

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION Nos.1503 AND 774 OF 2017

COMMON ORDER:

Both these petitions, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), have been filed by accused Nos.1 and 2 in C.C.No.273 of 2015 on the file of learned XIV Additional Judge – cum – XVIII Additional Chief Metropolitan Magistrate, Erramanzil, Hyderabad, challenging the common order, dated 09.01.2017, passed in CrI.MP.Nos.3763 and 3764 of 2016 in the said C.C.

2. The petitioners filed the aforesaid petitions, under Sections 311 and 254 (2) of the Code, to reopen the evidence on their side and to issue summons to one Sri Putta Srinivas for the purpose of giving evidence on their behalf, as the said witness worked in petitioner No.1- organisation i.e., Pragathi Organics Limited, at the relevant point of time, and for rendering complete and substantial justice.

3. The said request was opposed by the respondent – complainant by filing a detailed counter.

4. The learned Magistrate, having appraised the fact situation and the stage at which such petitions were filed, that being after examination of the petitioners under Section 313 Cr.P.C., and that the petitioners without examining themselves as witnesses to defend their case, have come up with these two petitions to summon one Putta

Srinivas as witness, and also on the premise that nothing has been filed along with the petitions showing the period or tenure during which the said witness worked in petitioner No.1 organisation, dismissed the petitions by the orders under challenge.

5. Heard Sri B. Vara Prasada Rao, learned counsel for the petitioners, and Sri Zubair Fazal, learned counsel for respondent No.1–complainant.

6. Both the learned counsel have advanced arguments supporting their respective stand. Learned counsel for the petitioners, in support of his arguments, placed reliance on a decision of learned single Judge of Allahabad High Court in **Arun Kumar Kaushik v. State of U.P. and others**¹, wherein the learned single Judge, by placing reliance on the judgments of the Honourable Supreme Court in **Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others**² and **State of H.P. v. Pirthi Chand and another**³, while holding that against the orders rejecting applications under Sections 91 and 311 Cr.P.C., the remedy available is by means of invoking the inherent powers under Section 482 Cr.P.C., dismissed the petition with liberty to the petitioner therein to move an application under Section 482 Cr.P.C.

7. Whereas, learned counsel for respondent No.1 – contesting respondent, in support of his arguments, placed reliance on the

¹ (2013) 5 ADJ 475

decisions of the Honourable Supreme Court in **Raj Kapoor and others v. State and others**⁴ and **AG v. Shiv Kumar Yadav and another** (Crl.A.Nos.1187 - 1188 of 2015 arising out of S.L.P.(Crl).Nos.1899 – 1900 of 2015). The learned counsel, while placing reliance on the observations of the Honourable Supreme Court contained in paragraph No.10 of **Raj Kapoor**'s case (supra 4), as to the purport of exercise of power under Section 482 Cr.P.C., contended that despite giving four chances, the petitioners herein have not availed the said benefit and after closure of evidence on defence side and when the matter was posted for arguments, they came up with the present petitions and, therefore, prayed to reject the request made by the petitioners. Learned counsel also relied on Section 143 (3) of the Negotiable Instruments Act, 1881, which envisages that as far as practicable, within six months, the proceedings under Section 138 of the Negotiable Instruments Act have to be concluded by resorting to summary trial procedure.

8. A perusal of the orders under challenge would show that one of the reasons assigned by the Court below for rejecting the request of the petitioners has been that the petitioners have not chosen to examine themselves as witnesses to defend their case and in such an event, coming up with the present petitions, to summon a witness, was not appreciable and the other reason is mentioned in the above paragraph. Learned counsel for respondent No.1, though, vehemently

² (1998) 5 SCC 749

opposed, but, however, at last, concedes for fixing a date for examination of the witness to be summoned and for concluding the evidence on behalf of the petitioners. It is not as though the petitioners have not shown reasons as to why they intend to examine the said witness, but, of course, they have not mentioned the tenure during which the said witness had worked in petitioner No.1 organisation. But, that cannot be a ground to reject the request. Hence, it is desirable to set aside the orders under challenge.

9. Accordingly, the Criminal Petitions are allowed and the orders under challenge are set aside. Consequently, CrI.MP.Nos.3763 and 3764 of 2016 are restored to file and are allowed directing the petitioners to immediately take out summons to the said witness i.e., Putta Srinivas and examine him on the date the Court below would fix, without any delay and without seeking unnecessary adjournments. It is made clear that CrI.MP.Nos.3763 and 3764 of 2016 are allowed only to the extent of examining Sri Putta Srinivas by taking out summons from the Court. Learned Magistrate is directed to afford a chance to the petitioners, as indicated in the above.

10. Miscellaneous Petitions, if any, pending in these Criminal Petitions, shall stand closed.

A. SHANKAR NARAYANA, J

February 28, 2017.
MD

³ (1996) 2 SCC 37

⁴ (1980) 1 SCC 43