IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THURSDAY, THE NINETEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SMT JUSTICE JUVVADI SRIDEVI

CRIMINAL PETITION NO: 15298 OF 2024

Between:

B. Muthyala Prakash, S/o. Late Narsimlu, Age 70 years, Occ. Business. R/o. Nizamabad. **...Petitioner/Complainant**

AND

1. The State of Telangana, through P.S. Town-I, Nizamabad. represented by the Public Prosecutor, High Court of Judicature at Hyderabad for The State of Telangana.
2. Nanchari Gopinath, s/o. Narayana, Age 53 years, Occ.. Advoacte, R/o. H. No.4-5-69, Uppertakidi, Nizamabad. **...Respondents/Accused**

Petition under Section 528 of BNSs praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to call for the records in CRLMP. No. 1427 of 2024 in C.C. No. 74 of 2017 on the file of the I Additional Judicial Magistrate of First Class cum I Additional Junior Civil Judge, Nizamabad District and quash the order dt. 17/09/2024 passed in CRLMP. No. 1427 of 2024 in C.C. No. 74 of 2017 and consequently allow the I.A. No. 1427 of 2024 in C.C. No. 74 of 2017.

I.A. NO: 1 OF 2024

Petition under Section 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to grant a stay of all further proceedings in C.C. No. 74 of 2017 on the file of the Hon'ble I Additional Judicial Magistrate of First Class cum I Additional Junior Civil Judge, Nizamabad District pending disposal of the above Criminal Petition.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri T. Gangadhar, Advocate for the Petitioner and the Sri Jithender Rao Veeramalla, Public Prosecutor on behalf of the Respondent No.1 and of None appeared for the Respondent No. 2.

The Court made the following: ORDER

HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

CRIMINAL PETITION No.15298 of 2024

ORDER:

Challenging the order dated 17.09.2024 passed in Crl.M.P.No.1427 of 2024 in C.C.No.74 of 2017 by the learned I Additional Judicial Magistrate of First Class-cum-I Additional Junior Civil Judge, Nizamabad, this criminal petition is filed. By the impugned order, the application filed by the petitioner/complainant under Section 311 Cr.P.C. to summon LW-1 to adduce evidence was dismissed.

2. Heard Sri T.Gangadhar, learned counsel for the petitioner/complainant/LW-1 and Sri Jithender Rao Veeramalla, the learned Additional Public Prosecutor appearing for the State-Respondent. Perused the material on record.

3. Case of the petitioner is that C.C.No.74 of 2017 was filed against him for the offence under Section 409 of IPC. During the course of evidence, when the matter was posted for his

evidence on 27.08.2024, since he was admitted in the hospital due to ill-health, he could not appear before the trial court and the trial Court has closed his evidence. It is his further case that his evidence is essential for proper adjudication of the matter, otherwise, he will be put to great prejudice. Hence, prayed to allow the criminal petition by setting the impugned order.

4. Learned counsel for petitioner submits that as per Section 311 of Cr.P.C., Court may at any stage of proceedings can re-summon any person, if his evidence appears to be essential for just decision in the case. Hence, prayed to allow the petition.

5. Having heard both sides and perused the material on record, it is apparent that the evidence of LW-1, who is the complainant, is very much essential for proper and effective adjudication of the matter. If LW-1 is examined, no prejudice would be caused to the 2nd respondent-accused, as he will get an opportunity to cross-examine LW-1. Therefore, this Court is inclined to give one more opportunity to the petitioner.

6. For the aforesaid reasons, this Criminal Petition is allowed and the impugned order, dated 17.09.2024 passed in Crl.M.P.No.1427 of 2024 in C.C.No.74 of 2017 by the learned I Additional Judicial Magistrate of First Class-cum-I Additional Junior Civil Judge, Nizamabad, is hereby set aside. The trial Court is directed to issue summons to LW-1 by fixing a date and on the said date, LW-1 is directed to adduce his evidence, in default, his evidence stands closed. The trial Court shall also fix a date and afford an opportunity to the 2nd respondent to cross-examine LW-1.

Miscellaneous applications, if any pending, shall also stand closed.

Sd/- N. SRIHARI
ASSISTANT REGISTRAR

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SECTION OFFICER

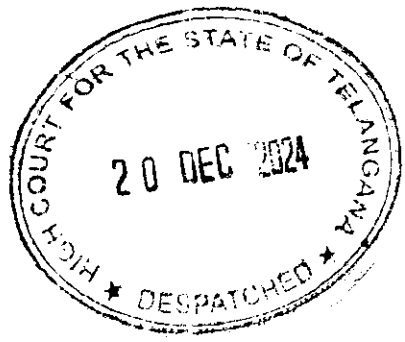
To,

1. The I Additional Judicial Magistrate of First Class cum I Additional Junior Civil Judge, Nizamabad District.
2. Two CCs to Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)
3. One CC to Sri. T Gangadhar, Advocate [OPUC]
4. Two CD Copies

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HIGH COURT

DATED:19/12/2024



ORDER

CRLP.No.15298 of 2024

ALLOWING THE CRIMINAL PETITION

(P)

20/12/24