HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P.Nos.448 and 449 of 2015

COMMON ORDER :

1(a). The petitioner Avinash Reddy is the accused in C.C.No.521 of 2010 on the file of the III Additional Chief Metropolitan Magistrate at Hyderabad, that was filed by one Pramod Kumar Reddy(1st respondent in Crl.P.No.448 of 2015) as the complainant for the offences punishable under Section 138 read with 142 of the Negotiable Instruments Act(for short, 'the N.I.Act'), for dishonour of Ex.P.3 cheque bearing No.170749 dated 01.01.2010 for Rs.12,55,000/- drawn on Axis Bank, Sanjiv Reddy Nagar branch, Hyderabad.

1(b). Similarly self-same petitioner is also accused in C.C.No.77 of 2010 on the file of the same Court, that was filed by one Mrs.M.Nishitha Reddy (2nd respondent in both the Crl.P.Nos.448 and 449 of 2015) as the complainant for the offences under Section 138 read with 142 of the Negotiable Instruments Act, for dishonour of Ex.P.4 cheque bearing No.170748 dated 01.12.2009 for Rs.26,70,700/- drawn on Axis Bank, Sanjiv Reddy Nagar branch, Hyderabad.

2(a). Both the cases crossed the stage of Section 145(2) of the N.I.Act, to say while the trial commenced in C.C.No.521 of 2010 the complainant Promod Kumar Reddy was examined as P.W.1 by filing his chief examination affidavit and placed reliance upon Exs.P.1 to P.9 viz; a copy of registered partnership deed dated 01.03.2007, Memoramdum of Understanding(for short, 'MOU') dated 01.06.2009, subject cheque, cheque return memo dated 07.01.2010, office copy of legal notice, dated 20.01.2010, RPAD receipts dated 20.01.2010, certificate of posting receipt, dated 20.01.2010, returned RPAD covers dated 22.01.2010 and 23.01.2010 and he was cross-examined on 05.03.2014.

2(b). Similarly, the complainant Mrs.M.Nishitha Reddy in C.C.No.77 of 2010 examined as P.W.1 and got marked Exs.P.1 to P.12 viz., a copy of registered partnership deed dated 01.03.2007, revised partnership dated 16.03.2009, Memorandum of Understanding, dated 01.06.2009, subject cheque, cheque return memo dated 03.12.2009, office copy of legal notice dated 14.12.2009, RPAD receipts dated 14.12.2009, under certificate of posting dated 14.12.2009, postal acknowledgment, dated 15.12.2009, returned RPAD cover dated 17.12.2009, reply issued by the accused dated 24.12.2009 and rejoinder issued to the counsel for the accused dated 11.01.2010 and she was also cross-examined on 05.03.2014.

3)In the cross-examination of respective witnesses(P.Ws.1) in C.C.No.521 of 2010 and C.C.No.77 of 2010, they admitted that themselves and the petitioner are even related to one another and they did partnership business and it is also brought on record that another CC.No.963 of 2011 is pending wherein the husband of P.W.1 (Mrs.Nishitha Reddy in C.C.No.77 of 2010) was A.1 and another partner K.Nischal Reddy(A.3) inducted as per the revised partnership deed and no partner can retire in the middle of financial year as per Ex.A.2 of C.C.No.77 of 2010. In C.C.No.77 of 2010, the P.W.1 deposed that Ex.P4 cheque in question was issued by the petitioner/accused in order to buy her share in the partnership and she does not know to quantify the value of her share but for saying accused failed to show the accounts and she has no knowledge about profits or losses in the business and she did not issue any notice of her intention to retire in the partnership by will but for orally and not even any public notice however denied the suggestion of still she is a partner and all the partners are subsisting with no retirement of anybody. She admitted about filing of O.S.No.549 of 2013 in City Civil Court, for recovery of amount based on pronote, cheque and MOU which form part of this case and she does not remember who attested the Ex.P.3 MOU under which she alone got retired and again say A.3

