

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

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For the State of Telangana and the State of Andhra Pradesh

MAIN CASE NO: CRL.R.C.No.1996 OF 2014

Between:

Avula Subba Reddy

.. Petitioner(s)

And

Venkata Krishna Granites and another

.. Respondent(s)

DATE OF JUDGMENT PRONOUNCED: 18.08.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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| 1. Whether Reporters of Local news papers
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 |

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRL.R.C.No.1996 OF 2014

ORDER:

This criminal revision case is filed questioning the orders, dated 18.09.2014, passed by the Principal Sessions Judge, Kadapa, in Crl.R.P.No.2 of 2014, whereby and whereunder, the learned Judge has allowed the petition setting aside the order, dated 20.12.2013 passed by the learned II Additional Judicial Magistrate of First Class, Kadapa, in Crl.M.P.No.1697 of 2013 in STC No.14 of 2012.

The facts of the case are hereunder:

The petitioner herein is the complainant. He filed STC No.14 of 2012 before the II Additional Judicial Magistrate of First Class, Kadapa, under Section 138 read with 142 of the Negotiable Instruments Act. During the course of trial, the complainant, besides examining himself as PW.1, also examined the supporting witness as PW.2 and Exs.P.1 to Ex.P.7 were marked. Thereafter, the respondent/accused filed Crl.M.P.No.1697 of 2013, under Section 311 Cr.P.C., to recall P.Ws. 1 and 2 and the said petition was dismissed by the learned Magistrate. Aggrieved by that the respondent/accused preferred the revision before the Sessions Judge, and the same was allowed with a specific direction that he shall pay costs of Rs.1,000/- to each witness on the date of their appearance before the trial Court. The Sessions Judge further directed the learned Magistrate to dispose of the STC as early as possible by giving due opportunity to both sides. Aggrieved by the said orders, the complainant filed the present revision.

It is contended by the learned counsel for the revision petitioner that though the trial Court has properly appreciated the plea of the petitioner in right perspective and rejected the request of the respondent to recall PWs.1 and 2, the said order has been set aside by the learned Sessions Judge without properly taking into consideration the evidence already adduced before the trial Court.

On the other hand, it is contended by the learned counsel for the respondent/accused that the respondent/accused could not give proper instructions to his counsel on the hope that the matter would be settled amicably and in order to maintain good relationship with the complainant, however, taking undue advantage of the cheques issued for the purpose of security, the complainant has started blackmailing the respondent/accused. Therefore, in order to meet the ends of justice, PWs.1 and 2 may be recalled for further cross examination with reference to financial capacity of PW.1, questions relating to alleged agreement under Ex.A7, notice, partnership firm, filing of a suit, income of the complainant, with regard to list of witnesses and the questions incidental thereto.

Being the Court of first instance, it is incumbent upon the trial Court to see that the entire material is placed on record by both the parties for proper adjudication of the controversy and when a petition was filed to recall PWs.1 and 2, that request cannot be rejected merely on the ground that the application is belated. Learned counsel for the petitioner should be afforded with sufficient opportunity to elicit the material facts from the mouth of PWs.1 and 2, so that the matter will be appreciated in a proper and effective manner. The accused should be afforded with sufficient opportunity to answer the charges levelled against him and the application filed by him for recall of witnesses should not be rejected merely on the

ground that it is filed belatedly. However, if it is shown that the intention behind filing of petition for recall of witnesses is to protract the litigation, the same could not be allowed. In the present case, after completion of evidence on 09.04.2013, the petition came to be filed on 16.08.2013. So, it cannot be said that the intention of the respondent/accused is to protract the litigation. Therefore, this Court is of the view that the learned Sessions Judge has rightly allowed the application and imposed sufficient conditions in order to safeguard the interests of both parties, and hence, the revision petition is liable to be dismissed.

Accordingly, the criminal revision petition is dismissed with a direction to the learned trial Court to fix a date for the purpose of examination of PWs.1 and 2 and on that day, the evidence of both the witnesses shall be completed.

Pending miscellaneous petitions in the revision, if any, shall stand closed. No costs.

M.S.K.JAISWAL,J

18.08.2015
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