

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.16405 of 2016

ORDER

This petition under Section 482 Cr.P.C. is filed to quash the order dated 30.08.2016 passed in Crl.M.P.No.1704 of 2016 in C.C.No.129 of 2009 by the learned XVII Additional Chief Metropolitan Magistrate at Hyderabad.

2. The first respondent-State filed Crl.M.P.Nos.1627, 1703 and 1704 of 2016 to recall P.W.1 to give further evidence, to receive certain documents and to mark them on behalf of prosecution respectively. It is stated that the reason for filing the documents at this stage is that the earlier petition filed under Section 242(3) Cr.P.C. in S.R.No.1132 of 2013 dated 04.04.2013 by enclosing 18 documents, was returned for filing xerox copies of documents and for not mentioning the description of documents. It is also stated that whereabouts of L.W.10-Investigating Officer could not be traced out and the documents which are crucial to this case are required to be marked by recalling the evidence of P.W.1 as he appointed A1 to A3. The trial Court dismissed the said petitions by the order impugned on the ground that the State, on earlier two occasions, filed Crl.M.P.Nos.373 of 2013 and 3428 of 2012 for the same relief and the documents were received and that the impugned application is filed for the third time for receiving additional documents and to recall the witnesses though the evidence was closed and the matter was adjourned for examination of accused under Section 313 Cr.P.C. Now, the present petition is filed to quash the said order on various grounds.

3. The main ground urged by petitioner/de-facto complainant is that he filed the present criminal petition for the first time and earlier applications were filed by the Public Prosecutor and that the order passed by the Magistrate is not in accordance with law and prayed to set aside the said order. During hearing, learned counsel for petitioner reiterated the grounds urged in the petition.

4. Undisputedly, petitioner filed private complaint against respondents 2 to 5 for the offences punishable under Sections 419, 420, 506 read with Section 120-B IPC, and on reference by the Judicial Magistrate of First Class to the police under Section 156(3) Cr.P.C., and after due investigation, police filed charge sheet. Thereafter, the Public Prosecutor has to prosecute the proceedings on behalf of the complainant and he himself filed the application on 25.05.2016 with his signature and not by the complainant. The Public Prosecutor has referred in the petition with regard to filing of several petitions in CrI.M.P.No.373 of 2013 and 3428 of 2012 for similar purpose and after closure of the evidence of the prosecution, when the matter was posted for examination of the accused under Section 313 Cr.P.C., the application was filed without explaining any reason for the delay. The Public Prosecutor, who is the prosecuting officer in the above case, did not file any petition before this Court aggrieved by the impugned order, but the de-facto complainant approached this Court seeking relief to set aside the order impugned at any rate, may be the applicant before this Court. It is evident from the record that on behalf of petitioner, the Public Prosecutor earlier filed two applications which were allowed by this Court by receiving

several documents in 2012 and 2013. Thereafter, almost three years period has been elapsed, the petitioner did not take steps to file any document after disposal of earlier applications and he maintained silence after closure of the evidence and when the matter was listed for examination of accused under Section 313 Cr.P.C., the present set of documents are filed along with three petitions referred to supra without any explanation much less reasonable explanation. Apart from that, no specific reason was assigned for failure of P.W.1 to give evidence with regard to the facts which are in dispute, except making bald allegation that these documents have to be received.

5. In the recent judgment reported in **Gayathri V. M. Girish**¹, the Supreme Court while deciding the application under Order 18 Rule 17 CPC., which is identical to Section 311 Cr.P.C., has pointed out the institutional responsibility of the advocate, which is similar to the responsibility of the Public Prosecutor in filing the petition.

6. It is a clear case where the public prosecutor or the petitioner filing petitions one after the other successively whenever they woke up, and it is not the intention of the legislature in fixing time for filing documents etc., but the Court is not supposed to allow such applications. Therefore, the reason assigned by the trial Court is just and satisfactory and the order impugned is not suffered from any legal infirmity and it cannot be interfered with by this Court while exercising jurisdiction under Section 482 Cr.P.C.

¹ 2016(3) L.S.17 (S.C.)

7. Hence, the Criminal Petition is dismissed at the stage of admission. Miscellaneous petitions, if any, pending in this criminal petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

30th November, 2016
sj

