

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.890 of 2017

ORDER:

Impugning the dismissal order dated 23.03.2017 of the lower Court in CrI.M.P.No.1005 of 2017 in C.C.No.528 of 2015, the revision is maintained by the accused of the said C.C. is the outcome of the offence under Section 138 of the Negotiable Instruments Act (for short 'the Act') against the complainant revision 2nd respondent.

A perusal of the impugned order shows in support of the defence of the accused that she did not issue the cheques and the cheques were forcibly taken by the complainant from the accused and her husband as the case may be, the case is foisted and to substantiate the said defence, she wanted to examine her husband earlier sought for in CrI.M.P.No.792 of 2017 by reopening the evidence that was ended in dismissal. She also filed earlier 3 applications in CrI.M.P.Nos.394, 395 & 396 of 2017 to examine as Court witness one Akula Vijaya, C.A. Srinivas claimed that those 2 persons also used those stealing and manipulated cheques and maintained false claims and the Managing Director of M/s. Mahi Laxmi Jewellers Private Limited saying the version of the complainant that for discharge of the amount due to the Mahi Laxmi Jewellers covered by the vouchers or receipts, the so called borrowal was meted in saying there were no such purchases covered by the so called receipts and thereby those 3 persons to be examined as court witnesses and those petitions were dismissed as the Court did not choose to examine them as court witnesses.

Now the single petition covered by the impugned order dated 23.03.2017 in CrI.M.P.No.1005 of 2017 not only to examine the 3 witnesses but also her husband as defence witness, the same was dismissed saying earlier the petitions were ended in dismissal. In fact for recall of her husband earlier filed, it was dismissed for non-mention of provision of law. The matter is now at the arguments stage undisputedly by closure of defence evidence therefrom. In fact when it is a valuable defence of the accused in support of her version of the cheque was not issued much less for legally enforceable debt or other liability including to rebut any evidence of the complaint by meeting any defence and for that chosen to examine her husband as a defence witness and also to cause summon the records of Mahi Jewellers for the so called borrowal to substantiate, the lower Court could have been allowed as earlier dismissal of the application to examine her husband as defence witness for non-quoting of provision and to examine 3 persons as Court witnesses for no inclined to do so no way comes in the way to consider to examine at least 2 persons that is husband of the accused and the Managing Director of Mahi Jewellers as defence witnesses, but for if at all subject to costs.

Having regard to the above and in the result, the criminal revision case is allowed in part by setting aside the impugned dismissal order dated 23.03.2017 only to the extent of permitting examination of husband of the accused and also the Managing Director of Mahi Laxmi Jewellers with reference to the records as defence witnesses subject to costs of Rs.5,000/- payable by the accused to the complainant before the lower court within one week from the date of receipt of a copy of this order and subject to that,

the accused can examine her husband as defence witness and also can seek summons and cause examine the Managing Director of Mahi Jewellers on the day fixed from the service of summons. Needless to say as the matter is almost at the fagend stage, the lower Court shall make every endeavour for early disposal within one month from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 13.04.2017
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