

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

CRIMINAL PETITION No.6711 of 2015

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Between :

O. Amar Nath Reddy S/o.late O. Prathasarathy Reddy

... Petitioner/Accused No.3

AND

M/s. Lakshmi Engineering Cosntructions & Enterprises,

Rep. by its Managing Partner, Smt.O.Anupama

and three others.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 28.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

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| 1. | Whether Reporters of Local
newspapers may be allowed to see
the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may
be marked to Law
Reporters/Journals? | Yes/No |
| 3. | Whether Their Ladyship/Lordship
wish to see the fair copy of the
Judgment? | Yes/No |

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

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ORDER :

Heard learned counsel for the petitioner/A.3 of C.C.No.194 of 2013 on the file of the VII Special Magistrate, Hyderabad and also the 4th respondent-State represented by Public Prosecutor, before admission and before notice to the 3rd respondent-*de facto* complainant since respondent Nos.1 and 2 arrayed formally, who are A.1 and A.2 respectively, and perused the material on record.

2. The above C.C. is outcome of the private complaint for the offence under Section 138 of the Negotiable Instruments Act, 1881, and the learned Magistrate has taken cognizance for the offence supra and during its trial as the complainant maintained the complaint claiming as individual, but in appears, the cheque was issued in the name of an establishment by one Laxmi Enterprises and Constructions-respondent No.1. PW.1 deposed that he is individually prosecuting the case. It is after closure of the evidence and at the fag end almost, the complainant filed petition under Section 311 Cr.P.C. to recall PW.1 to exhibit the Certificate of Registration of the entity M/s.Sujatha Office. It is his contention that it is a propriety concern. The petitioner herein, who went unsuccessful along with other accused persons i.e., A.1 and A.2 in opposing CrI.M.P.No.763 of 2015 for recall is impugning the order dated 22.05.2015 and it is the contention that when complaint is filed by the individual and the complainant has deposed as PW.1 in the capacity of individual and not even referred about propriety concern of M/s.Sujatha Office, much less as mentioned in the cheque of Sujatha Centring and it is not even the documents to be filed of any entity that Sujata Centring, the trial Court

committed error in allowing the petition to permit so-called additional evidence to the prejudice of the defence of the accused. In fact, it is one of the contentions raised before the trial Court referring in para No.6 of the order relying on expression of the Apex Court in **A.C.Narayana v. State of Maharashtra**, that payee if a proprietary concern, the complaint can be filed by the proprietor of the proprietary concern, describing himself as sole proprietor of the 'payee'.

3. It is the submission that there is no such description in the complaint, much less in the evidence of PW.1, and the so-called additional evidence certificate of Sujatha Office, no way correlate and the learned Magistrate committed error in referring to the expression in **Bipin Shantilal Panchal v. State of Gujarat and another**, of any objection is left open during trial to decide.

4. In fact, exhibiting a document is different from appreciation of the probative value of the document after hearing arguments. Moreover, PW.1's evidence is already on record. Once such is the case, nothing takes away the defence of the petitioner herein and also A.1 and A.2 from exhibiting of the document, as defect in the complaint array, no way washed away by admitting the additional evidence to exhibit the document, the said defence of the accused persons always available to say Sujatha Office is different from Sujatha Centring and the petition filed not even by arraying as proprietor of the payee proprietary concern and that is a defect, to place reliance on the expression in Narayana supra that is also left open and available to the accused.

5. With the above observations, the criminal petition is disposed of.

6. Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

28th July 2015.

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