

*** THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

+ TRANSFER CRIMINAL PETITION No.29 OF 2013

% 08.06.2015

Naresh Kumar.

....Petitioner.

v.

\$ The State of Andhra Pradesh and another.

.... Respondents

! Counsel for the Petitioner: M.Vinod Kumar

Counsel for Respondents: Public Prosecutor

<Gist :

>Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

TRANSER CRIMINAL PETITION No.29 of 2013

ORDER:

None appears for the petitioner even today. None appeared on 01.06.2015 also.

The petitioner sought for transfer of C.C.No.35 of 2011 pending on the file of IV Special Magistrate, Erramanjil, Hyderabad to any other court under the jurisdiction of Metropolitan Session Judge at Hyderabad.

The 2nd respondent appears to have filed a complaint against the petitioner herein for an offence said to have been committed under Section 138 Negotiable Instruments Act, which was numbered as C.C.No.35 of 2011 on the file of IV Special Magistrate, Erramanjil, Hyderabad. It is stated that on 22.11.2012 the matter was posted for cross-examination of P.W.1 and it is alleged that the IV Special Magistrate, Erramanjil has not recorded the questions put to the witness and hence the matter was got adjourned and posted for further cross-examination and hence the petitioner initially filed Transfer CrI.M.P.No.1944 of 2012 before the Metropolitan Sessions Judge, Hyderabad, which was dismissed on 17.01.2013. Therefore, the present petition is filed.

When Transfer CrI.M.P.No.1944 of 2012 was moved before the learned Metropolitan Session Judge, Hyderabad that was dismissed by the Court on 17.01.2013 pointing out that what questions are sought to be put during the cross-examination of P.W.1

by the petitioner, for the Court to understand as to whether the learned Magistrate is justified for not recording the same. Since no questions, which the petitioner wanted to put to P.W.1 were spelt out in the said Transfer Criminal Petition, the same was dismissed.

Now in paragraph No.7 of the affidavit filed in support of this petition, the following 3 questions are stated to have been put to P.W.1.

1. You got influence in Vardhaman (Mahila) Co-operative Urban Bank Ltd at Ameerpet Branch, Hyderabad and got opened a bank account in the name of Accused by giving introduction, through your acquaintance with bank official and got received the cheque book in the name of Accused during pending of present case, what do you say?
2. Any one will enquiry about reason with the parents or whom through he has acquaintance with the accused before disbursing the alleged loan and also enquiry about his financial capacity of repayment – Yes or No-?
3. You brought to court today along with you all the Receipt's of Sree Ram Chit belongs to the Father of Accused in which accused and P.W.3 son in law stood as Surety to his father and also contain another bank cheque of Accused and property documents pertaining to him, same is present in court hall in a cover belong to you, what do you say-?"

It is stated that the Magistrate has refused to record the same.

Though, no reasons are set forth for me to arrive at a *prima-facie* conclusion that these questions are the ones which are put to P.W.1, but nonetheless, I gather that these questions are not relevant for the charge laid against the petitioner, who is accused in the criminal case. The 2nd respondent has initiated proceedings for the alleged offence said to have been committed under Section 138 Negotiable Instruments Act, and so long as questions which have relevance for the defence of the accused or questions which will have a direct bearing upon the alleged commission of offence, are put the Magistrate is bound to record the same and then consider the answers furnished thereto by the witness. If irrelevant questions are put to a witness, the Court is bound to remind the counsel to stay focused with regard to the issue on hand instead of unnecessarily dragging on the proceedings to somehow gain time. Cross-examination is not meant to test the patience of the

Presiding Officer or the witness in the box. It is a very important tool in the hands of an opposite party for purpose of brining out the truth in the matter and also to bring out the essential contradictions, so that the Court upon a careful analysis of such evidence can easily find out where the truth lies in the matter, which would ultimately clinch the issue. The counsel and the parties are duty bound to help the Court to discharge it's functions efficiently and effectively and no endeavour only to evade/avoid should be made. Further, if a counsel or his party is desirous of putting any particular question to a witness and if the Court has good reason to believe the question to be irrelevant, a brief Memo, explaining in writing the significance of the question, to the Court, should be submitted. So that, it would help the superior Courts, if the Court still has not allowed the question to come on record, to examine the issue objectively. Otherwise, there will be no contemporaneous record available for examination of the legality or regularity of the action of the Court which declined to record the question(s) concerned and the Superior Courts will be left to guess the correctness of the action of the Court, complained of. Perhaps, if no such memo is filed before the Court, an unscrupulous litigant can create record at a later point of time, so as to maintain the complaint against the Court.

I am, therefore, of the opinion that no error has been committed by the learned Magistrate in exercise of jurisdiction and hence the petition is dismissed. No costs.

The miscellaneous applications, if any shall also stand dismissed.

JUSTICE NOOTY RAMAMOHANA RAO

08.06.2015

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