HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.7357 of 2017

ORDER:

This criminal petition, under Section 482 of Cr.P.C., is filed to quash the order, dated 12-07-2017 passed by the III Additional Special Judge for C.B.I. Cases, Visakhapatnam, in Crl.M.P.No.535 of 2017 in C.C.No.09 of 2008, whereby the request of the petitioner/A-1 to take necessary action against the Bank officials for not producing the documents was rejected.

It is the case of the petitioner/A-1 that he filed application under Section 91 of Criminal Procedure Code, to summon certain documents from the bank authorities and the trial Court was pleased to pass an order, dated 12-07-2017 in Crl.M.P.No.535 of 2017 in C.C.No.09 of 2008, directing the officials of two Banks to produce the documents set out in the list. The documents are as follows:

> *"i) Log reports (Computer generated) relating to the current account No.CA/1/34 of Ms.Susi Sea Foods Pvt. Ltd from the date of opening the account to closing i.e., till 23.09.2006; ii) Key movement register of Andhra Bank, Markondaputti branch from January, 2005 to September, 2006; iii) 'Staff allocation of duties register' of Andhra Bank, Markondaputti branch, from January, 2005 to September, 2006; iv) Dispatch register of Andhra Bank, Markondaputti branch for the period January, 2005 to September, 2006; v) 'Cash remittance register' of Andhra*

Bank, Markondaputti branch for the period January, 2005 to September, 2006; vi) Sanction letter from Head Office and entire correspondence in between D.Babu Rao (P.W.1) and Bank in payment of deposit amount to the said D.Babu Rao and further ordered to issue summons for compelling the attendance of the Officer of Head Office, Andhra Bank, Saifabad, Hyderabad to produce the listed documents such as: i) Entire record (correspondence) from P.W.1, Markondaputti branch of Andhra Bank Zonal Office, Head Office and Ombudsman in relating to the complaint of P.W.1 and; ii) Disciplinary proceedings and punishment imposed against S.K.Sahoo (P.W.2) (Code No.20709), Rural Development Officer, S.V.Ravindra Babu (P.W.3) (Code No.18898), cashier and C.Thyaga Raju (P.W.7) (code No.16710), Dy.Manager, for proof of his contentions, on payment of process."

But the bank officials produced only few documents as mentioned in the petition filed by the petitioner under Section 91 of Cr.P.C., which is the subject matter of the present revision. They are as follows:

"Regarding Manager, Andhra Bank, Markondaputti Brnach:

The petitioner requested the branch to supply 6 documents in original/certified copies, but they supplied only one document i.e.,

5) Cash remittances Register of Andhra Bank, Markondaputti Branch from January, 2005 to September, 2006 only in Photostat copy.

The Branch had initially supplied the below mentioned wrong documents instead of requested documents, those are:

1) Log reports of CA/1/34 M/s.Susi Sea foods from the date of opening of account to 23-09-2006. (Log reports means the Staff/Officers who were operated the account can be established)

2) Total key movement Register i.e., Officers and Clerical Staff.

But the branch had supplied:

1) Statement of account which discloses transactions in the account.

2) But the branch supplied only Cashier's key movement Register only.

The Branch has not supplied any other document, even though directed by the Honourable Court. Those are:

3) Staff Allocation of Duties Register of Andhra Bank, Markondaputti branch from January, 2005 to September, 2006.

4) Despatch Register of Andhra Bank, Markondaputti branch from January, 2005 to September, 2006.

6) Sanction of payment letter from Head Office/Zonal Office and entire correspondence in between Sri Dandamudi Babu Rao and the Branch in payment of Deposit amount.

Regarding Head Office/Zonal Office, Andhra Bank:

The Honourable Court directed the Head Office/Zonal Office to supply:

Entire record (correspondence) from Dandamudi Babu Rao (PW-1), Markondaputti Branch of Andhra Bank Zonal *office, Head Office and Ombudsman in relating to the complaint of PW-1.*

But the Head Office/Zonal Office had intentionally not supplied important documents, those are;

1. Letter dated 30-11-2006 addressed to the Chairman & Managing Director of Andhra Bank by Dandamudi Babu Rao (PW-1).

2. Head Office reply Letter dated 11-12-2006 to Dandamudi Babu Rao (PW-1)

3. Ombudsman award.

4. Letter of Payment of Deposit amount sanctioned by Head Office.

(The above documents are very important documents to prove the innocence of the Petitioner/Accused. All above not supplied documents mentioned above are very much in possession of the Branch and Head Office/Zonal Office)"

When the bank officials are directed to produce certain documents they are bound to produce, or file a report informing that they are not available explaining the reason. Instead of doing so, the Bank officials are cleverly avoided to produce the documents, which resulted in filing the petition before the trial Court and the revision before this Court.

Learned counsel for the petitioner would draw the attention of this Court in paragraph No.8 of the order, where the Court below draw certain presumptions and negated the relief in the petition before the trial Court and requested this

Court to pass appropriate order setting aside the order under challenge.

Learned Special Public Prosecutor for C.B.I. contended that the Bank authorities are bound to produce the documents or otherwise file a report before the Court and requested to pass appropriate orders.

As seem from the material on record, the Court below already gave a direction in Crl.M.P.No.389 of 2015 in C.C.No.09 of 2008, dated 21-02-2007 for production of certain documents set out in the list. Instead of producing the documents, the Bank officials of Head Office, produced the documents set out in the petition filed before this Court and failed to produce other documents and they did not file any report about availability or non-availability of the documents summoned by the Court. In such case, it is the duty of the Court to compel the Bank officials to produce the documents so as to enable the petitioner to substantiate his contentions in a case pending before the Court below during trial. If such relief is negated it would amount to denial of fair trial, therefore, the order passed by the trial Court is hereby set aside while directing the Court below to direct the Bank officials to produce the documents and otherwise to file a report about non-availability, if not available.

With the above direction, the Criminal Petition is disposed of. The Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

August 18, 2017

Pn

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.7357 of 2017

August 18, 2017

Pn