

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.3956 of 2015

ORDER :

Heard learned counsel for petitioners as well as 2nd respondent/ de facto complainant in C.C. No.188 of 2014 on the file of X Special Magistrate, Hyderabad and perused the material on record including impugned order of the learned Magistrate dated 15.04.2015 passed in CrI.P.M.P. No.463 of 2015 in C.C. No.188 of 2014 in dismissing the application filed by accused under Section 91 of Cr.P.C for summoning the Assistant Engineer to produce the relevant document regarding the completion of alleged work as part of defence and there is no legal or other liability to the accused to enforce the amount covered by cheque claimed to be issued by him.

2) No doubt, a perusal of the petition shows it is wrongly calculated and filed the petition under Section 91 Cr.P.C instead of 254 (2) Cr.P.C but mere wrong calculation of delay no way fatal and maintainability of the application. The core contention of the learned counsel for complainant is that the so-called work allegedly completed and the so-called inspection and examination in October, 2012 is nothing to do with the amount covered by the alleged cheque and thereby, the trial Court also from the contest rightly come to conclusion in dismissing the application not a necessary witness much less record to be produced not relevant under N.I Act. More particularly, from the presumptions under Sections 118 and 139 read with 138 N.I Act there is reverse onus clause that apart once he admitted signatures cheque routed from the account. It is settled law that the accused to discharge by for that wanted to say the work is completed and there is no due. No doubt the complainant is contesting that the so-called completion of work is nothing to do with the cheque that it is claimed as part of the evidence, the trial Court should have allowed to give the appreciation whether relevant or not rather than showing the opportunity to the accused.

3) In regard to the conclusion of the trial is thereby sustainable, leave about the other observation of already accused taken after Section 313 Cr.P.C examination after completion of evidence of the complainant more than four or five adjournments.

4) Having regard to the above, the Criminal Petition is allowed while setting aside the order passed on 15.04.2015 in CrI.M.P. No.463 of 2015 in C.C. No.188 of 2014 on the file of X Special Magistrate, Hyderabad, subject to costs of Rs.1,000/- (Rupees one thousand only) to the complainant to deposit before the trial Court within one week from the date of receipt of the order despite cause summon the witness and to adduce evidence on the day being fixed by the Court. Needless to say the trial Court shall make every endeavour to complete the case for early disposal as it is summary in nature practically Section 143 of N.I Act.

5) Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.27.08.2015
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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