

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRIMINAL PETITION NO. 3094 OF 2015

ORDER:

This application is filed under Section 482 Cr.P.C to quash the order dated 3.3.2015 in Crl.M.P.No. 325 of 2014 in Crl.A.No. 180 of 2013 on the file of II Additional District and Sessions Judge, Guntur.

2. Petitioners are accused in CC No. 412 of 2009 on the file of Special Judicial First Class Magistrate for Prohibition and Excise, Guntur, and they alleged to have committed offences under Section 138 of the Negotiable Instruments Act, 1882.

3. After trial the said Court had convicted the petitioners/accused.

4. Questioning the same, petitioners filed Criminal Appeal No. 180 of 2013 on the file of II Additional District and Sessions Judge, Guntur.

5. Pending the said appeal, petitioners filed Crl.M.P.No. 325 of 2014 under Section 391 Cr.P.C., to issue summons to one P. Ramesh S/o Periaswamy, r/o D.No. 72-12, 1st lane, Rainbow Nagar, Pondicherry to examine him as witness on their behalf. In the said application, it is the contention of the petitioners that the said Ramesh was the Sales Officer in the first respondent company and is now employed elsewhere and that his evidence is necessary to the petitioners to prove their defences. It is further contended that the defence of the petitioners is that the cheque in question on the basis of which the prosecution was initiated action against them was not given by the petitioners to the de-facto complainant, and that an unfilled cheque signed by the second petitioner on behalf of the first petitioner was given at the time of taking dealership as surety to the Chief Office of the first

respondent-complainant through the said Mr. Ramesh, who was then the Sales Officer of the said company stationed in Tamilnadu State.

6. By order dated 3.3.2015 the court below rejected the said application and held that even if the said Ramesh is examined, it won't help petitioner because signature on the cheque was not disputed by the second petitioner and that the only question to be decided is that the cheque was issued or not. It was also held that during the course of trial before the Magistrate summons were sent to said Mr. Ramesh and since such an opportunity was already given, there is no necessity of summoning the said person to be a witness at this stage.

7. Counsel for the petitioner vehemently contended that the order of the court below will be cause prejudice to the petitioner and if he is examined it will establish his defence that the cheque was not given for the discharge of any legal liability to the de-facto complainant and was given only as a security.

8. I am of the opinion that an opportunity had already been given to the petitioners by examining the said Mr. Ramesh in the trial court and the summons were already had been issued to him. In any event, it is not the case of the accused that the said Mr. Ramesh had filled the cheque in question. Whether the handing over of the cheque by the accused was through the said Mr. Ramesh or directly to the complainant is of no consequence in the case. Under Section 391 of Cr.P.C further evidence may be taken up by the appellate Court only if the said Court thinks additional evidence is necessary for the reasons to be recorded. Since the II Additional District and Sessions Judge, Guntur felt that the evidence of Mr. Ramesh is not necessary, I am of the opinion that the petitioner cannot insist that he has right to examine Mr. Ramesh. I therefore do not find any error in the impugned order.

Therefore, this Criminal Petition is dismissed.

9. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

**JUSTICE M.S.RAMACHANDRA
RAO**

Date: 21.04.2015
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