THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Criminal Revision Case No.2809 of 2017

ORDER:

The Revision petitioners herein, who are arraigned as accused Nos.1 and 3, in C.C. No.449 of 2015 on the file of XIV-Special Magistrate, Hyderabad, questioning the order dated 28.08.2017 passed in Crl. M.P.No.1015 of 2017 in C.C. No.449 of 2015, which petition was filed under Section 254 (2) of the Code of Criminal Procedure, 1973 (for short, 'the Code') to summon the complainant-Smt. Raavi Subhasini as a defence witness and to produce her income tax returns and schedules annexed with effect from 31.03.2004 onwards till the date of filing petition along with the Bank statements of all her Bank accounts with effect from 01.03.2004 and audit books being maintained under Section 44 of the Income Tax Act, 1961, for the said period, was refused.

2. The learned Special Magistrate dismissed the application answering all the grounds agitated by the revision petitioners.

3. Heard Sri Rakesh Sanghi, learned counsel for the revision petitioners.

4. Learned counsel for the revision petitioners would submit that the order passed by the Court below is contrary to the provisions of Section 254 (2) of the Code. According to him, the learned Magistrate was not right in analysing and weighing evidentiary value

of the testimony of witness i.e., the complainant, which is crucial to prove the defence of the revision petitioners, which the learned Magistrate failed to take note of. The learned counsel would submit that the husband of the *de facto* complainant examined as P.W.1 was evading to give answers on crucial aspects of the case and his evidence can only be categorized as 'hearsay evidence' and summoning of the documents as well as the complainant was necessitated as the testimony of P.W.1 discloses that the transactions embodied in the Lease Deed, dated 27.3.2004, constituted an illegal benami transaction under Section 2 (9) of the Prohibition of Benami Property Transactions Act, 1988, and the complainant was virtually hiding behind her GPA holder with a diabolic intention of herself avoiding to give evidence regarding the most crucial aspects of the case.

5. It is, according to him that the law declared by the Hon'ble Supreme Court in **Ronald Wood Mathams and others v. State of West Bengal**[1] as to the effect that if the prosecution fails to examine star witness and if the Hon'ble Court itself prevents the accused from examining the star witness and most crucial witnesses in this case, the said illegality constitutes a mis-trial, and, hence, the Revision is maintainable as per the decision in AIR 1978 SC 47 as the impugned order under challenge is not merely an interim order, and,

[1] AIR 1954 SC 455

therefore, requests to set aside the order under challenge and allow the Criminal M.P. No.1015 of 2017.

6. Perused the order under challenge.

7. The revision petitioners even before the Court below, in their petition, went on referring to the documents sought to be summoned as most crucial documents without referring to the basis on which he considers the documents sought to be summoned are crucial documents and the evidence of complainant is of crucial nature, that too to summon her and examine her as a defence witness. Even, arguments advanced by the learned counsel do not at all indicate in what manner the documents sought to be summoned are crucial to decide the controversy.

8. The offence punishable under Section 138 of Negotiable Instruments Act, 1881, was clutched herein against the petitioners, precisely, on the ground that though, they have taken the lands belonging to the complainant on lease, but issued cheques, which were dishonoured. The nature of the documents now sought to be summoned, in the very words of the revision petitioner are:

> "… … to issue witness summons to Smt. Raavi suhasini/the Complainant in the subject complaint for producing her Income Tax Returns and schedules annexed thereto w.e.f. 31.03.2004 onwards till today along with the Bank Statements of all her Bank accounts w.e.f. 01st March, 2004 till today along with all her audited books being maintained under Section 44 of the Income Tax Act, 1961 for the aforesaid period and also for being examined generally in respect of the entire conspectus of the dispute, as

> defence witness and render justice else, the petitioners/accused shall suffer grave hardship and irreparable loss."

9. Except stating that P.W.1 has admitted that he is ignorant of the most crucial aspects of the said transaction and he is not even aware of the Income Tax Pan Card Number of the complainant or her Bank account details and he is not even aware of the entry in the audit books maintained by the complainant under Section 44 of the Income Tax Act, 1961, and that it is imperative to examine the complainant herself as a witness for production of crucial documents for clarification of the entire issue relating to the said claim, nothing else is finding place in the petition to show the reason or explanation as to how the documents would constitute basis to caption them as 'crucial documents'. The very petition *ex facie* shows that it is very vague without any clarity for dishonouring the cheques relating to the date 25.05.2015 numbering six cheques with Nos.359545, 359546, 359547, 359548, 359549 & 359550. The first three cheques are for Rs.1,50,000/- each and last three cheques are for Rs.1,00,000/- each. The revision petitioners want to cause production of (1) Income Tax Returns and Schedules annexed thereto w.e.f. 31.3.2004 till 28.04.2017 (2) All statements of her Bank Accounts from 31.03.2004 to 28.04.2017 and (3) Audited Books maintained under Section 44 of the Income Tax Act, 1961 for the aforesaid period, that too summoning her and to examine her as a defence witness.

10. There cannot be any quarrel so far as the law laid down by the Hon'ble Apex Court, relied on by the learned counsel, is concerned, but on facts, it would not render assistance to them where the very petition is bereft of relevant details and suffers from vagueness.

11. Nothing more is required to probe except to hold that the petition clearly indicates without any doubt that it is filed only to protract the litigation. The learned Magistrate has answered the contentions raised before him and assigned convincing reasons in declining to grant request. It is unnecessary to refer to all the grounds which the learned Magistrate taken up and recorded findings in dismissing the application.

12. Thus, there is absolutely, no legal infirmity nor any irregularity warranting interference with the order under challenge. Hence, the Criminal Revision Case is dismissed at the stage of admission.

As a sequel thereto, miscellaneous petitions, if any, pending in the Criminal Revision Case shall stand closed.

A. SHANKAR NARAYANA

Dt.13.11.2017
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