

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE Nos.1931, 2123 and 2135 of 2014

COMMON ORDER:

The accused/Kannaganti Samba Siva Rao, who said to have been borrowed money from M/s.Kamadhenu Financiers issued a cheque bearing No.169598, dated 15-01-2000 for an amount of Rs.5,09,500/-, that when the same was presented it was returned with an endorsement of 'account closed' and on the complaint, C.C.No.304 of 2000 was registered. Impugning the conviction judgment of the trial Court in contesting C.C.No.304 of 2000, dated 13-02-2003, accused maintained CrI.A.No.24 of 2003 against the said entity represented by the then Managing Partner Sri K.V. Appa Rao.

As per the facts, it appears that there was compromise said to have been entered by the entity represented by Sri.K.V.Appa Rao and by recording the same, the appeal proceedings were closed acquitting the accused-Kannaganti Samba Siva Rao. Impugning the same, Sri B.B. Visweswara Rao, so-called present Managing Partner of the entity stating that the said Sri K.V.Appa Rao, Ex-Managing Partner was removed from the partnership because of the disputes and there is a collusion without any right of him in so-called entering of the compromise, pending appeal behind the back of him and the said compounding of the offence is liable to be

set aside, maintained revision in CrI.R.C.No.909 of 2005. The same was allowed after contest by said Sri K.V. Appa Rao disputing the so-called removal of him from the partnership and by Sri B.B. Visweswara Rao is coming into the firm as Managing Partner ultimately with a direction to the lower Court by restoring the appeal to decide the status of either Sri B.B. Visweswara Rao or Sri K.V. Appa Rao or the said entity of the complaint.

Pursuant to which the said Sri B.B. Visweswara Rao filed M.P.No.579 of 2014 in CrI.A.No.24 of 2008 and the lower appellate Court by detailed order, dated 22-08-2014 allowed the application to the extent of permitting the said Sri B.B. Visweswara Rao to come on record as 3rd respondent representing the firm M/s.Kamadhenu Financiers, which is the complainant-cum-appeal 2nd respondent show representing by Sri.K.V.Appa Rao.

These three revisions are the outcome impugning the same and also against the dismissal of the application of the accused-Kannaganti Samba Siva Rao to direct the respondents/complainant entity to produce the original partnership deed and addendum partnership deed before the Court in CrI.M.P.No.1085 of 2014.

Heard common arguments in all the three revisions at length and perused the material on record.

In a Criminal Appeal impugning the conviction judgment of the trial Court, for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 filed by M/s.Kamadhenu Financiers irrespective of who represents the said complainant entity, the accused has to establish his case propounded in the appeal grounds, impugning the trial Court's conviction judgment, it is not of much material as to who among the partners of the entity representing the entity supporting the trial Court's judgment. Once such is the case, undoubtedly the lower appellate court has to decide either Sri K.V. Appa Rao or Sri B.B. Visweswara Rao who is the correct person to represent the entity when the order impugned says by impleading both of them to come on record to hear their arguments to ultimately decide who among them is competent to represent the entity in deciding whether the appellant/accused is entitled to acquittal against the conviction judgment of the trial Court or not by setting aside. When such is the case, there is nothing to impugn the order in impleading both of them to contest or defend supporting the lower Court's judgment for deciding the appeal including as to who among the two are entitled to represent as the Managing Partner of the entity. No doubt, for that purpose when the original partnership deed and addendum partnership deed sought for producing is required to show. It can be said that in fact in the impugned order of the lower

Court, dated 22-08-2014 there is a reference of the partnership deed in Exs.P-13 and P-14, dated 25-09-2010 and 25-11-2013 respectively.

Now, learned counsel for the accused submits that there is a original partnership of '1994' and addendum partnership deed and that are required to be produced.

Having regard to the above, if at all any requirement of the original partnership deed is necessary for the lower appellate Court including as to decide the representatives of M/s.Kamadhenu Financiers entity pursuant to the partnership deed to represent the lower appellate Court can invoke its power under Section 165 of the Indian Evidence Act, and also pursuant to this order call for the same or from any Registrar of Documents the names of the Managing Partners and other partners entered.

All the revision cases are disposed of. There shall be no order as to costs.

Miscellaneous Petitions pending consideration, if any, in three revisions shall stand closed in consequence.

Dr. B. SIVA SANKARA RAO, J

March 20, 2017

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