

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION Nos.623, 817 AND 818 OF 2017

COMMON ORDER:

These three Criminal Petitions are directed against the distinct orders, dated 05.01.2017, passed by the learned II Additional Judicial Magistrate of First Class, Guntur in Criminal M.P. Nos.35, 36 and 34 of 2016 respectively in C.C. No.29 of 2015 rejecting the request made by the petitioners.

2(a). Criminal M.P. No.35 of 2016 was filed to summon Mr. C.S.S. Patnaik, Secretary, Tobacco Board, Guntur to cause production of five (5) documents, description of which is given in paragraph No.1 of the order passed by the learned Magistrate.

(b) Criminal M.P. No.36 of 2016 was filed to summon the Branch Manager, Oriental Bank of Commerce, Guntur to cause production of five (5) documents, description of which is given in paragraph No.1 of the order passed by the learned Magistrate.

(c) Criminal M.P. No.34 of 2016 was filed to summon the Branch Manager of Oriental Bank of Commerce, Guntur and C.S.S. Patnaik, Secretary, Tobacco Board, Guntur to adduce evidence; the purpose being to disprove the case of the *de facto* complainant.

3. All these three (3) requests were resisted to by the *de facto* complainant - respondent No.1 stating that the petitioners can lead

evidence under Section 315 of the Code of Criminal Procedure, 1973, and that the case shall be tried under summary procedure and entitlement of the *de facto* complainant is clearly discussed in the suit in O.S. No.198 of 2011 and it is for the petitioners to prove that the subject cheque was not issued towards discharge of legally enforceable debt and the petitions are filed only to drag on the proceedings.

4. In Criminal M.P. No.35 of 2016 filed under Section 91 of the Code of Criminal Procedure, 1973, the learned Magistrate observed that the material discloses that the subject cheque was issued in connection with E.P. No.31 of 2013 in O.S. No.198 of 2011 in order to discharge legally enforceable debt, which is existing as per the decree in O.S. No.198 of 2011. The *de facto* complainant is no other than the plaintiff in the said suit and decree-holder in E.P. No.31 of 2013 on the file of Judge, Family Court - cum - VII Additional District Judge, Guntur. The *de facto* complainant being the decree-holder in the said execution petition, the learned Magistrate opined that the petitioners are not entitled to dispute with his right in proprietorship of S. Balaiah & Sons and it is for the petitioners to prove that the disputed cheque was not issued towards discharge of legally enforceable debt which is existing in E.P. No.31 of 2013 and further opining that no purpose would be served by examining the proposed parties and marking the proposed documents on behalf of the petitioners, rejected the request, however, observing that the

petitioners are entitled to let in evidence in order to prove that the subject cheque was not issued in connection with E.P. No.31 of 2013.

5. Heard Sri Raja Reddy Koneti, learned counsel for the petitioners in all these petitions.

6. Learned counsel for the petitioners in all these petitions would submit that the learned Magistrate was not right in rejecting the request and dismissal of the petitions on the ground that such defence as projected by the petitioners is not available and the petitions are unnecessary is beyond the scope, and, therefore, the same cannot be sustained. The learned counsel stating that the observation of the learned Magistrate that the Criminal M.Ps. are unnecessary is beyond the scope and that the petitioners are at liberty to take such defence as they think fit and the requests made to summon the documents and to examine the Branch Manager of Oriental Bank of Commerce, Guntur and C.S.S. Patnaik, Secretary, Tobacco Board, Guntur, is to substantiate the defence, and thus, sought to set aside the orders.

7. One thing is certain from the arguments advanced by the learned counsel for the petitioners, the averments from the petitions in Criminal M.P. Nos.35, 36 and 34 of 2016 and the counters filed therein that the subject cheque relates to the decree in O.S. No.198 of 2011 in the direction of satisfying the liability. The learned counsel for the petitioners has also submitted that the subject cheque was issued by the petitioners in connection with a settlement arrived at in

O.S. No.198 of 2011. In such an event, the question of either examining the witnesses now proposed to be examined and summon the documents which are sought to be markedm from the Oriental Bank of Commerce, Guntur and C.S.S. Patnaik, Secretary, Tobacco Board, Guntur, certainly, would not arise, more particularly, when the *de facto* complainant filed E.P. No.31 of 2013 to enforce the decree in O.S. No.198 of 2011 and the subject cheque relates to the said decree.

8. Thus, there is no merit in the requests made by the petitioners. The orders passed by the learned Magistrate cannot be viewed as suffering from any legal infirmity. The petitions are devoid of merit.

9. Therefore, all the Criminal Petitions are dismissed at the admission stage itself.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petitions stand closed.

A. SHANKAR NARAYANA, J

February 3, 2017.

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