

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

**CIVIL REVISION PETITION Nos.3847, 3853, 3851, 3849 &
3852 of 2016**

COMMON ORDER:

The CRP.No.3847 of 2016 is maintained impugning the order of the lower Court dated 22.07.2016 in I.A.No.88 of 2016 in the panchayat election O.P.No.4 of 2013 dismissing the application to reject the main petition for alleged non-compliance with the deposit or payment of Rs.100/-.

2. CRP.No.3853 of 2016 is maintained impugning the order dated 22.07.2016 dismissing the application to frame additional issues in I.A.No.87 of 2016.

3. CRP.No.3851 of 2016 is maintained impugning the dismissal of the application in I.A.No.86 of 2016 for recall of RWs.4 and 5 sought for.

4. CRP.No.3849 of 2016 is maintained impugning the order in I.A.No.84 of 2016 dated 22.07.2016 dismissing the application to reopen the evidence.

5. CRP.No.3852 of 2016 is maintained impugning the order dated 22.07.2016 in I.A.No.85 of 2016 dismissing the application for receiving 5 documents filed with the election petition on behalf of the election 1st respondent.

6. Heard both sides at length for common disposal and perused the material on record.

7. So far as CRP.No.3847 of 2016 concerned, there is nothing to interfere, but for to dispose off the revision with the

observations that the impugned order rejecting the application for no grounds to reject the plaint, no way takes away such contention to raise in the main matter pending as one of the contentions.

8. So far as CRP.No.3853 of 2016 concerned, the trial Court when came to the conclusion of no additional issues that could practically arise even though procedure for trial of suit equally that apply as per the rules framed in deciding the election application by the Tribunal vis-à-vis Section 141 CPC also says the procedure applicable to suits equally applicable to miscellaneous applications, but for to dispose off saying such conclusion no way takes away power of the trial Court in the course of hearing final arguments to formulate any necessary points, additional issues or recasting any existing issues for consideration when come across to decide on merits the exact lis from evidence on record.

9. CRP.Nos.3849, 3851 and 3852 of 2016 since require a common order for once is to reopen, other is recall of RWs.4 and 5 and the other is to receive the five documents filed with the petition to let evidence through RWs.4 and 5 concerned; through the official respondents the question of adducing the proposed evidence does not arise but for if at all to confront them and that does not even serve any purpose for nothing of contents of the documents are within their personal knowledge. In fact a perusal of the 5 documents filed with the application in I.A.No.85 of 2016 (subject matter of revision in CRP.No.3852 of 2016) shows but for document No.1 is charge sheet and document No.5 is FIR dated 28.07.2013 against the election petitioner, if any, the other 3 documents are statements of witnesses recorded during

investigation cannot be exhibited as documents, but for if at all to confront the maker of the statements for the limited purpose as per Section 145 of the Evidence Act. Equally the so called scene observation report of the criminal case if at all only to examine the investigating officer who collected the physical evidence and question of exhibiting through somebody does not arise and so far as other document is confession cum recovery panchanama against accused no other the petitioner No.1/PW.1 concerned, the same when disputed by him but for to admit within the limited scope under Section 27 of the Evidence Act in the criminal proceeding, that cannot be made use though Section 162 (2) Cr.P.C. no way applies to Sections 27 and 32 of the Evidence Act. Thus the documents if at all to permit from the public documents covered by FIR and charge sheet, the so called crime against the election petitioner/PW.1 if at all within the limited scope to confront him therefrom under Sections 145 and 155 clause (3) of the Evidence Act, there are no grounds to recall RWs.4 and 5 but for from the consensus arrived by both sides to make use only within the limited scope to put to PW.1 by recall, this Court within the plenary jurisdiction, instead of driving to file another application and giving further life to the litigation, permitted recall of PW.1 to cross-examine only for that purpose with reference to FIR and charge sheet by receiving the documents.

10. Accordingly, CRP.Nos.3849 and 3852 of 2016 are allowed and C.R.P.No.3851 of 2016 is dismissed (besides C.R.P.Nos.3847 and 3853 of 2016 are disposed off), by reopening the evidence and by virtue of this order from what is discussed supra to receive said FIR and charge sheet and not any other

documents and by virtue of this order the Tribunal is directed to recall PW.1 for his appearance on the day being fixed within one week from the date of receipt of this order and therefrom the lower Court to put questions on those 2 documents to PW.1 if he admits to exhibit and if not admitted to permit any cross examination with reference to the same further of PW.1 by respondent No.1 and nothing beyond. Needless to say on such completion, the Tribunal shall take up arguments of the main matter and dispose of on merits as early as possible without any further right to adduce further evidence as per the consensus arrived here.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

Date: 14.09.2016
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JUSTICE Dr. B.SIVA SANKARA RAO

