

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
CRIMINAL PETITION No.865 of 2015

ORDER :

This Criminal Petition is filed by the Petitioner/ accused under Section 482 Cr.P.C seeking to quash the proceedings against the order dated 30.07.2014 passed in Crl.M.P No.3929 of 2010 in C.C. No.585 of 2008 on the file of Principal Junior Civil Judge, Kovur, Sri Potti Sriramulu Nellore District, which was confirmed by IV Additional District & Sessions Judge, Nellore Order dated 05.12.2014 in Crl.R.C. No.49 of 2014.

2) Heard learned counsel for the petitioner/ accused as well as 1st respondent—State represented by learned public prosecutor. The 2nd respondent even served failed to attend the Court, hence taken as heard and perused the material on record including the impugned order of the lower Court in dismissing the discharge application filed in Crl.M.P. No.3929 of 2010 in C.C. No.585 of 2008 vide order dated 30.07.2014 and also the revision order in Crl.R.P. No.49 of 2014 almost confirming the same.

3) The contention of the learned counsel for the petitioner is that leave about attracting of the offences punishable under Sections 420 and 406 IPC that are answered by the Court below and no way requires interference at this stage but for to put the parties to trial on that aspect, mainly two-fold, one is when the very tender was called for on 16.04.2004 by the Andhra Pradesh State Cooperative Marketing Federation (for short 'Markfed') by notification and the petitioner submitted the offering space in his tender on 22.04.2004 and the same was confirmed by Markfed in their letter dated 14.05.2004 and as per the same, they entered into agreement on 12.07.2004 with District Manager, Markfed and offered space in the cold storage to accommodate Red Chillies, thereby, the question of appointing 2nd respondent is unsustainable and baseless and the other contention is that the so called agreement dated 22.04.2004 is not a bilateral agreement to bind that too when he disputes the signatures and thereby the Court below went wrong in appreciating these aspects.

4) The learned counsel for the petitioner placed reliance upon the expression of this Court in ***Dhanalakshmi Bank vs. SHO Malakpet*** ^[1] there in

a quash petition for the offences taken cognizance under Sections 406, 420, 506 r/w 34 IPC. The Court mainly answered on the issue of the penal provisions attracting or not and though it is one of the submissions adverted regarding the agreement is unilateral or bilateral, it was not answered in specific, that cannot be taken as a precedent.

5) Needless to say whether the agreement is unilateral or bilateral, the position of law is well settled, more particularly, in relation to the specific performance of the contracts for sale where executed by prospective vendor in favour of prospective vendee, even the vendee not a signatory to it, held binding. Under the same analogy the contract between the accused and the de facto complainant signed by the accused if proved binding. Thereby, he cannot avoid but for to left open his contention of his signature is a forged one and in fact on that expert opinion is already elicited and that opinion is part of the record and the opinion got its own evidentiary value subject to admissibility for trial Court to decide. The two contentions at this stage thus have no life to stand, but for left open that contention also to raise before the trial Court as part of the defence to prove ultimately.

6) Subject to the above, the Criminal Petition is disposed of.

7) Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.20.08.2015
Kri

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

-
-
-
-
-
-
-
-

CRIMINAL PETITION No.865 of 2015

Date:20.08.2015

knl

[\[1\]](#) 2014 (3) ALT 81 CrI