

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P. Nos.9640 of 2014 and 13576 of 2014

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COMMON ORDER :

These two Criminal Petitions are filed by the petitioner/ accused under Section 482 Cr.P.C to quash the proceedings in C.C. No.194 of 2014 and to quash the order dated 03.07.2014 passed in Crl.M.P. No.816 of 2014 in C.C. No.194 of 2014 on the file of the IV Additional Chief Metropolitan Magistrate, Visakhapatnam, where the learned Magistrate has taken cognizance for the offences punishable under Section 138 r/w 142 N.I Act, outcome of report of 2nd respondent—de facto complainant, for dishonour of cheque from the cause of action accrued.

2) Heard learned counsel for the petitioner/ accused as well as 1st respondent—State represented by learned Public prosecutor. Perused the material on record.

3) The core contention of the learned counsel for the petitioner/ accused is that in seeking to quash the private complaint proceedings between parents-in-law of complainant and accused, there are transactions right from 2001 if not earlier to it and there was giving of some cheques or pro-notes in relation to that and one of the cheque already misused in the name of mother in law of complainant by filing a case and this is the second one in the name of complainant by using those available blank cheques of the year 2001 and that it is also highly improbable to believe the alleged cheque bearing No.682044 as if issued on 04.06.2012 whereas the cheque bearing No.707736 used as if issued in the year 2009.

4) Whereas it is the contention of the learned counsel for

2nd respondent/ complainant that this contention of the accused is untenable when the signature is not in dispute so also the cheque routed from the account and there is a presumption in favour of complainant and once it is proved that the accused issued a cheque routed from his account, the only thing remains to consider is whether there is legal debt or other liability.

5) Having regard to the above, as laid down by the Apex Court in ***Rangappa vs Mohan***^[1], the burden is on the accused in view of the presumption under Section 139 r/w 118 N.I Act in the reverse onus clause to rebut and as laid down in ***Krishna Janardhan Bhat vs Dattatraya G.Hegde***^[2] which is also explained in Rangappa (supra) the accused need not even go to witness box on the preponderance of probability either from the cross examination of witness and the complainant or by examination of defence witness or by summoning of any document. Needless to say, it is for the accused to discharge the burden on the reverse onus clause and it is premature for this Court to make expression but for to be decided by trial Court on adducing of evidence with opportunity to the accused after 313 Cr.P.C examination.

6) So far as the other application covered by CrI.P.No.13576 of 2014 impugning the order of the learned Magistrate in CrI.P.No.816 of 2014 dated 03.07.2014 in dismissing the application by accused for no grounds to consider concerned, no doubt, in the course of defence, the accused is entitled as referred supra in discharge of the burden under the reverse onus clause to examine any witness. It is one of the defence of the accused that the so called cheques of the year 2001 and misused in 2009 and 2012 respectively. No doubt, the evidence is closed and the matter is at the arguments stage as the lower Court dismissed the

application of the accused to summon the mother-in-law of the complainant to examine as a witness. In fact, it is not stated as a defence witness and it is not even stated as court witness. No doubt, the mother-in-law of complainant not in hostile terms with complainant and it is not useful for the accused to summon as defence witness much less such recourse will serve no defence purpose but for at best she could be examined as a court witness with the right of examination to the complainant and accused.

7) Having regard to the above, modifying the order of the lower Court, permitting to examine the mother-in-law of de facto complainant as a court witness with right of examination to the complainant and accsued.

8) Accordingly, both the Criminal Petitions are disposed of permitting the accused to adduce his defence evidence if so wants to come to witness box by filing application under Section 315 Cr.P.C or otherwise for issuing of summons to the witness to be examined as court witness, the mother in law of complainant as referred supra. The trial Court shall make every endeavour to dispose of the case early.

9) Miscellaneous petitions, if any pending in these Criminal Petitions, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

21.08.2015

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[\[1\]](#) AIR 2010 SC 1898

[\[2\]](#) (2008) 4 SCC 54