

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION Nos.6302 and 6467 OF 2018

COMMON ORDER:

These Criminal Petitions are filed under Section 482 Cr.P.C by the petitioner/ accused, seeking to quash the respective orders, dated 14.03.2018 in CrI.MP.No.3134 of 2017 in C.C.No.124 of 2016 and CrI.MP.No.3133 of 2017 in C.C.No.43 of 2016 on the file of the V Special Magistrate, Hyderabad, where taken cognizance for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act'), which is an outcome of the private complaint of the 2nd respondent herein.

2. The petitioner, by name M.S Shankar Prasad is accused in the above said cases. At the post cognizance, after summons, when the appearance on filing of the respective chief examination affidavits of PW.1/complainant in the above said cases, recorded on 06.06.2017 and 03.04.2017, at the instance of the learned counsel for the accused, case was posted for cross examination many a time including as finally on 04.10.2017 for about four months, where, on that day PW.1 was cross examined only in part and taken time for continuation and the Court granted time, subject to costs of Rs.2,000/- to 16.10.2017 and again, at request for further cross examination on costs of further Rs.2,000/- to 26.10.2017 and again at request for further

cross examination, granted time and on 26.10.2017 on further costs of Rs.3,000/- to 09.11.2017 and again at request for continuation of further cross examination without doing all through so far from 06.06.2017 and 03.04.2017 other than partly on 04.10.2017 supra, on further costs of Rs.3,500/- to 23.11.2017 and even on that day taken time for further cross examination without doing that was posted on costs of Rs.4,000/- to 07.12.2017 and even on that day, the learned counsel for accused did not choose to cross examine the witness by abused concessions simply on costs as the trial Court accommodated at the mere asking, for no other option to the Court treated for no cross examination of PW.1 by accused. It is, thereafter, recall of PW.1 for further cross examination filed, that too, only on 22.12.2017 invoking Section 311 Cr.P.C. in CrI.MP.Nos.3134 and 3133 of 2017 in the respective cases, which are about two weeks after said treating of PW.1 further cross examination 'nil' on 07.12.2017.

3. From the above, even there are no any cogent reasons that could be assigned for all through not doing the cross examination, but for, in saying by filing some docket proceedings of the Court of engaged the counsel in another matter and could not allegedly attend. It is nothing but a ruse, even from perusal of the said docket proceedings of the High Court before Court No.7 by ignoring preference before the trial

Court, rightly, there from and from the contest, dismissed the applications by the impugned orders dated 14.03.2018 by the learned Special Magistrate. It is now impugned. Practically, on merits, there is nothing to interfere. However, that is not the be all herein from the submission of the learned counsel for the complainant/ 2nd respondent that since then the accused is also in abscondance and failed to attend and NBW issued and process paid and could not be executed and trial Court to execute the NBW invoking Section 72 Cr.P.C. an advocate was appointed and it could not so far execute even from the whereabouts of the petitioner/ accused, so far, unknown. However, it is clear that the petitioner/accused filed the present petitions being conscious of the proceedings and avoiding the Court and due disposal. Hence, he cannot be given any aid by the Court, but for, from the submission of the learned counsel for the complainant/ 2nd respondent that if at all he chooses to appear and submit by execution of fresh bond by payment of penalty to the earlier bond within one week and to complete the cross examination that can be considered further cross examination and subject to heavy costs, thereby, the trial of the matters can be proceeded with, otherwise the complainant is suffering.

4. Having regard to the above and by considering the submissions of the learned counsel for the 2nd respondent/ complainant, the Criminal Petition is allowed only

to the limited extent of subject to the petitioner physically appearing before the learned Special Magistrate within one week from today i.e. on or before 29.11.2018 and file an application under Section 70(2) Cr.P.C. for recall of warrant, if at all earlier bond under Sections 88 and 89 Cr.P.C. if obtained, by imposing penalty not exceeding Rs.3,000/- (Rupees Three thousand only) on the bond and obtain fresh personal bond under Sections 88 and 89 Cr.P.C. for future due appearance for a sufficient amount and subject to that in recalling the warrant and by adjourning the matter to next day i.e.30.11.2018 or if it is inconvenient to the Court, post on 03.12.2018 for PW.1's appearance for completion of further cross examination of PW.1 by accused, subject to payment of costs of Rs.3,000/- (Rupees Three thousand only) to PW.1 by accused respectively. Any non-compliance of the above, holds good the orders of the trial Court, without any further reference to this Court.

5. Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 22.11.2018

Note:

Issue C.C. tomorrow.

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