

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.16430 & 15584 of 2016

COMMON ORDER:

The petitioner in both the petitions is the accused in C.C.No.162 of 2015 on the file of XIV Additional Judge-cum-XVIII Additional Chief Metropolitan Magistrate, Hyderabad, where the learned Magistrate has taken cognizance for the offence under Section 138 of Negotiable Instruments Act (for short 'the Act') from the private complaint of the 2nd respondent-complainant. In the course of trial, the petitioner/accused filed one petition in CrI.M.P.No.537 of 2016 directing the complainant to produce original postal receipt sent on 15.07.2014 and also filed CrI.M.P.No.2438 of 2016 for recall of PW.1 for purpose of further cross examination. The complainant filed counters in opposing the same.

By separate orders those 2 petitions were ended in dismissal respectively on 07.04.2016 & 14.10.2016. These present petitions are filed impugning the said dismissal orders.

Heard learned counsel for the petitioner/accused in both matters and also from the proof of service on the 2nd respondent-complainant, from appearance filed in one matter through advocate from the request by clubbing both the matters also heard besides the learned Public Prosecutor representing the State and learned counsel for the complainant and perused the entire material on record.

The factual background necessary to mention in deciding the 2 quash petitions on the legality and correctness of the impugned

orders of the learned Magistrate respectively, in nutshell are that in the private complaint of the dishonour of cheque filed by the complainant on 05.09.2014 the averments show for Rs.2,00,000/- lent by the complainant to the accused in November 2013 from the promise to repay within six months and for the failure to pay from the demands, accused issued cheque bearing No.007218 dated 16.06.2014 for said Rs.2,00,000/- drawn on ICICI Bank, Barkatpura Branch, Hyderabad, in discharge of the said debt and when the cheque presented for collection on same day, the same returned dishonoured by cheque return memo dated 17.06.2014 as drawers signature differs and from the statutory legal notice issued on 15.07.2014 demanding to pay received by accused on 22.07.2014 accused failed to pay and failed to respond, thereby liable for prosecution. In the list of documents filed with the private complaint, 5 documents were typed viz., cheque supra, cheque return memo, office copy of legal notice supra, postal receipt and acknowledgment. However, the 4th document postal receipt was struck off and 5th document-acknowledgment is made as 4th document. The accused having been summoned after served with copies from denial of accusation during examination under Section 251 Cr.P.C., the learned Magistrate put the accused to trial.

In these facts coming to the averments in CrI.M.P.No.537 of 2016, it is averred that the legal notice dated 15.07.2014 marked as Ex.P3 covered by postal acknowledgment dated 22.07.2014- Ex.P4 besides cheque and cheque return memo as Exs.P1 & P2, no postal receipt filed and a perusal of the list of documents annexed to the complaint shows the postal receipt is listed as one of the

documents without mentioning the date of sending, but subsequently struck off deliberately and there is no cause of action to file the complaint since not complied the statutory requirement of time prescribed for not sent the legal notice on the date bears of 15.07.2014, but later and the postal receipt is crucial to show notice not given within the statutory period after cheque dishonour memo received and thereby direct the complainant to produce the postal receipt. The order speaks as per the complainant, the postal receipt is beyond recovery and he deposed that he could file whenever it can be traced and once not in possession, it is not just to direct him to produce and if at all the accused wanted to get such postal receipt, he can obtain the same from post office from where it is sent.

