

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
CRIMINAL PETITION Nos.8400 and 8465 of 2015

COMMON ORDER :

These Criminal Petitions are filed by the petitioner/A4 under Section 482 Cr.P.C to set aside the common order dated 04.08.2015 in CrI.M.P.Nos.1554 and 1555 of 2015 in C.C.No.394 of 2014 passed by VI Special Magistrate, Hyderabad.

Heard the learned counsel for the petitioner/A4 and also the respondent-State represented by the Public Prosecutor before admission and perused the material on record.

The petitioner is A4 in C.C.No.394 of 2014 and he filed CrI.M.P.Nos.1554 and 1555 of 2015 seeking to permit him to adduce evidence and to reopen the evidence, respectively. Undisputedly, way back the matter was seized of by reserving for judgment, after written arguments of the accused persons including A4. It is needless to say, at this stage from the written arguments one of the contentions raised by the accused is that the complainant entity is not a registered firm under Section 69 of the Partnership Act, the complainant wanted to file additional documents regarding proof of registration and sought for reopening of his evidence including recall of PW.1 for further examination with reference to documents by filing CrI.M.P.Nos. 512 and 513 and the trial Court allowed the same.

Aggrieved by the same, the accused preferred Criminal Petitions 3808 and 3809 of 2015 before this Court. After hearing both sides, this court by common order dated 03.06.2015 allowed the same by observing that from perusal of cross examination of PW.1 by

accused person there is no even a suggestion that the complainant firm is not a registered one much less with any whisper specifically by the evidence of 'A4 and DW.1'. In fact, it is A3/DW.1 and not A4. There is a mistake crept in the order and like wise by inadvertence from wrong array as the case may be without any insist to probe the record but for to clarify and thereby there is no necessity to reopen the complainant's evidence much less to recall PW.1 or to accept the firm registration documents. It is also observed that when there is no any suggestion regarding firm not registered and no dispute practically, allowing of petitions to recall A3 and reopen of evidence in CrI.M.P.Nos. 512 and 513 by the trial Court do not arise, thereby that order is set aside for no necessity for just decision of the case as per the 2nd Part of Section 311 Cr.P.C.

It is subsequently as can be seen covered by the impugned petitions before the lower Court, the accused persons filed application for the first time for examination of A4 as a further witness in defence to bring on record(to fill up the lacunas) as if the complainant firm is not a registered one. Even undisputedly, written arguments filed way back and matter is reserved for judgment including by the time common order passed by this Court

on 03.06.2015 referred supra. The law cannot permit a party to fill up lacunas that too after the matter is reserved for judgment by seeking to reopen the matter and permit further evidence. There is nothing even to show such permission for examination of A4 (sought for the first time in defence after the matter reserved for judgment) is with any necessity for just decision of the case even for the trial Court to consider. Thereby the trial Court is perfectly right in dismissal of the applications.

Needless to say, in this context, but for any clarity before the lower Court from what brought to the notice of this Court that already in the PW.1's cross examination there is a suggestion put to the complainant/PW1 that the complaint is not maintainable under Section 138 of the Negotiable Instruments Act, if at all such a suggestion is there, it is for the trial Court to consider for any otherwise non-maintainability. It is in fact not covered by any specific suggestion as required by law of the firm is not registered. Thus, it is for the trial Court to decide the *lis* on own merits in pronouncing the judgment.

With the above observations, the criminal petitions are dismissed.

The miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:31-08-2015

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