

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
CRIMINAL PETITION No.3686 OF 2014

ORDER:

This Criminal Petition is filed by the petitioners/A1 and A2 under Section 482 Cr.P.C seeking to quash the order dated 19.02.2014 in Criminal Revision Petition No.349 of 2013 passed by IV Additional Metropolitan Sessions Judge, Hyderabad, confirming the order dated 02.09.2013 passed by the learned XXIII Special Magistrate, Hyderabad in CrI.M.P.No.643 of 2013 in C.C.No.48 of 2013.

Heard the learned counsel for the petitioners, Sri R.Mahender Reddy, learned counsel for respondent No.1/*de facto* complainant and the learned Public Prosecutor for the respondent No.2/State.

Perused the material on record.

The case of the complainant is that the accused issued cheques for the amount due, which is legally enforceable debt for the supply of empty bottles. The defence of the accused leave about no reply given to the statutory notice for any inference if at all during trial (para-15 of Rangappa v. Sri Mohan of SLP (Crl.) No. 407 of 2006) that he never issued cheques to the complainant and the blank cheques given to one M/s.Sunrise Containers Limited, Silvasa in blank and that the same was

misused by the 1st respondent by manipulating and writing their company name and dates and filling up the blanks, which are Exs.P1 and P2. It is to send documents from the suggestion

including PW.1 cross examination of with different ink and different persons writing to probablize the defence, the accused stated for sending the document to handwriting expert regarding the writings and age of the ink found in the said two cheques vide Crl.M.P.No.643 of 2013, that the learned Magistrate dismissed the same. The accused preferred the revision in Criminal Revision Petition No.349 of 2013 on the file of IV Additional Metropolitan Sessions Judge, Hyderabad, and the learned judge dismissed the same on 19.02.2014 with observation at para-13, which reads as follows:

“T.Nagappa v. Y.R.Muralidhar)2008 Scale 6-642(SC). That was a case where the facts available for consideration before their Lordships were that in the year 1999 blank cheques of accused were received by complainant and in the year 2004 columns in the cheques were filled up by complainant and case was filed. It was in that context expert’s opinion concerning age of the ink was found necessary. Their Lordships allowed the prayer of accused holding that accused holds right to adduce evidence in defence in the manner suited to him. In the case at hand the facts are vastly different. Accused has not indicated as to when it gave signed blank cheques and when the complainant misused them by filling up columns of cheques. More over in the case at hand accused is not asking for determination of age of ink of signatures on cheques as against the age of the ink concerning body columns of cheques. Hence, this ruling does not assist the accused.”

This observation of the learned Judge in brushing aside the expression of the Apex Court result dismissal of the

petition. A perusal of the above preposition clearly speaks supporting the above defence of the accused that he did not give the cheques much less he did not fill the part of the columns of the cheques and those were filled by somebody and different writings to the original writings and ink also

different and he sought for sending the same. The Apex Court in fact held that it is one of the defence available to the accused so to permit. Thus, the learned Magistrate committed error in not considering the request equally in confirming the order of dismissal by the learned Sessions Judge. The application is therefore deserves to allow.

Accordingly, this Criminal Petition is allowed setting aside the order dated 19.02.2014 in Criminal Revision Petition No.349 of 2013 passed by IV Additional Metropolitan Sessions Judge, Hyderabad, confirming the order dated 02.09.2013 passed by the learned XXIII Special Magistrate, Hyderabad in Crl.M.P.No.643 of 2013 in C.C.No.48 of 2013.

The case is of the year 2013 and practically under Section 143 of the Act, a summary disposal. Taking consideration of the same, the petitioner is directed to deposit Rs.10,000/- (Rupees Ten thousand only) within one week from the date of receipt of a copy of this order before the trial Court and pursuant to which the trial Court send Exs.P1 and P2 with specimen writings if any

and the available writings on record to the handwriting expert referring the documents for opinion on the writings and the age of the ink and after receiving of the expert opinion with reasons if any and from the further evidence to be adduced including any necessity of examining the expert, the trial Court to give expeditious disposal.

Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 03-07-2015
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