

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.190 of 2017

ORDER :

The revision petitioner is the accused and unsuccessful petitioner before the lower appellate Court in CrI.Appeal No.46 of 2014 in the additional evidence application filed under Section 391 Cr.P.C. in CrI.MP.No.299 of 2016 by the impugned order dated 06.10.2016.

2. According to the very case of the petitioner/ accused, the cheque was not issued by the complainant in his individual capacity and on seeing the cheque on its face vide Ex.P1, it shows that it was issued by the firm, represented by its managing partner and the firm is not a party accused and thereby the very complaint itself is not sustainable. The lower Court convicted the accused from which undisputedly present appeal is maintained and the same is pending. In the course of trial, he filed application saying the Bank Manager is to be recalled for production of the bank account of the accused to show that the account is firm account and not his individual account. Since the same was ended in dismissal by the impugned order, present revision is filed.

3. Heard before admission.

4. The very wording of Section 391 Cr.P.C. is the appellate Court may in its discretion that too where the additional evidence is necessary for the effective adjudication of the appeal is can permit. Here, the ingredients are totally lacking for the reason that the very cheque itself shows that it was issued by the rice mill, represented by its managing partner and not by any individual. Once such is the case, the cheque itself is an evidence and there is no necessity to call for the bank account of the accused to further demonstrate when the complainant relied upon the cheque, which demonstrates the cheque was issued by the firm apart from Section 91 of the Indian Evidence Act that also comes into play.

5. Having regard to the above, when there is no necessity but for to say the observations of the lower Court touching the merits including dismissal of the application no way influence the mind of the Court in deciding the appeal and the core issue as to whether cheque issued by the managing partner of the firm on behalf of the firm without impleading the firm, can an individual be prosecuted. Once that is the core issue, for that no additional evidence is required, thereby the petition is disposed of before admission accordingly.

6. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:30-01-2017
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