
(1998) 09 AP CK 0068

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 757 of 1998 and Cri. Revision Petition
No. 754 of 1998

Beagari Pentaiah and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 01-09-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311

Citation : (1998) 2 ALD(Cri) 627 : (1998) 2 ALT(Cri) 353 : (1998) 3 APLJ 162 :
(1999) CriLJ 1713

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : B. Sitharamaiah, for the Appellant; Public Prosecutor, for the
Respondent

Final Decision : Dismissed

Judgement

Bilal Nazki, J.—Heard the learned counsel for the petitioners.

2. It appears that a cage is pending against the petitioners before the learned trial Court. It was posted for final hearing when an application came to be filed seeking recall of PWs. 1 and 2. The following application was moved before the learned trial Court :-

That in the above said case LW-1 to LW-4 and LW-6 were examined as PW-1 to PW-5 and the said case is posted today for judgment. Today, the case file of the above said case is handed over to me, and I have gone through the file and noticed that due to inadvertency some of the relevant questions on FIR and some of the facts were not put to the PW-1 and 2.

Today I am coming on the record and filing Memo of appearance on behalf of petitioner/Accused Nos. 1 to 3.

In the above-mentioned case (sic) just and necessary to recall the PW-1 and PW-2 for the proper adjudication, unless the PWs 1 and 2 were recalled for the

purpose of cross-examination in respect of FIR and some other facts, which were later on came to my notice, petitioner/accused Nos. 1 to 3 will be put to loss and injury.

It is, therefore, prayed that this Hon"ble Court may be pleased to recall the witnesses LWs 1 and 2 as PWs 1 & 2 for the purpose of cross-examination in the interest of justice.

3. The learned trial Court did not find favour with the said application and dismissed the application. Against that, the revision has been filed in this Court.

4. I have heard the learned counsel in detail and gone through the judgment referred to, in Mohanlal Shamji Soni Vs. Union of India and another, . When this judgment was pronounced by the Apex Court, the Apex Court took note of many other judgments on the subject and the Supreme Court was of the firm view that it is always open to Courts to summon or examine, to recall or re-examine persons for evidence, if it appears to be essential to the just decision of the case. Before the Courts exercise their jurisdiction u/s 311 of the Code of Criminal Procedure for calling or summoning a new witness or recalling or re-examining a witness who has earlier been examined, the Courts have to satisfy themselves that recalling or calling of such a witness is essential to the just decision of the case. Such a satisfaction can only be recorded by the Courts if facts are brought to the notice of the Court suggesting that recalling of a particular witness would be necessary in order to reach to the just decision of the Court. In the application no reason as such was given by the petitioners., It was only stated that some questions needed to be asked with regard to the F.I.R. and it was also stated that since the lawyer was changed by the parties, therefore, the witnesses are need to be re-examined.

5. I have seen even the statements made by PW-1 and PW-2. They were also cross-examined, but, I do not want to comment on sufficiency or insufficiency of cross-examination, as in the first instance it is not within the domain of this Court to say whether the cross-examination was sufficient or insufficient and, secondly, it may prejudice the parties. Since no factual basis; was laid down before the trial Court for showing that it was essential to recall the witnesses for cross-examination in order to arrive to a just decision of the case, therefore, I do not find any infirmity in the order of the learned trial Court

6. The revision deserves to be dismissed and is accordingly dismissed.