

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.16591 OF 2016

ORDER:

The present Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), is filed requesting to quash the order, dated 24.10.2016, passed in CrI.M.P.No.4310 of 2016 in C.C.No.235 of 2009 on the file of Judicial Magistrate of First Class, Salur, Vizianagaram District.

2. Petitioner herein is the sole accused in the aforesaid Calendar Case. He alleged to have committed the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3. By the order under challenge, the request made by the petitioner, under Section 91 of the Code, to issue summons to the Secretary, Salur Co-operative Urban Bank Limited, Salur, Vizianagaram District, and direct him to produce the statement of accounts pertaining to respondent No.2 – *de facto* complainant from 01.01.2009 to 01.12.2009 along with authorisation letter for giving evidence, for just decision of the case, was rejected. Aggrieved over the same, the present Criminal Petition is filed.

4. Heard Sri R. Siva Sai Swaroop, learned counsel for the petitioner, and learned Additional Public Prosecutor for the State of Andhra Pradesh.

5. Learned counsel for the petitioner would now request that a direction be given to the learned Judicial Magistrate of First Class,

Salur, to peruse the account sheet of respondent No.2, as the petitioner has obtained the same for the period mentioned in the above under the Right to Information Act.

6. The learned Magistrate has elaborately dealt with the issue, referring to the decision rendered by the Honourable Supreme Court in **C. Magesh and others v. State of Karnataka**¹, as to the consequence of Sections 91 and 233 of the Code and as to when an application under Section 91 of the Code can be maintained. When there is no legal infirmity in the order under challenge, certainly, it does not warrant interference.

7. So far as the request now made by the learned counsel for petitioner i.e., the learned Magistrate be directed to receive the account sheet of respondent No.2 and peruse it at the time of arguments, is concerned, certainly, such is not the evidentiary rule and, in case, the request is acceded to, it amounts to read the provisions of Indian Evidence Act topsy-turvy. There is no merit in the present Criminal Petition.

8. Accordingly, the present Criminal Petition is dismissed. Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

A. SHANKAR NARAYANA, J

April 26, 2017.

Note: Issue C.C. by tomorrow.
B/o.MD

¹ AIR 2010 SC 2768