and A.4 of C.C.No.963 of 2011 besides one Madhava Reddy and there is no signature of other partner Pradeep Kumar Reddy and denied that Ex.P.3 is a fabricated document and the cheque and MOU obtained by coercion without consideration and are unenforceable. Similarly, in C.C.No.521 of 2010, the complainant Pradeep Kumar Reddy deposed that A.3 (K.Nischal Reddy) of C.C.No.963 of 2011 was made as Managing partner as per the revised partnership deed dated 16.03.2009, and he demanded the petitioner to show the accounts but he did not oblige thereby he decided to retire in April, 2009 and made known the same to other partners and he asked only the petitioner to buy his share and the petitioner expressed his willingness and it is for that the petitioner issued Ex.P.3 and there was no process of assessment value of the share was undertaken but for whatever he invested that was considered and he does not know whether he filed the record of his investment into the firm in the Court. He further stated that he does not know in the middle of year a partner cannot retire and it is a partnership at will and he did not issue any notice to other partners of his decision to retire and there was no deed of retirement so as to submit to the Registrar of Firms dated 16.08.2013 and showing him of his partnership is denied by him including suggestion of still he is a partner and he deposed that Ex.P.2 contains only signature of only one witness and there was no written consent from other partners but orally and denied the suggestion of there is no consideration for the Ex.P.3 cheque obtained and Exs.P.2 and P.3 were obtained under force and duress and he is deposing falsehood. Leave about other evidence, in C.C.No.963 of 2011 by P.W.1 Avinash Reddy (the petitioner/ accused herein) that was against the husband of complainant(C.C.No.77 of 2010) and among others about 4 in number, after said evidence of the respective complainants under Section 313 of Cr.P.C. examination of the petitioner/accused supra as part of defence evidence, the petitioner/accused sought under Section 254(2) Cr.P.C. the summons to the Registrar of Firms along with the records to state that the respective two complainants are still partners and they did not retire or resign but continuing, in support of his defence that the two cheques in question were obtained by force and fraud as narrated by him in his case C.C.No.963 of 2011 and the cheques are not supported by consideration.

4. The petitioner Avinash Reddy filed Crl.M.P.No.3407 of 2014 in C.C.No.521 of 2010 and 3408 of 2014 in C.C.No.77 of 2010 under Section 254(2) of Cr.P.C. on the file of the III Additional Chief Metropolitan Magistrate, Hyderabad, praying to summon the Registrar of Firms for adducing evidence but the trial Court dismissed the said two petitions by common order dated 19.01.15 since impugned in Crl.P.No.448 of 2015 and the petitioner also filed Crl.M.P.No.3409 of 2015 in C.C.No.77 of 2010 praying to summon one Sri Papa Reddy, Advocate which petition is also dismissed vide order dated 19.01.2015 holding that since the petitioner was contesting the case with a plea that MOU obtained under coercion, the same is suffice even if it is proved that the two signatures were missing, it will not change the nature of the case nor will it have direct impact on the issues involved in the litigation especially when it is the burden on the accused to prove that the MOU itself was obtained under force and it is immaterial as to how many signatures it contains and the same is also impugned herein vide Crl.P.No.449 of 2015.

5) The reasons assigned of by the trial Court, as can be seen from the impugned common order is that the MOUs though disputed by the petitioner/accused, placed reliance to show the two complainants were retired from the partnership firm and the cheques issued for their share by the petitioner/accused and when MOUs themselves are seriously questioned and disputed by the petitioner/accused seeking to summon the Registrar of Firms as there is nothing to show passing of consideration in the cheques and the showing of their continuing as partners in the Registrar of Firms; summoning the Registrar of Firms is

alien aspect of the lis and thereby the Registrar of Firms is no way necessary and proper witness to speak the transfer of the stakes by the two complainants in favour of the petitioner/accused and, that too, the MOUs recited about their retirement subject to amending of partnership deed i.e. finalization of retirement process and the accused having taken stand of MOUs and cheques obtained by duress and innocence, and to confront the MOUs to Registrar of Firms that serves no purpose.

6. Heard the learned counsel for the respective defacto-complainants of the two cases and the learned counsel for the petitioner/accused in the two cases at length while sitting against the impugned common order of the learned Magistrate referred supra.

