

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRIMINAL PETITION No.352 of 2015

ORDER:

This application is filed under Section 482 Cr.P.C. challenging the order dt.12-01-2015 in Criminal Revision Petition No.384 of 2014 of the Metropolitan Sessions Judge, Hyderabad.

2. The petitioner herein is the accused in CC.No.187 of 2014 on the file of the IV Special Magistrate at Hyderabad in a complaint filed by 1st respondent alleging that the petitioner had committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

3. In his examination under Section 251 Cr.P.C., the petitioner admitted on 24-07-2014 that he had engaged an advocate; that the allegations made in the complaint against him are true; and that he had committed the offence punishable under Section 138 of the Act.

4. Thereafter the petitioner filed an application for conducting re-examination of himself under Section 251 Cr.P.C. contending that he was unable to understand the questions put to him in the examination which was held on 24-07-2014; and that he did not engage any counsel to represent his case on that day with a bonafide intention to

settle the matter by deducting amounts already paid to 1st respondent.

5. This application was opposed by respondent contending that there is no provision in the Code of Criminal Procedure to conduct re-examination of accused under Section 251 Cr.P.C. as he had full information of the allegations against him and to enable him to prepare for his defence; that the petitioner is not an illiterate person but a builder by avocation having all knowledge and means to engage the services of a counsel and to prepare for defence.

6. By order dt.08-10-2014, the Court below dismissed the said application holding that there is no provision to conduct the re-examination of accused under Section 251 Cr.P.C.; that the petitioner is not an illiterate person and is a builder by profession; that the petitioner was questioned by the Court under Section 251 Cr.P.C. in Telugu and also explained the incriminating material found in the complaint; and the accused had confessed the offence and answered in Telugu. It therefore held that the excuse now advanced that the services of a lawyer were not availed by petitioner cannot be a good ground to give him an opportunity under Section 251 Cr.P.C. again to record his denial when such is not permitted by the Code of Criminal Procedure.

7. Questioning the same, the petitioner filed Criminal Revision Petition No.384 of 2014 before the Metropolitan Sessions Judge, Hyderabad. The said Revision was also dismissed. The Sessions Court also held that the petitioner had made a categorical admission which was recorded in his own words that the imputations made in the complaint against him were true; that he took the amount in question as loan and issued cheque; and that he has committed the offence punishable under Section 138 of the Act. It also recorded that in answer to the question whether he has means to engage a counsel, he stated that he had engaged a lawyer and this admission cannot be said to have not been made consciously. It therefore held that parties cannot be allowed to take different stands at their convenience when they have consciously made an admission before the Court below.

8. Challenging the same, this Criminal Petition is filed under Section 482 Cr.P.C.

9. The learned counsel for petitioner contends that the petitioner had not understood the purport of the questions put by the Magistrate and therefore he should be given an opportunity by way of re-examination under Section 251 Cr.P.C.

10. I am unable to agree with the said submission. A reading of the statement made on 24-07-2014 by the Magistrate indicates that the petitioner had engaged the

services of an advocate and has admitted the imputations made against him in the complaint thus confessing to his guilt. Both the Courts below have in fact stated that the questions were put in Telugu language which is the mother tongue of the petitioner, and therefore, the petitioner cannot contend that he did not understand the questions. The petitioner is not an illiterate person but a builder engaged in real estate business and it cannot be said that he did not understand the questions put to him by the Court. In any event, there is no provision for conducting of re-examination of accused under Section 251 Cr.P.C.

11. In this view of the matter, I do not find any merit in the petition and therefore it is accordingly dismissed at the stage of admission. No order as to costs.

12. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-01-2015

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