

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2465 OF 2017

AND

CRIMINAL PETITION No.2469 OF 2017

COMMON ORDER:

Both these Criminal Petitions have been filed requesting to quash the Orders dated 17.02.2017 in CrI.M.P.No.94 of 2017 in Criminal Appeal No.307 of 2015 and CrI.M.P.No.93 of 2017 in Criminal Appeal No.306 of 2015 respectively, on the file of I-Additional Sessions Judge, East Godavari at Rajamahendravaram, under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code').

2. The aforesaid orders were passed in the appeals referred to in the above, when request was made at the appellate stage to permit the petitioner/appellant/accused to file certain documents, the description of which is given in the petitions.

3. Heard Sri O. Manohar Reddy, learned senior counsel, representing Sri S.V. Ramana, learned counsel for the petitioner and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

4. The submission of the learned counsel for the petitioner has been that learned Additional Sessions Judge has just referred to docket proceedings dated 17.8.2016 and thenceforth till 18.1.2017, on which

day the present application was filed, and opining that the appellant was in the habit of changing his counsel from time to time and seeking time on one reason or the other protracting the appeal proceedings to the extent possible, rejected the request.

5. Thus, the submission of the learned counsel is that instead of entering into the arena of merits, whether the documents are relevant for the purpose of just adjudication of the matters in controversy, did not adhere to the said principle and just carried away by the number of adjournments undergone both the appeals. It is, therefore, his submission that there is every merit in the application to receive the documents for the reason that the petitioner never intended to issue the cheque in the context of discharging the debt, which is enforceable, and in fact cheques were issued in connection with chit fund transaction with Sri Nagarjuna Chits, Ramachandrapuram, as collateral security and P.Ws.1 & 2 colluded together and got filed these cases under the provisions of the Negotiable Instruments Act and even the same was agitated by the defence counsel in the trial Court, and no documents were filed in the trial Court as they were misplaced due to shifting of the hospital of the petitioner and no corroborative evidence was produced by the complainant in the trial Court to prove Ex.P7. The learned Senior Counsel would further contend that the petitioner was not present at the time of Ex.P7 and he was staying at SRS Regency Hotel, Anantapur, and obtained

certificate and abstract from the register of SRS Regency Hotel, Anantapur.

6. It appears resistance was offered in the counter stating that the documents were introduced only to support the allegations invented during the course of defence evidence for the first time and the so-called chit transaction was not mentioned in the notice issued by the petitioner/appellant as well as in the cross-examination of the prosecution witnesses, and only introduced at the time when D.W.1 deposed and the evidence of the petitioner before the trial Court would contradict the documents, and, thus, the petitioner is not entitled to file any documents.

7. Now, the short question that arises for consideration is whether the I-Additional Sessions Judge just decided the application basing on one particular circumstance that the petitioner has been protracting the proceedings in the appeals without considering the merits of the request?

8. The aforesaid submission made by the learned counsel for the appellant appears to be without any merit. In paragraph-7 of the order, the I-Additional Sessions Judge has elaborately dealt with and assigned reasons; firstly, that the petitioner appears to have filed the present application to fill up lacunae in his defence; second, the lower Court negated the defence of the petitioner in C.C. No.12 of 2011; third, the petitioner never agitated about the existence of these

documents before the complainant's witnesses and never pleaded about these documents before the defence evidence was commenced; fourthly, he had chance to produce documents before the trial Court but he kept quiet and submits that documents were misplaced which ground appears to have been invented for gaining time.

9. There appears to be cogent reason in making such an observation and the learned I-Additional Sessions Judge would mention that the petitioner took several adjournments even to comply with Section 437-A of the Code and after compliance thereof when appeal was coming up for hearing with conditional orders, the then learned counsel for the petitioner/appellant filed a memo on 15.3.2016 stating that he has filed Transfer O.P. before the Principal Sessions Judge to transfer the matter to some other Sessions Court and, ultimately, Transfer O.P. was dismissed by the Principal Sessions Judge and thereafter, number of adjournments were taken by the petitioner till he filed the petition under Section 391 of the Code where he extracted as to what transpired and what submissions that were made in seeking adjournments.

10. The orders of the Court below would clearly reflect time and again the petitioner sought adjournments and succeeded till the present application was filed and has become unsuccessful.

11. One striking point would cut the root of all the grounds agitated therein. It is not as if the petitioner was not aware of the documents,

which were in his custody though, alleged that they were misplaced and the alleged purpose for which he stated to have tendered cheques which constitute subject-matter in the two appeals or the calendar cases, as the case may be, the very fact that he has not set out that ground of defence either in the reply notice filed by him or suggested to P.Ws.1 & 2 would itself sufficient to hold that the petitioner came forward with the story woven with a view to get himself wriggling out of the consequences that flow onus resting on him.

12. The submissions of the learned senior counsel for the petitioner in both these matters would, therefore, is without any merit. Cogent reasons have been assigned by the learned I-Additional Sessions Judge in paragraph-7 of the order, and, therefore, the present Criminal Petitions are liable to be dismissed and accordingly dismissed at the stage of admission.

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

A. SHANKAR NARAYANA, J

Dt. 27.03.2017

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