

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.3227 of 2018

ORDER :

The petitioner is the complainant in C.C.No.523 of 2016 on the file of the Special Magistrate-IV at Visakhapatnam, taken cognizance against the respondents 2 to 5 (4 accused) for the offence punishable u/ sec.138 of the Negotiable Instruments Act(for short, 'the Act'). It is during trial, after the arguments for the complainant while coming for arguments of the accused, even from paragraph 2 of the averments of Section 311CrPC petition in CrI.M.P.No.7299 of 2017 filed for recall of the P.W.1 for the purpose of cross-examination, else to suffer loss saying not cross-examined on certain important aspects in respect of accounts maintained by him and other cases filed by him against other Sub Contractors in relation to service tax and income tax returns and the earlier non-cross-examination no way wilful and they got a strong case and the cheque involved is about a sum of 50lakhs.

2. Counter of the respondent/ complainant in opposing the same particularly from paragraphs 1 and 2 is that the complainant's chief-examination affidavit filed on 27.01.2017 and for two and half months coming for cross-examination and the counsel for the accused took four adjournments to complete his cross-examination viz; on 07.04.2017, 28.04.2017 and 09.05.2017 and 07.06.2017 and after lengthy cross-examination and after the complainant's evidence, including for examination of accused u/ sec.313CrPC completed having taken 3 or 4 adjournments to

adduce evidence on behalf of the accused, the A.4 as D.W.1 was examined and after D.W.1's examination from the closure of their evidence and it was while coming for arguments on 17.10.2017 complainant's side arguments were completed and it was coming for arguments of the accused and having taken time on 03.11.2017, the petition for recall of P.W.1 filed which cannot be allowed but for to fill up lacunae for which the provision is not contemplated what the learned Special Magistrate in slipshod order mentioned as perused the contents of the petition and counter and in the circumstances stated in the petition it is just and proper to allow the petition without prejudicing the contentions raised by the parties and subject to costs of Rs.300/- payable on or before 21.11.2017. It did not even refer what is the counter contest and how it is just and proper to allow the petition despite the contest.

3. On perusal of the deposition of P.W.1, it substantiates what was stated in the counter and elaborate cross-examination was done and Section 311 CrPC cannot be used as a lever but for to consider with discretion of the Court even under first limb if not where necessary, under second limb and it is not a case of no cross-examination, not even a case of no sufficient opportunity in the cross-examination. Once such is the case, it is outside the scope of considering the application u/ sec.311 CrPC for not even a case to find such further cross-examination is essential for just decision of the case even by invoking second limb of Section 311 CrPC read with 167 of the Indian Evidence Act.

4. Having regard to the above, the Criminal Petition is allowed by setting aside the order dated 07.11.2017 in CrI.M.P.No.7299 of 2017 in C.C.No.523 of 2016 granting recall of P.W.1 by the trial Court. Pending miscellaneous petitions, if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:14.12.2018
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