the Government is totally different from the costs that are imposed by the Courts on the failure of a party to do a particular thing as required. Payment of costs cannot be equated to payment of Batta by the Government.

6. By the material available on record, what can be perceived is that the witnesses, who were examined as PWs 2 to 7 in C.C.No.58 of 2017 on the file of the Court of XII Additional Chief Metropolitan Magistrate, Hyderabad, were not cross-examined immediately on completion of chief-examination. By the impugned order, it is clear that the cross-examination of those witnesses was deferred at request and permission was accorded to cross-examine those witnesses on costs of Rs.1,000/-. It is

also indicated that even after several adjournments, the petitioner/accused did not choose to cross-examine those witnesses, as such, the cross-examination of those witnesses was recorded as 'Nil'. Subsequently, the petitioner/accused filed Crl.M.P.No.706 of 2021 seeking the Court to recall PWs 2 to 7 for cross-examination. The said petition was filed at the stage of examination of accused under Section 313 Cr.P.C.. However, the trial Court by making an observation that the petitioner/accused is intentionally causing delay in proceedings, allowed the application and permitted the petitioner/accused to cross-examine those witnesses on costs of Rs.2,000/- payable to each witness. Payment of costs is assailed and thereby the learned counsel for the petitioner/accused seeks to quash the impugned order so far as payment of costs is concerned.

7. When a query is put by this Court as to why the witnesses were not cross-examined immediately after the chief-examination, learned counsel for the petitioner states that those witnesses were arrayed as victims and if some of the witnesses are cross-examined the other witnesses would get alert and they would not testify as expected and hence, they were not cross-examined. To eradicate such situation, the law by its wisdom

has directed the Investigating Agency to record statements of witnesses under Section 161 of Cr.P.C. immediately after registration of the case. Therefore, in every criminal case the statements recorded under Section 161 Cr.P.C. would be available and therefore, witnesses can be contradicted with those 161 Cr.P.C. Statements. Thus, the contention of the learned counsel for the petitioner that the witnesses could not be cross-examined as soon as their chief examination is completed so as to cross-examine them at a time, is unjustifiable. Further, though an opportunity was given at the earlier instance i.e. after the cross-examination was deferred at request, to cross-examine the witnesses, for the reasons best known such an opportunity was not availed. Cross-examination of those witnesses, as per the contents of the impugned order, was recorded as 'Nil'. Though as per law and the settled proposition, the Court ought not to have entertained an application for recalling witnesses thereafter, however, the trial Court by its wisdom allowed the application and permitted the petitioner to cross-examine the witnesses. Thus, the petitioner by paying costs imposed ought to have cross-examined the witnesses but he did not do so and has filed the present

application for quashment of the order. In the light of the said factual scenario, this Court does not find any grounds more so, justifiable grounds to disagree with the findings given by the trial Court. The costs imposed are highly justifiable and the impugned order needs no interference in any of the aspects.

8. Resultantly, the Criminal Petition is dismissed.
9. As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

DR. JUSTICE CHILLAKUR SUMALATHA

Date: 06.09.2022

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