

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Criminal Revision Case No.3153 of 2017

JUDGMENT:

Heard Smt. K.Pallavi, for Sri Venkat Rao Ravulapalli, learned counsel for the petitioner.

2. Her submission has been that, in fact, if the order under challenge is set aside since great miscarriage will be done to the revision petitioner, who is the accused before the learned Additional Judicial Magistrate of First Class, Shadnagar, in C.C. No.597 of 2014.

3. A few facts relating to the complaint in an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, made an application under Section 63 of the Indian Evidence Act, 1872, to lead the secondary evidence on the ground that the original envelope filed along with complaint was missing from the file, and the return postal cover as unclaimed dated 1.8.2014. The respondent-accused contested the same by filing counter.

4. The learned Additional Judicial Magistrate of First Class, Shadnagar, by his order dated 21.11.2017 in Criminal M.P.No.732 of 2017 in C.C. No.597 of 2014, acceded to the request permitting to lead secondary evidence, however, mentioning that no prejudice would be caused to the respondent-accused, and, still further observing that the merits of the case and admissibility of the document will be seen at the time of rendering the judgment. The

learned Magistrate also observed that the petitioner-complainant can summon the postal authority, if necessary, to prove his case and the respondent-accused has got right to cross-examine in support of his defence.

5. The learned counsel, though, would submit that in case secondary evidence is allowed to go on, the infraction of the statutory requirement would be filled in. According to the learned counsel that before moving an application of this nature, a preliminary enquiry ought to be done as to circumstances, in which primary evidence could not be let in. In support of the said submission made by the learned counsel, she placed reliance in **Suddapalli Lakshmi Saroja v. Vishnu Botla Murali Krishna and others**¹, rendered by a learned Single Judge of this Court, but, the fact-situation therein is not alike the one is occurring in the present case. It was a case where an application moved under Section 63 at the inceptive stage, but, in the present case, it is not as though, the respondent-complainant did not file unclaimed registered envelope. A perusal of the complaint would show that the list of documents annexed thereto would describe Item No.5, dated 1.8.2014, as the original unclaimed notice, whereas Item No.4 would show the original postal receipt date 23.7.2014. In such an event, certainly, the burden rests on the complainant to establish the circumstances to lead secondary evidence gets obviated.

¹ 2014 (3) ALD 427

6. It is no doubt true, it is not clear from the order as to who was responsible for missing of Item No.5, stated in the list of documents filed along with complaint. In such an event, certainly, the learned Presiding Officer or the learned Magistrate ought to have initiated enquiry by following necessary procedure of reporting it to the District Judge, and, then to fix liability or responsibility on the person, who is responsible. Normally, when the original documents are filed, they are to be in the custody of the Court or the concerned officer of the Court, and the chance of missing the documents shall not arise. Exceptionally, it may arise on account of various factors which are unnecessary to refer to herein.

7. As could be seen from the order, the learned Magistrate has not shut the doors of the revision petitioner herein. While burdening the complainant even to summon the postal authority to establish and also to decide the admissibility at a later stage postponing it giving chance or liberty to the revision petitioner to cross-examine the witnesses on these aspects of the case. When once such is the situation referred to in the order under challenge, it is to be held that there is no merit in the present Criminal Revision Case.

8. Therefore, the Criminal Revision Case is dismissed at the stage of admission itself. It is made clear that the learned Magistrate shall bestow his attention in initiating enquiry in regard to missing of Item No.5, mentioned in the list of documents or annexed to the complaint.

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

A. SHANKAR NARAYANA, J

December 08, 2017.

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