

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.6543 and 6546 of 2017

COMMON ORDER:

The self-same petitioner who is the complainant in C.C.No.50 of 2016 on the file of the learned XXIII Special Magistrate, Hyderabad, for the offence under Section 138 of the Negotiable Instruments Act (for short 'the Act'), filed these two Criminal Petitions against the self-same respondents, (1st respondent-State and 2nd respondent/accused impugning the common order dated 03.07.2017 in CrI.M.P.Nos.1573 of 2017 filed under Section 294 CrPC to receive documents and 1574 of 2017 filed under Section 311 CrPC to reopen and recall P.W.1 in the above Calendar Case, impugning the dismissal of both the petitions.

The common contentions in both the quash petitions are that as the 2nd respondent/accused taken specific plea that no documents have been filed in support of Ex.P.1 cheque like invoices, delivery challans and credit notes and also any license to sell seeds, the petitioner/complainant filed CrI.M.P.No.1573 of 2017 to receive said documents etc, which are necessary to be brought on record and also filed CrI.M.P.No.1574 of 2017 (impugned in CrI.P.No.6546 of 2017) seeking to recall P.W.1 for marking said documents, in order to assist the trial Court to come to a just conclusion in the matter, but the trial Court dismissed both the petitions holding that the complainant in his cross-examination admitted that the said documents were not filed along with the complaint and even not referred in the complaint or notice. It is submitted that along with said two petitions, he filed

two other petitions viz; CrI.M.P.No.1572 and 1575 of 2017 both under Section 311 r/w Sec.254 (2) Cr.P.C. to summon M.Keshava Reddy, Senior Area Manager of the petitioner company and S.Sreedhar Babu, an ex-employee of the petitioner company respectively as witnesses and the same were allowed basing on the no-objection of the respondent/accused, the trial Court ought to have allowed the petitions impugned herein along with the above other two petitions. The trial Court failed to observe that the accused during the cross-examination of the P.W.1 specifically suggested about non-filing of the said document but did not qualify this suggestion by way of a further suggestion that the said documents were not filed as they were non-existent, therefrom it can be presumed that the existence of said documents is well within the knowledge of the respondent/accused and allowing the same to be filed and marked in evidence on behalf of the petitioner/complaint will not prejudice the respondent/accused and that the respondent/accused will have ample chance to cross-examine P.W.1 with respect to the same. The trial Court erred in ignoring the admissions of the respondent/accused in his own chief and cross-examination as D.W.1 that he was being supplied seed by the petitioner/complainant. The trial Court failed to see that when the standard of proof for the respondent/accused under Section 139 is by way preponderance of probabilities, the petitioner/complainant could be given opportunity to refute the case of the respondent/accused and no prejudice would be caused to the respondent/accused. The holding of the trial Court as the said documents are not allowed to be filed on the reason that there

was no pleading in the demand notice or in the complaint is untenable and unsustainable.

Proof of taking notice filed to the advocate on record of the 2nd respondent/accused and there is no representation. Heard the learned counsel for the petitioner/complainant and the learned Public Prosecutor for the 1st respondent-state and perused the material on record including the grounds urged in the petitions and impugned order in question.

The detailed order of the lower Court running in 15 Paras in dismissing the 2 applications for receiving of documents and recall of PW.1 for further examination no doubt at the stage the matter after evidence of Dws.1 & 2 from the closure of evidence of defence of the accused post for arguments concerned regarding the amount due under the cheques in question as to legally enforceable debt or not concerned, there is a specific plea in the defence taken by accused regarding non-filing of invoices, delivery challans and notes for the so-called sale of seeds and holding of licence. It is needless to say that once the cheque routed from the account of the accused and bears his signature or proved as the signature is that of the accused, the burden is on the accused under reverse onus clause to rebut the presumptions under Sections 139 & 118 clauses (a) to (f) of the Act including from the 3 Judge Bench in **Rangappa Vs. Sri Mohan**¹. Needless to say, going into the merits of the matter, which tantamounts to pre-judging of the matter at the arguments stage. DW.1 in his cross-examination also stated the signature on the Ex.P4 cheque is that of him though he

¹ (2010) 11 SCC 441

disputes any purchase of seeds in giving of cheque in this regard. The receiving of the notice covered by Ex.P8 acknowledgment is not in dispute so also of Ex.P10 in question. It is the case of the complainant that it is in discharge of amount due as per Ex.P1 of Rs.7,03,803/-, the Ex.P4 cheque in question was issued, there is no reply to Ex.P6 notice covered by Ex.P8 acknowledgment from the accused even among the defence documents with reference Ex.P1=P10 so called statement of account in dispute for the amounts due, Exs.D2 to D6 are weigh-bridge bills and in Ex.D7 with complainant company seal and initial there is writing of Asian Agri Genetics Limited by the accused as deposed in his cross-examination even but for the dispute is in relation to Exs.D8 & D9 relied by accused from the complainant has not genuine.

In this factual background to further substantiate the amount due of the credit supply of seeds in question the cheque stated issued and that too from the development of the version by accused without even reply to the statutory notice, the invoices delivery challans and credit notes etc., not filed including holding a seeds licence and when complainant want to file to further substantiate his case to avoid any little cloud in his case, the dismissal of the applications by the lower Court including recall of PW.1 to exhibit the same is no way sustainable, but for to allow even at the stage of arguments subject to costs if any.

Having regard to the above, the impugned orders are set aside and both the Criminal Petitions are allowed subject to costs of Rs.2,000/- payable by the complainant to accused with a direction to the lower Court to recall PW.1 to exhibit the

documents and permit further cross examination of accused in relation to it if any for an earlier date to be fixed by the lower Court.

Consequently, miscellaneous petitions, if any shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date: 14.09.2017
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