7. Importantly, from the undisputed facts, the so called cheques said to have been issued as consideration for the shares of the two complainants said to have been purchased by the petitioner/accused from their retirement pursuant to the so called MOUs. The petitioner/accused is disputing the execution of MOUs as well as the issuing of cheques but for saying under the circumstances explained by him particularly in C.C.No.963 of 2011, he was called under the threat to his life by cause securing his cheque books in the hotel, the signatures were obtained on the blank stamp papers as well as two blank cheques supra and he did not execute the MOUs and did not issue cheques but for admitting signatures.

8. The so called cheques in question as well as MOUs are of the year 2009 and 2010 respectively that are exhibited undisputedly in both the cases through respective witnesses (P.W.1s) according to the versions of respective complainants. It is undisputedly a Registrar of Firms revised the partnership also through Ex.P.2 in C.C.No.77 of 2010 dated 16.03.2009. When such is the case, if there is a retirement of partners, leave it as it is, there is a clause that in the middle of the financial year a partner cannot retire. In this scenario what the defence of the petitioner/accused is so called retirement, execution of MOU and

issuing of cheques are all false, bogus and created taking advantage of the signatures on the blank cheques and stamp papers obtained and he is not liable for any legally enforceable debt to enforce the cheques much less for the penal consequences under Section 138 of the N.I.Act. It is to support the defence when he wants to summon the Registrar of Firm, that too, when it is confronted to P.W.1 in each of the case and particularly in C.C.No.521 of 2010 that was denied by P.W.1 of continuing as a partner in the Registrar of Firms and document confronted in showing was denied by P.W.1 and even the trial Court observations also the burden is on the accused; the trial Court went wrong in negating that right of defence. No doubt, even as per the expression in **Krishna Janardhan Bhat Vs. Dattatreya G.Hegde**[1] that was with little deviation confirmed in **Rangappa Vs. Mohan**[2] (3-Judges Bench) burden under reverse onus clause is on the accused, once he admits the cheque routed from his account with his signatures. This is one of the available modes and this is a piece of available defence to the accused that was not properly considered by the trial Court in dismissing the applications.

9. Learned counsel for the 3rd respondent sought leave of the Court invoking Article 134A of the Constitution of India. Article 132(1) speaks that if the High Court certifies under Article 134A that the case involves a substantial question of law as to the interpretation of this Constitution it can. Undisputedly, there is no substantial question of law as to the interpretation of the Constitution involved. Even coming to Article 133(1), the High Court can certify for an appeal if the case involves a substantial question of law of general importance. Apart from that the same applies to the civil and the matter is of the criminal case, in the opinion of the High Court, such questions need to be decided by the Supreme Court. Here, this Court feels no any such question is involved to be decided by the Supreme Court. Even coming to Article 134(1), an appeal shall lie to the Supreme Court from

any judgment, final order or sentence in a criminal procedure of a High Court, if the High Court has in an appeal reversed the acquittal of accused persons and sentenced them or as withdrawn for trial before itself any case from any Court subordinate to it and in such trial convicted the accused and sentenced him to death or certifies under Article 134A that the case is a fit one for appeal to the Supreme Court. Even under clause (1)© of Article 134 of the Constitution of India, the Court can certify invoking Section 134A r/w 134(1) © if it is a fit case. This Court is of the opinion that it is not such a fit case to accord leave. Accordingly, the request for leave is rejected.

10. Having regard to the above, both these Criminal Petitions (Crl.P.No.448 and 449 of 2015) are allowed by setting aside the common order dated 19.01.2015 in Crl.M.P.No.3407 of 2014 in C.C.No.521 of 2010 and Crl.M.P.No.3408 of 2014 in C.C.No.77 of 2010(impugned in Crl.P.No.448) and also Crl.M.P.No.3409 of 2014(impugned in Crl.P.No.449 of 2015) passed by the III Additional Chief Metropolitan Magistrate at Hyderabad. The trial Court is directed to summon the witnesses and also to summon the Registrar of Firms to adduce the defence evidence. Consequently, Miscellaneous applications, if any, pending in these two Criminal Petitions stands closed.

Dr. B. SIVA SANKARA RAO, J

Date:03.08.2015
Vvr

[1] AIR 2008 SC 1325

[2] AIR 2010 SC 1898