

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE Nos.3241 & 3288 OF 2016

COMMON ORDER:

The accused aggrieved by the orders in CrI.M.P.Nos.4208 and 4207 of 2016 in pending C.C.No. 264 of 2016, dismissing the two applications of him - one is to reopen the defence evidence and the other is to issue summons to cause examine one C.Manemma @ Nagamani, as defence witness, against the impugned dismissal orders dated 15.12.2016, maintained the revision.

2. The calendar case is outcome of the dishonor of cheque under Section 138 N.I. Act, said to have been issued by the accused in favour of the complainant. The defence of the accused is that he stood as guarantor to one Manemma and there is no consideration received under the cheque from the complainant by him and there is no legally enforceable debt or other liability to satisfy under the cheque claim. It is in support of the defence, the accused wanted to examine said Manemma saying the cheque issued and routed from his account is not supported by consideration. The application was not earlier filed, though it is claimed as one of the defence, even in his reply notice, during the period the trial court allowed to adduce any defence evidence. It is after closure of the defence evidence in September, 2016, there are three applications, it appears to be filed by the accused -

one is to send the Ex.P1 cheque to handwriting expert and the other is there is a material alteration under Section 87 of the N.I. Act to decide and the other is to reopen the case in relation to the evidence of the accused. These three applications at the stage of revision against the dismissal orders of the trial court shown withdrawn giving liberty to raise the material alteration and the signature on the Ex.P.1 cheque in dispute before the trial court to consider during trial. It is after that the present applications were filed to reopen and to cause examine said Manemma. Once it is the defence raised in the reply notice itself, though there are latches on his part, during the period permitted to adduce defence evidence in not sought summoning examination of said Manemma, it is just to permit in view of the defence, however, subject to costs instead of dismissal. Thereby the impugned order of dismissal of the lower court unsustainable, though otherwise not prone to revision, to sub-serve the ends of justice to take the revisions under Section 482 Cr.P.C.

3. Accordingly and in the result, these two revisions are allowed by treating the applications under Section 482 Cr.P.C., by reopening the evidence of the accused and by permitting to secure on hand summons the said Manemnna @ Nagamani to cause examined before the trial court by applying for hand summons, within one week from date of receipt of the order, for the lower court to fix a date for serving the hand summons and secure her presence to cause

examine and to proceed further therefrom subject to costs of Rs.5,000/- to be deposited by the petitioner/accused before the trial court, within one week from date of receipt of the order, for the trial court to send the said amount to any orphanage owned or running by the Government in the District or within the State.

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

07.04.2017
SS

DR.B.SIVA SANKARA RAO,J

