

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P.Nos.4271 and 4277 of 2015

ORDER :

The self-same petitioner/accused filed these two Criminal Petition i.e. Crl.P.No.4271 of 2015 against the orders in Crl.M.P.No.422 of 2015 in C.C.No.303 of 2011(old C.C.No.953 of 2010) and Crl.P.No.4277 against the orders in Crl.M.P.No.419 of 2015 in C.C.No.302 of 2011 dated 08.04.2015 on the file of the Special Judicial Magistrate of First Class(Court-I) at Rajendranagar, Hyderabad, to quash the said orders dated 08.04.2015.

2. Heard the learned counsel for the respective petitioners in both the cases so also the learned Public Prosecutor representing State-2nd respondent before admission and the respective 1st respondent-complainants, even proof of Service filed, did not choose to appear, hence, taken as heard and perused the material on record.

3. Both the above cases are outcome of private complaints filed by two different complainants (G.Krishna Kumar Gowd in C.C.No.303 of 2015 and Prabhakar Yadav in C.C.No.302 of 2011) taken cognizance for the offence under Section 138 of the Negotiable Instruments Act(for short, 'the Act'). It appears the cases crossed the stage of Section 145(1) of the N.I.Act. The trial commenced and the evidence of the complainant was completed and it appears at the stage for entering defence, the accused filed applications under Section 45 of the Indian Evidence Act to send the disputed signatures on the cheques as forged, to handwriting Expert for comparison and opinion and the Court, as can be seen from the impugned order even allowed the applications and also received the expert opinion.

4. It appears at this stage, no doubt, Expert was not examined either by the complainant even the report is against him or by the accused or even by the Court, as the case may be, since the Court observed in the impugned orders that the opinion of Expert regarding the difference in

signature and writing can be considered by the Court. The accused now sought under Section 315 of Cr.P.C. permission to come to witness box to depose with reference to the Expert opinion and also that the signature is forged one and not issued by him with his signatures. The learned Magistrate after counter of the respective complainants in the respective petitions supra dismissed the same with observation that since the Expert opinion is available with the Court to speak the same facts accused need not come to witness box. In fact, Section 315 of Cr.P.C. is practically a privilege and concession to the accused against testimonial compulsion for the reason, but for accused voluntarily come forward to depose by seeking permission of the Court, he cannot be compelled to give any evidence, in any case of which he faces accusation. It does not mean the application even made by him as per his right to come to witness box has to be rejected. Once the accused as a witness wants to come to witness box and depose in favour of his defence, it is the duty of the Court to permit.

5. Having regard to the above without considering the same, the learned Magistrate, it appears, from the counter of the complainant in saying no reasons assigned for his now seeking at this stage to come to witness box and as if the matter reached argument stage though there is nothing to show from the evidence, case was closed or reported closed, in rejecting the request. The orders impugned thereby are unsustainable and liable to be set aside and it requires to permit the accused to come and depose in pursuance of his written request.

6. Accordingly, these Criminal Petitions (Crl.P.Nos. 4271 and 4277 of 2015) are disposed of by setting aside the impugned orders in Crl.M.P.No.422 of 2015 in C.C.No.303 of 2011(old C.C.No.953 of 2010) and in Crl.M.P.No.419 of 2015 in C.C.No.302 of 2011 dated 08.04.2015 on the file of the Special Judicial Magistrate of First Class(Court-I) at Rajendranagar, Hyderabad, directing the trial Court to permit the petitioner/accused to adduce his evidence by fixing a date as the cases

are of 2010, and to proceed with and dispose of the cases as expeditiously as possible. Miscellaneous applications, if any, pending in these Criminal Petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 03.08.2015

Vvr