

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.8225 of 2018

ORDER:

The petitioner being accused in CC.No.275 of 2016 on the file of learned I Special Magistrate, Hyderabad, which is outcome of private complaint proceedings of the 1st respondent Chit Fund Company for the offence under Section 138 of Negotiable Instruments Act, filed this petition aggrieved by the dismissal order of the learned Special Magistrate dated 20.07.2018 in CrI.M.P.No.1660 of 2018 in that CC.No.275 of 2015, which is the petition filed for recall of PW.2.

The petition for recall reads that the matter posted for chief examination of branch manager-PW.2 on 11.07.2018 and chief was completed and it was cross examination recorded 'Nil' and posted for Section 313 Cr.P.C. examination of accused to 13.07.2018. During cross examination, learned counsel for the accused was suffering from ill-health and same informed to the other side counsel through junior and due to which cross examination of PW.2 could not be conducted and it was neither intentional nor deliberate but for the reason supra and cross examination of PW.2 essential to bring out the real facts to elicit the truth, otherwise the petitioner/accused suffer loss and thereby it is just to recall.

Same was opposed by the 1st respondent/complainant.

The order of the Court reads that from hearing both sides the representation of the counsel for the accused on that day 11.07.2018 when witness was present in taking adjournment was through the junior counsel saying senior counsel went to High Court to attend urgent matter and when it states as if senior counsel was suffering from ill-health and informed to the other side counsel it is therefrom one of the statements was false, thereby no bonafides in seeking assistance of the Court and dismissed.

The notice ordered to the 1st respondent/complainant served on the counsel failed to attend.

No doubt there is a mis-statement either in the representation before the Court or even later in filing the affidavit without regard to the representation. Once there is one false statement from perusal of the two statements, however the fact remains the party shall not be suffered without cross examination of PW.2.

Having regard to the above, by imposing costs of Rs.2,000/- payable to the Army Welfare Fund for the said lack of bonafides and prevaricating false statements before the Court, this Criminal Petition is allowed in permitting the cross examination of PW.2. The petitioner shall file proof of payment before the trial Court within one week from the date of receipt of this order, for the trial Court to permit cross examination of PW.2 by recall. If at all the witness claims TA

and DA, the petitioner has to bear and file undertaking to the effect.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 02.11.2018
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