

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL PETITION No.4814 OF 2019

ORDER:

The petitioner/accused challenges the order dated 09.07.2019 in CrI.M.P.No.98 of 2019 in Spl.S.C.No.7 of 2016 passed by Spl. Sessions Judge-cum-IV Addl. Sessions Judge, Tirupati dismissing the petition filed by the petitioner/accused under Section 311 of Cr.P.C seeking to recall P.Ws.1 to 3 for further cross-examination on the ground that the matter was coming up for arguments of the defence side and at this stage, P.Ws.1 to 3 cannot be recalled for further cross-examination to question them on some important points relating to their statements given by them before the Judicial Magistrate of First Class, Satyavedu. The trial Court held that such statements before the Magistrate are not substantive evidence and the witnesses cannot be routinely recalled.

2. Heard learned counsel for petitioner and learned Additional Public Prosecutor representing respondent-state.

3. Learned counsel for petitioner would submit that P.Ws.1 to 3 were examined by the Magistrate and their statements were recorded and during their earlier cross-examination some of the important aspects relating to their earlier statements before the Magistrate were not touched upon and therefore their recall is essential to effectively establish the defence of the accused.

4. Learned Addl. P.P opposed the criminal petition stating that the recall is only intended to fill up the lacunae in the earlier cross-

examination and therefore the trial Court rightly dismissed the petition.

5. I gave my anxious consideration to the above respective submissions. The record shows that P.W.1 is a resident of Chilamuthur Village in Chittoor District, lodged a report before Police of Varadaiahpalem Police Station that the accused who is a Deputy Tahsildar, Civil Supplies abused in the name of his caste in the presence of P.Ws.2 & 3 and others in front of Tahsildar office on 03.12.2013. Since the Police did not take action, he filed a private complaint and the Magistrate referred the case to Police for investigation under Section 156(3) of Cr.P.C. The Police registered Crime No.6 of 2014 for the offence under Sections 3(1)(x) of SCs & STs (POA) Act, 1989 r/w.Sec.156(3) of Cr.P.C and after investigation, filed final report referring the case as '*false*'. The complainant filed a protest petition before the Magistrate and in that context, the Magistrate recorded the statements of P.Ws.1 to 3 and it appears he took cognizance. During the trial, P.Ws.1 to 3 deposed that they were earlier examined by the learned Magistrate. The accused did not cross-examine them on the said aspect. It appears when the matter was coming up for arguments, he filed recall petition under Section 311 Cr.P.C which was dismissed. For the above reasons, I found no tenable grounds to find fault with the order impugned. When the witnesses clearly stated that they were earlier examined by the Magistrate, the accused, if he desired, ought to have cross-examined them in respect of the statements given by them

earlier. However, he did not choose to do so. At this late hour, he now seeks for their recall. It is true that there is no embargo under Section 311 of Cr.P.C to recall a witness at any stage of the trial before pronouncement of the judgment, but the Court shall undertake such exercise if such evidence is essential to the just decision of the case. However, when it causes prejudice to the other side, the Court shall not generally allow the recall application vide *Ravi Bhushan Dubey and another vs. State of Jharkhand and another*.¹ The present petition, as rightly argued by the Addl. Public Prosecutor, is intended to patch up the loopholes and hence cannot be allowed. I find no merits in the Criminal Petition and accordingly, the Criminal Petition is dismissed.

As a sequel, Interlocutory Applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

20.09.2019
MS

¹ 2006 (Cr.L.J) 2507