

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CRIMINAL PETITION No.7121 of 2015

Between:

S.T.Ranganadhan

... Petitioner

and

K.Doraswamy and another

... Respondents

DATE OF JUDGEMENT PRONOUNCED: 11-08-2015

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
CRIMINAL PETITION No.7121 of 2015

ORDER :

This Criminal Petition is filed by the Petitioner/Accused under Section 482 Cr.P.C seeking to quash the proceedings in C.C. No.635 of 2013 on the file of Special Judicial Magistrate of the First Class for Excise offences, Chittoor which is the private complaint filed by the 1st respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

2) Heard the learned counsel for the petitioner and the 2nd respondent-State represented by the Public Prosecutor before admission, before ordering notice to the 1st respondent and perused the material on record.

3) Since the above mentioned Calendar Case reached the stage under Section 145(2) of the Negotiable Instruments from chief-examination of complainant filed and the Court has taken the chief affidavit on oath and further examination in chief by exhibiting six documents including the fresh cheques in question with dishonour memo and legal notice and postal acknowledgement and it is at that stage, the complainant's son sought to represent as G.P.A holder of the complainant stating that complainant affected with paralysis and the G.P.A was permitted. The law is very clear on the limited scope of G.P.A holder to represent the matter and to give evidence. He can give evidence only on

the facts known to him and cannot give evidence of the facts known to the principal i.e., the complainant as personal knowledge of the facts of the principal he has to depose. In fact the paralysis is to the lower limbs and inability to move. It is not even the case that he cannot speak apart from he is incapacitated to give evidence under Section 118 and 119 of the Indian Evidence Act otherwise being a competent witness, if unable to move atleast to examine on commission. It is the G.P.A holder, whose chief affidavit taken by the Court as P.W-2 as per the impugned docket order from the memo filed by the G.P.A holder to eschew the evidence of the principal (complainant) taken already on oath as P.W-1.

4) The trial Court should have considered in taking the chief affidavit as evidence, from the enabling provision under the Act, for otherwise affidavit itself is not evidence and Evidence Act has no application to affidavit because of specific provision in Section 1 of the Evidence Act. It is only after taking the affidavit on oath as evidence it form part of evidence otherwise there is a bar of Section 1 of the Indian Evidence Act. It is to say that once a G.P.A holder cannot speak certain facts which the principal can unless those facts are within the personal knowledge of the G.P.A holder, the trial Court should have considered the scope of the averments in the chief affidavit of the G.P.A holder before taking on oath as P.W-2 chief-examination. Apart from it, the eschewing of evidence of witness already examined

and brought on record is unknown to law. It is striking of the evidence even (already brought on record) no provision and no right to strike out. It is to say there is only a provision under Order VI Rule 16 of C.P.C for striking of pleadings or eschewing the pleading which is scandalous or otherwise as the case may be within the power of the Court. Thus, to eschew the evidence brought on record there must be an enabling provision.

5) There is any loose reference of eschewing of evidence in any memo or in any representation of parties or in any order of the Court, same is unknown to law. It is because once evidence is brought on record, subject to admissibility and relevancy and credibility of a witness or probative value of a document which are part of the evidence is subject to scrutiny of the Court in the course of appreciation of evidence in arriving a truth as trial is a voyage in which truth is the quest.

6) When such is the case, the only thing to consider, keeping the evidence on record in appreciation, if no value not to consider and if any value and relevant and admissible to consider also on credibility and probative value with reference to the nature of evidence and nature of witness.

7) Having regard to the above, the lower Court might have rejected the memo seeking to eschew the evidence of P.W-1 already on record. In fact a perusal of the impugned docket order of the learned Magistrate no way shown any specific order eschewing the evidence of P.W-1 in-chief

taken on oath. In fact unless the witness is cross-examined as contemplated by Section 137 of the Indian Evidence Act, his evidence is not full and it cannot be used as evidence in appreciation by not to consider the inadmissible evidence brought on record. It is might be for that reason though not specifically rejected the memo, the lower Court taken the G.P.A holder's evidence is taken as P.W-2. In fact while taking so, the lower Court ought to have passed an order as to scope of the chief affidavit averments of the G.P.A holder for the limited scope of the power of G.P.A Holder to depose, for G.P.A holder cannot speak facts which are within the personal knowledge of the principal unless he attributes personal knowledge to him.

8) Having regard to the above, this criminal petition is disposed of before admission by clarifying that eschewing of evidence is unknown to law, but for appreciation of the evidence brought on record if not admissible to so held likewise if not relevant was to so held and if not faced the cross-examination by treating as with no value for so to held and if faced the cross-examination and admissible and relevant, then to appreciate from the credibility of the witness and probative value of the documents referred as to the quality of evidence in arriving truth. It is made clear that whatever the chief affidavit taken of the G.P.A. holder as P.W-2 by the lower Court is liable to be set aside and accordingly set aside such order and by directing the lower Court while keeping the evidence of P.W-1, the complainant,

on record by observing with no value for not come forward to face cross-examination to draw whatever inference it can at the end of trial, from that evidence subject to any proof about his inability to come to Court or even inability to speak for examination on commission. Leave it as it is so far as P.W-1 evidence on record with reference to Exs.P-1 to P-6; in the P.W-2 G.P.A holder's evidence those facts which he can speak within his personal knowledge alone to retain in the affidavit to admit and the facts which he cannot and principal i.e., the complainant alone can speak to eschew and delete from the affidavit before taking on oath as chief-examination that too, after hearing objections of the accused to take the G.P.A holder's affidavit contents as chief-examination of P.W-2 and to mark the documents afresh in the same seriatim of Exs.P-1 to P-6 already allotted in the examination of P.W-1 by recording the P.W-2's further chief-examination to mark the documents.

9) With the above observations, the Criminal Petition is disposed of. Consequently, the miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.11th August, 2015

KSH