

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
CRIMINAL PETITION No.7077 of 2015

ORDER :

This Criminal Petition is filed by the Petitioner under Section 482 Cr.P.C seeking to set aside the order dated 03.07.2015 in CrI.M.P.No.1068 of 2015 in C.C. No.61 of 2014 on the file of VII Special Magistrate, Hyderabad, which is a private complaint filed for the offence punishable under Section 138 of the Negotiable Instruments Act.

2) Heard the learned counsel for the petitioner and the 2nd respondent-State represented by the Public Prosecutor before admission, before ordering notice to the 1st respondent and perused the material on record.

3) The case taken cognizance of private complaint for the offence under Section 138 of the Negotiable Instruments Act and undisputedly the case at the arguments stage, the petitioner herein as accused therein filed the application covered by the impugned order supra to summon one Innareddy so called one of the witnesses to the documents said to have been executed by accused as per the complainant and that the accused is disputing the document.

4) It is the submission by the learned counsel for the petitioner that the lower Court without considering the purport of Section 311 Cr.P.C dismissed the application on

the sole ground as if it is a belated one. It is the submission that said Inna Reddy in another case filed for dishonour of cheque by the complainant or another person sailing through him in the cross-examination by accused therein made an admission and that admission must be brought before this case through that witnesses, thereby sought for examination of him.

5) The deposition of a living person unless comes under Section 33 of the Indian Evidence Act is inadmissible, but for confrontation either under Section 145 or Section 155(3) of Indian Evidence Act. For confronting the deposition, it is unknown how the petitioner/accused want to summon that person to examine on his side as a defence witness. He ought to have sought to examine as a Court witnesses by saying the complainant is not choosing to examine him and the examination is necessary by Court to unfurl the truth and to confront with the previous deposition with right of cross-examination by calling as Court witness.

6) Having regard to the above, even otherwise on merits, there are no grounds for allowing the application under Section 311 Cr.P.C. for examination of said Inna Reddy as a witness in defence but for any further remedy if able to make out a case left open to file application to examine as a Court witness.

7) With the above observations, the Criminal Petition is disposed of. Consequently, the miscellaneous petitions, if

any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.8th September, 2015
KSH