Coming to Crl.M.P.No.2438 of 2016 pursuant to the above impugned order as subsequent consequence sought for recall of PW.1 saying the factual background supra and further that in the course of cross examination of PW.1 on 22.08.2016 sought for time by counsel for the accused to get the postal receipt from the postal department, however the trial Court forfeited the right of further cross examination of PW.1 by posting the matter to 22.08.2016 for Section 313 Cr.P.C. examination despite the further cross examination sought for time is not for any other reason much less deliberate, but for from the need of put forth the good defence, thereby it is just and necessary to recall PW.1. The impugned order from the complainant opposes the petition saying it is only to drag on the matter, with observation that on 22.02.2016 PW.1 was partly cross examined and on that day Crl.M.P.No.537 of 2016 filed and it was dismissed later on 07.04.2016 and the matter was

coming at the request of accused for further cross examination of PW.1 and in spite of directions of the Court by giving adjournments ultimately to 22.08.2016 of if not chosen for further cross examination be closed, he filed the petition for reopening closed and ultimately it was closed and he filed the petition for reopening the cross examination and in fact from PW.1 deposition he was elaborately cross examined by learned counsel for accused and without mentioning reasons for cross examination petition is not sustainable.

No doubt from PW.1 deposed the postal receipt is not traced and he can produce on its tracing, therefrom the dismissal of the application in Crl.M.P.No.537 of 2016 for could not give direction to produce the postal receipt by complainant as stated not traced, there is nothing to interfere. However the very observation of the learned Magistrate shows while dismissing the Crl.M.P.No.537 of 2016 on 07.04.2016 that the accused if wanted can get such postal receipt from the post office where from the registered notice is sent by the complainant on the alleged dates. Once it is the observation of the learned Magistrate for accused to apply and obtain there could be some opportunity and once if at all obtained any information from the postal department to put questions in relation thereto, there is every need to recall PW.1 within the 2nd part of Section 311 Cr.P.C. for the duty of the Court from the necessity of effective disposal of the case as it is very crucial as to the notice dated 15.07.2014 was sent on the date it bears or subsequent to that and if so within the statutory time from the date of receipt of cheque return memo of the dishonour dated 17.06.2014. Once such is the case, the crucial aspect lies on the

date of sending the notice by registered post. When the petitioner sought for further cross examination of PW.1 in the application filed if it is the purpose, the trial Court should have considered. No doubt in the application covered by Crl.M.P.No.2438 of 2016, but for mentioning, complainant deliberately avoided to file postal receipt of the alleged statutory notice dated 15.07.2014 sending and from what he deposed the learned counsel for accused to get it from the postal department sought for time, the Court closed the same. In fact with these petitions, the copy of the letter issued by the Department of Posts dated 28.04.2016 with RTI application dated 13.06.2016 and response to it dated 24.06.2016 were filed of which the Department of Posts letter dated 24.08.2016 speaks the RTI application of the accused dated 14.03.2016 received on 30.03.2016 and found that he did not furnish the actual date of booking of the registered article No.RN030254074IN and on verification of the available records at Uppal SO, it is found that no such article with registered article No.RN030254074IN was booked nor dispatched, it speaks during the month of July 2014 in the application under Right to Information Act the accused/applicant mentioned that the notice stated sent between 15.07.2014 and 19.07.2014, hence to furnish the particulars in relation to the registered letter number supra. The further letter of the RTI dated 24.06.2016 from the further application of the accused dated 13.06.2016 received on 16.06.2016 it is mentioned that in between the dates there is no such letter with registered number supra dispatched from Uppal Sub Post Office as per the verification manually and computerized records.

This aspect is crucial to put to the complainant because unless the complainant furnished the correct registered letter number with date, the accused cannot get and from what he furnished and what he get there is no such registered letter of the legal notice with that registered letter number much less between 15.07.2014 & 19.07.2014 at least if it is put to PW.1 the Court can draw necessary inference and appreciation of evidence therefrom, thereby recall of PW.1 for cross examination in this aspect is required and the dismissal of the application in Crl.M.P.No.2438 of 2016 is thereby unsustainable and is to be allowed by setting aside the dismissal order.

Accordingly and in the result, while dismissing the Crl.P.No.16430 of 2016 confirming the dismissal order and Crl.P.No.15584 of 2016 is allowed by setting aside the dismissal order by permitting recall of PW.1 for further cross examination in relation to the postal receipt by directing the trial Court to fix a date for said limited purpose by receiving the said documents of Postal Department.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 06.10.2017
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