

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
CRIMINAL PETITION Nos.7898 of 2015 and 7913 of 2015

COMMON ORDER :

There are four accused persons in C.C. No.576 of 2013 on the file of XI Special Magistrate, Erramanzil, Hyderabad, where the learned Magistrate has taken cognizance for dishonour of cheque under Section 138 N.I Act, from the cause of action accrued under Section 142 of N.I Act from the private complaint of payee/ drawer/ de facto complainant and after taken cognizance and examination of accused under Section 251 Cr.P.C, the matter is at the post stage of Section 145 of N.I Act and needless to say once the matter is already heard and reserved for judgment, leave about, subsequently the officer, who presided the Court, transferred if any it is later DW.1, the A-2—Madabhushini Vasudeva Chary filed application for recall of DW.1 and permitted by the trial Court. Needless to say there are two applications in CrI.M.P. Nos.353 of 354 of 2015 for recall of DW.1 also filed and earlier ended in dismissal and again CrI.M.P. No.647 of 2015 filed for recall of PW.1 and CrI.M.P. No.853 of 2015 filed for recall of DW.1, these are the two petitions filed under Section 311 Cr.P.C which are subject matter of the two petitions filed before this Court under Section 482 Cr.P.C.

2) The averments for recall of DW.1 is that there is an inadvertent admission about Ex.P28—email record and it discloses the amount of Rs.7.5 lakhs and odd shown due and in the cross examination, while admitting the document, it is according to him only 1.8 lakhs due. It is only disputed the quantum and not the content in precise.

3) It is subsequently, after the matter reserved for judgment even there from further arguments if any or while arguments are in progress to say not immediately after the so-called inadvertent version of the deposition much less re-examination at that point of time, the petitions were filed one that there is reply email messages with clarification and it is to be exhibited, thereby to recall DW.1 and that too further with reference to it to confront PW.1 also required to be recalled. This is the

sum and substance of the contents of two petitions after contest ended in dismissal before the lower Court that are now impunged before this Court.

4) Needless to say, if at all the document is required to be filed it is only under Section 254 (2) Cr.P.C to receive that document also undisputedly the so called reply email not before the Court and not even chosen to file for the alleged purpose of recall of DW.1 much less for further examination of PW.1 with reference to it. The lower Court having observed belated and meritless supported by own reasons dismissed the two applications.

5) Having regard to the above, for this Court while sitting against, there is nothing to interfere as nothing could be shown even for this Court to exercise its discretionary power either under third limb of 482 Cr.P.C or under the second limb of Section 311 Cr.P.C for nothing shown as same is necessary for just decision of this case as the document is not even before this Court to consider by this Court, thereby there is nothing to interfere.

6) Accordingly, the Criminal Petition is dismissed.

7) Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.02.09.2015
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date:02.09.2015

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