

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.742 OF 2017

ORDER:

The accused is the revision petitioner and 2nd respondent is the complainant of C.C.No.90 of 2015, outcome of a private complaint for the offence under Section 138 N.I.Act.

2. In the course of trial, on behalf of the complainant, he himself came to witness box as P.W.1. The defence of accused from the suggestions to P.W.1 were that there is no any legally enforceable debt and the alleged cheque i.e., Ex.P1 and alleged pro-note i.e., Ex.P6, for which the cheque said to have been issued are the fabricated documents and there is no liability. From said defence of accused set up by suggestions in the cross-examination of P.W.1, with reference to it supra, evidence of complainant was closed and it was coming for defence evidence of the accused, if any. It is at that stage the accused filed the application relying on the P.W.1's evidence of the cheque is supported by consideration of the pro-note and the pro-note was executed in the presence of the complainant's wife Anitha Reddy and complainant's friend Janardhan Reddy and the complainant did not choose to examine them and it is essential to examine said Anitha Reddy, on behalf of the accused, to disprove the case of the complainant.

3. The lower court dismissed the petition, by the impugned order, dated 06.01.2017, saying said Anitha Reddy, wife of complainant, generally cannot speak against her husband and it is for the complainant to choose to examine her or not and as she is the wife of complainant, she cannot be called by accused to depose as a defence witness.

4. Heard the counsel for the petitioner pursuant to the contentions in the revision impugning the order. The accused/respondent, even served, failed to attend and taken as heard.

5. Perused the impugned order.

6. As held by the three Bench judgment of the Apex Court in **Rangappa Vs. Sri Mohan**¹, once the cheque routed from the account of accused is not in dispute, under reverse onus clause burden lies on the accused to rebut the presumptions. The accused's right of defence is also a valuable right, as discussed therein, referring to the earlier expressions and accused can establish his case either by cross-examination of the complainant and witnesses or by adducing defence evidence, as the case may be.

7. In the deposition of P.W.1, there are suggestions by which the accused is denying the issuing of the cheque, saying the cheque and the pro-note are the fabricated

¹ (2010) 11 SCC 441

documents, though there is no specific suggestion of the cheque not routed from his account and there is further cross-examination of there is no consideration for the cheque. Complainant deposed that his wife and Janardhan Reddy were present, when he paid Rs.8,00,000/- (rupees eight lakhs only) cash to the accused and the accused executed the pro-note and he also deposed that the accused and his wife got money lending transactions. In this scenario, it is the duty of the complainant to examine any of the two persons to prove the passing of consideration from said denial by accused. However, complainant did not choose to examine any of the two witnesses. When such is the case, accused wanted to examine her as a defence witness, trial court instead of saying wife of the complainant as a defence witness will not support the defence, could have been considered that a witness who called to depose must depose truth of the transaction that too on oath and if at all choses to wriggle out from truth, there is a right of cross-examination of own witness that can be permitted under Section 154 of the Evidence Act. Having regard to the above, the trial court should have allowed the petition or atleast within its power including under section 165 of the Evidence Act, should have called her (Smt.Anitha Reddy wife of the complainant) as a court witness with right of cross-examination to the complainant and accused.

8. Having regard to the above and in the result the revision is allowed and the dismissal order of the lower court is set aside and the matter is remanded to the lower court to consider afresh pursuant to the observations supra to permit the examination of wife of complainant if at all not chosen still by the complainant on his behalf to examine, either as a defence witness or atleast as a court witness.

9. Miscellaneous petitions pending, if any, in this case shall stand closed.

30.03.2017
SS

DR.B.SIVA SANKARA RAO,J

