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

CRIMINAL PETITION NO. 13639 OF 2014

Between:

Kanuru Venkateswara Rao

.. Petitioner

and

Anandhi Associates, Kurnool
Rep. by its Managing Partner
Sri M.Venkateswara Rao
and another

.. Respondents

DATE OF ORDER PRONOUNCED: 20.07.2015

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? 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.13639 OF 2014

ORDER:

This is a Criminal Petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') by the petitioner/accused requesting to quash the order dated 29.10.2014 passed in Criminal M.P. No.4831 of 2014 in C.C. No.617 of 2013 by the Special Judicial Magistrate of First Class (Prohibition & Excise), Kurnool.

2. The petitioner herein is the accused in C.C. No.617/2013 on the file of Special Judicial Magistrate of First Class (Prohibition & Excise), Kurnool (case renumbered on transfer from the file of Judicial First Class Magistrate, Kurnool as C.C. No.616/2013). This is a case under Sections 138 and 142 of the Negotiable Instruments Act maintained by the first respondent-complainant against the accused for dishonour of Ex.P.1 cheque dated 06.03.2013 for Rs.40,00,000/- drawn on State Bank of Hyderabad, Patamatalanka Branch, Vijayawada, returned dishonoured when sent for collection through Karnataka Bank, Kurnool Branch, Kurnool, on the self-same date as it appears by the cheque return memo dated 07.03.2013-Ex.P.2, resulted in exchange of notice and reply.

3. The case of the complainant is that the accused issued a cheque having borrowed the amount for discharge of the said legally enforceable debt. The defence of the accused is that he never issued the cheque in favour of the complainant and did not borrow any amount from the complainant and that he borrowed from one Borra Radhakrishna @ Gandhi in the year 2005 a sum of Rs.21 lakhs for his business purpose and the said Radhakrishna, for the same, obtained a blank signed cheque and a blank signed promissory note and the same it appears misused by the complainant in collusion and Ex.P.7 is the said blank promissory note besides Ex.P.1 so called cheque with the said blank cheque, and the so called promissory note is not whispered either in the notice or in the complaint or even in the sworn statement of P.W.1 in chief. The further defence of the accused is that the latest Electronic Cheque Clearance system was introduced and in the earlier system of those cheques manual clearance without IFSC code and MICR code are outdated and the summoning and examination of the bank manager of the accused establishes the same of so-called misuse of the cheque by the complainant with signature of the accused that was obtained by Radhakrishna @ Gandhi in collusion with the complainant. It is also his contention that the complainant in his memo of evidence shown the Manager of the bank as one of the witnesses, however, not chosen to examine. It is the application filed thereby in Criminal M.P. No.4831 of 2014 seeking summoning of the said Bank Manager of the accused bank for examination in defence, that was ended in dismissal by order dated 29.10.2014. Impugning the same, the present application is filed under Section 482 Cr.P.C.

4. The impugned order of the Magistrate speaks that the case is coming for defence evidence, during which the present application is filed by the accused. Needless to say, earlier also the accused filed Criminal M.P. No.4277 of 2014, that was ended in dismissal on 18.09.2014 and without seeking permission for evidence of accused he cannot file Criminal M.P. No.4277 of 2014 or the present one viz., Crl.M.P.No.4831 of 2014 and that the cheque return memo-Ex.P.2, marked with no objection, shows cheque in question was returned dishonoured at State Bank of Hyderabad, Kurnool Branch, that was, when cheque presented through Karnataka Bank, Kurnool Branch for collection, for “Insufficient Funds” and without even saying whether the accused himself want to come to witness box or not for his choosing to examine and the Bank Manager as defence witness is unsustainable.

5. Heard both sides and perused the material on record.

6. Section 315 (1) Cr.P.C reads as under:

> "Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial; Provided that-
>
> (a) he shall not be called as a witness except on his own request in writing;
>
> (b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial."

What the above section says is that the accused is also a competent witness to depose if at all come to witness box with permission in writing and such recourse is not required even of any written permission to examine any witness in defence. The trial Court was, in fact, wrong in its observation in dismissing the application by taking the same as one of the ground. The scope of the defence to rebut the presumptions is well laid down by the Apex Court in **Krishna Janardhan Bhat v. Dattatraya G.Hegde**[1]**,** that was reiterated later in several expressions including **Rangappa v. Mohan**[2], but for to the limited extent of holding not good law on the burden of proof from the presumptions in favour of the complainant and burden on accused under *reverse onus* clause. The law is thereby very clear of the accused even need not come to witness box, he can rebut the presumptions by suggesting the witnesses of the complainant or by filing any material or by confronting with any documents or by cross-examining any witness without even coming to witness box, apart from liberty to come if at all to depose himself.

7. As held in **C.Antony v. K.G.Raghavan Nair**[3], it is for the complainant if at all to cause summon that B.Radhakrishna @ Gandhi if at all to belie the said defence version of the so-called cheque and promissory note given empty by the accused to the said Radhakrishna @ Gandhi in the year 2005 and not at all issued to the complainant herein. It is in this factual scenario though under law mere marking of the cheque return memo is enough and summoning of Bank Manager not required for the complainant, even cited in the complaint as witness for no necessity to examine; when the accused want to examine to substantiate his defence version, leave about that defence version is probable or not a matter for part of appreciation of evidence from the arguments after closure of evidence negating such a right of the accused by the trial Court is nowhere just. Thereby the trial Court went wrong in dismissing the application instead of permitting.

8. In the result, the Criminal Petition is allowed. The trial Court is directed to permit the accused/petitioner to cause summon the Bank Manager to lead evidence in support of his defence with right of cross-examination to the complainant of such witness.

Miscellaneous petitions pending, if any, in the Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 20.07.2015
MVA

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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CRIMINAL PETITION No.13639 OF 2014

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Date:

MVA

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[1] AIR 2008 SC 1325

[2] AIR 2010 SC 1898

[3] 2003 (1) SCC 1=AIR 2003 SC 182