

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE NOs. 1909 and 1910 of 2012
AND CRIMINAL PETITION Nos.2083 and 2086 of 2015

COMMON ORDER :

All the four applications are outcome from C.C.No.35 of 2012 renumbered as C.C.No.29 of 2012 and C.C.No.19 of 2012 renumbered as C.C.No.42 of 2012 on the file of IV Special Magistrate, Kukatpally at Miyapur, outcome of the two private complaints for the dishonour of the respective cheques filed by the self-same complainant against self-same accused viz., C.C.No.19 of 2012, said accused as A1 and one D.Bhavani, authorized signatory, individually as two accused in C.C.No.35 of 2012. Among four applications, two quash petitions and two revisions supra the quash petitions in Crl.P.Nos.2083 and 2086 of 2015 are filed to quash the C.C. proceedings pending from the cognizance taken by the learned Magistrate.

2. The sum and substance of the contentions in the two quash petitions of the two Calendar Cases where trial is completed and which are at the stage of arguments are that the so called defacto complainant is one of the gangsters running business by using by all means and taking advantage of the cheque book stolen or lost of the accused who is running a business with name and style of Vijaya Traders in cloth, these

cases are foisted among other cases and there is no even a statutory notice properly served for endorsement even from very

complaint as no such person and thereby the proceedings continuation are nothing but abuse of process and are liable to be quashed.

3. Coming to the revision petitions, after the complainant came to witness box with chief affidavit as PW.1 taken on oath as contemplated by Section 145 of the Negotiable Instruments Act (for short the Act'), cross examined and after closure of evidence of the complainant with reference to oral and documentary evidence, the accused was examined under Section 313 Cr.P.C. during May to August, 2012 and when the accused reported no defence and the two cases are while coming for arguments at that stage the complainant filed two applications by change of the earlier advocate through a new advocate, one is to reopen the closed evidence and to recall PW.1. The averments are there are certain supporting documents yet to be filed and thereby recall of PW.1 for further chief examination is necessary. It is in fact subsequent to the service of notice in the revision petitions by the complainant having been unsuccessful in the two applications since dismissed by the learned Magistrate vide order dated 06.10.2012 the two quash petitions are filed by the accused as referred supra.

4. Heard at length and perused the material available on record.

5. Undisputedly, the case is at the fag end for submission of any arguments and disposal under Section 143 of the Act is very clear of the trial is summary in nature for expeditious disposal as per the amended Act w.e.f. 06.02.2003

by Act 55 of 2002. The cheques rooted from the account of the accused and the cheques bear the signatures of the accused are not in dispute. It is the case of the complainant that the accused issued the cheques in question respectively having borrowed the amounts being the neighbour for necessities and failed to liquidate. No doubt, the notices sent returned as 'no such person'.

6. It is a fact finding required as to the endorsement is managed as claimed or intentionally to a wrong address sent and is it shown by the accused that that it is not the address of residence and there from to say no cause of action whether accrued and Section 142 of the Act and the cognizance taken thereby is unsustainable. In fact trial already completed and the evidence is on record before the trial Court and not even placed before this Court to consider. Further, this Court in a quash proceedings cannot go into the complicated questions of fact which are required to be decided by the trial Court as a fact finding Court.

7. Having regard to the above, such a defence of no statutory valid notice including as to the cheque book was lost so also the signed cheque slips if made use of and if the complaint is whether not given how the complainant could come into custody and when the accused parted with and with proof etc., which are all required to be dwelled into by the trial Court by such a defence is left open, for there are no other grounds to quash the two C.C. proceedings, the quash petitions are liable to be dismissed without prejudice to the defence of accused before the trial Court.

8. Coming to the revision applications, needless to repeat from those applications supra, any of the two parts of Section 311 Cr.P.C. are not complying to the statutory requirements to entertain. Though under the first part, the Court got a discretion, subject to making a foundation for recall at any stage to permit, there is no foundation as rightly concluded after hearing with reference to the material by the learned Magistrate. The application is not only at the fag end of trial and there is no anything in saying to entertain but for by change of advocate the applications are filed saying so vaguely of some supporting documents are yet to be filed and exhibited and thereby the witness PW.1 to be recalled. No document even described much less filed in support of such a plea. The trial Court came to the conclusion that this is not a fit case of exercising discretion judiciously under the first limb of under Section 311 Cr.P.C. Undisputedly the case is not shown coming within the purview of Second Part of Section 311 Cr.P.C. even for the Court to stretch its hand to help the complainant, for nothing to show any receiving of documents or recall of PW.1 are necessary for just decision of the case.

9. Having regard to the above, there are no grounds even in the revisions to sit against the impugned orders of the learned Magistrate, apart from the revisions are also not maintainable against dismissal of the witness recall as per the settled law, even taken the same as applications under Section 482 Cr.P.C. within the inherent powers of the Court, for no merits even for that and thus, these petitions are also liable to be dismissed.

10. Accordingly and in the result, the criminal revision cases and the criminal petitions are dismissed. There is no order as to costs.

11. As the matter is at the fag end for arguments and disposal of Section 143 of the Act is summary in nature, the trial Court shall make every endeavour to dispose of the case as expeditiously as possible.

12. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:01-12-2015

pab