

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.9264 and 9277 of 2016

ORDER :

The *de facto* complainant of C.C.No.1515 of 2008 filed these two criminal petitions against the dismissal orders of the learned III Additional Chief Metropolitan Magistrate, Hyderabad, passed on 10.05.2016 separately in CrI.M.P.Nos.1510 of 2016 and 1511 of 2015, these are the two applications to receive the decree and judgment in O.S.No.473 of 2006 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad, appears set aside the decree and judgment in O.S.No.192 of 2006. The said judgment and decree is in relation to alleged forgery and fabrication of the Will un-registered, dated 18.12.2004. In C.C.No.1515 of 2008 supra covered by Crime No.799 of 2005 on the police final report, dated 19.06.2008, at last page of the charge sheet, it referred about the subject matter of the criminal prosecution is also in relation to the said un-registered Will, dated 18.12.2004. The legality and enforceability of the said un-registered Will was the subject matter of issue in O.S.No.473 of 2006 setting aside the decree and judgment in O.S.No.192 of 2006. Once such is the case, the dismissal of two applications by the lower Court one for recall of PW.1 and other to receive the judgment and decree in both the suits *per se* unsustainable, but for to consider what is the relevancy. The very re-call of PW.1 sought is only to exhibit the decrees and judgments. As pointed out by lower Court, judgments not filed before the lower Court and only decree is filed. Filing of decree itself is not sufficient. Without going from the findings as to the so-

called unregistered Will, dated 18.12.2004, if at all to rely which findings will be available only in the judgment including as to what was the judgment delivered in O.S.No.192 of 2006 that was set aside in O.S.No.473 of 2006.

2. Having regard to the above, from the respondents/accused persons' counsel say if at all those are to be exhibited what is the relevancy under Sections 42 and 43 of the Indian Evidence Act can be considered by the trial Court and for that there is no necessity to recall PW.1.

3. By recording the same, both the criminal petitions are disposed of permitting the *de facto* complainant to submit before the trial Court the judgments and decrees in both the suits within one week from the date of receipt of a copy of this order, for the trial Court to exhibit on 'C' series as Court documents and give opportunity to both parties to show any relevancy from the said judgments in the course of arguments in the calendar case for its findings on merits.

Miscellaneous petitions pending, if any, shall stand closed.

29th October 2018.

mar

Dr. B. SIVA SANKARA RAO, J