

HON' BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7614 of 2017

ORDER:

The unsuccessful petitioner/ accused in CrI.M.P.No.1056 of 2017 in C.C.No.31 of 2016 pending on the file of the V Special Magistrate, Erramanjil, Hyderabad, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), which is an outcome of a private complaint of the 2nd respondent herein, in the application filed under Section 311 Cr.P.C. for recall of P.W.1 for cross examination since that right is forfeited by treating no cross examination by the lower Court by the impugned order dated 27.06.2017, maintained the present criminal petition.

A perusal of the order with reference to the counter of the complainant in opposing the said application shows more than five adjournments taken and from the alleged inconvenience of the advocate representing the petitioner/ accused engaged in another Court, no cross examination for five times done, the lower Court, thereby, rightly closed the application.

However, the fact remains that there is no cross examination of P.W.1 on behalf of the accused at all, which is a valuable right even for the lower Court for effective disposal of the case. Such evidence testing by cross examination since necessary for the laches, it could be compensated by awarding costs to sub-serve the ends of justice, invoking Part-II of Section 311 Cr.P.C. and Section 165 of the Evidence Act.

Having regard to the above, the Criminal Petition is allowed by directing the lower Court to fix the date within four days from the date of receipt of copy of this order for presence of P.W.1 and his cross examination on the same day to be fixed by the lower Court by the accused, subject to payment of costs of Rs.2,000/ (Rupees Two thousand only) to the 2nd respondent/ complainant herein in open Court and any non-payment before commencement of cross examination, the impugned order holds good and this order will have no effect at all, so that there will be no any further reference to this Court in that regard.

Pending miscellaneous petitions, if any, shall stand closed.

Date: 24.10.2017
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JUSTICE Dr. B.SIVA SANKARA RAO

