HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

Criminal Petition No.10580 of 2018

ORDER:

Impugning the dismissal order of the learned Judl.Magistrate of First Class, Nakrekal, dt.13.08.2018 in Crl.M.P.No.2093 of 2017 in C.C.No.377 of 2015 by the petitioner/complainant u/sec.243 Crpc to receive two receipt books saying along with the two receipt books, he filed application under Section 45 of the Indian Evidence Act (for short, 'the IE Act') in C.C.No.51 of 2015 before the X Spl.Magistrate at Hastinapuram that was transferred and pending presently before the Nakrekal Court, and at that time the Court directed the petitioner/complainant to produce receipt books before the Magistrate, Nakrekal. The respondent/accused made endorsement in token of receipt of money from the petitioner/complainant in the receipt books but now denying the same with oblique motive to escape from liability, therefore those are essential for proper adjudication of the case to receive.

2. The respondent/accused filed counter with the contention of the petition filed only to prolong the matter with oblique motive and if at all those are really available with the complainant, he could have confronted the P.W.1 with the same at P.W.1's cross-examination where his version was different as if has not taken any loan from the complainant at all subsequently the accused changed his version that he borrowed one lakh or two lakhs on different dates and the complainant issued alleged books with his signatures but said plea was not taken in the cross-examination and earlier there is no whisper about borrowing the amount from the complainant with different

defence versions and even in the chief-examination of the D.W.1/accused and therefore he cannot be permitted to file the receipt books since the accused is not certain about defence from the beginning. The Hastinapur Court refused to mark the alleged receipt books on the ground of they were brought at a later point of time. The documents, which are once refused by Court to mark as Exhibits, cannot be filed for being filed on behalf of the accused and the receipt books are forged and sought for dismissal. Originally the Calander Case was numbered and transferred to X Metropolitan Magistrate, Hastinapuram, by virtue of the Apex Court's judgment and later by virtue of the Negotiable Instruments Act amended ordinance, the case transferred back to the present Court after evidence of accused as D.W.1. At this stage, the complainant filed the petition under Sections 243 and 311 CrPC to receive the two receipt books and to recall the D.W.1 for further examination to mark the same and earlier similar counter filed by the accused resisting the application. The matter is at the arguments stage. Before the earlier Court accused was examined as D.W.1 and also cross-examined. After gone through the cross-examination of P.W.1 and chief-examination of D.W.1, certainly one can say that it is the case of the accused while cross-examining the P.W.1 that one Mohammad Galib borrowed the amount from complainant and as security, issued subject cheque in favour of the complainant. Though in his counter the complainant denied said documents are not confronted by the P.W.1 but subsequently P.W.1 was further cross-examined and these two documents were confronted by the complainant who denied his

alleged signatures in those receipt books. There is a crucial point observed by the Court that accused did not make attempt to get mark those documents when he was examined as D.W.1 and subsequently also and when to file is retuned to the present Court, he filed a petition for return of the unmarked documents having undertaken to file before this Court. Earlier the Court made an observations of these documents are submitted to D.W.1 and the accused undertaken to file receipt books before appropriate Court before hearing. When the accused admitted in his application under Section 219 CrPC of listed documents unmarked, he cannot take any advantage out of the Court that there is a change of Court. Earlier application filed under Section 45 of the IE Act, to forward these documents to FSL for analysis and report whereas the present application filed only to receive these documents for marking them as exhibits shows different applications at his will and in view of the same no grounds to allow.

3. It is impugning the same, the present application is filed by the accused saying said order is unsustainable and said documents are not relevant and already confronted to P.W.1 who admitted in the cross-examination though not marked in the D.W.1's evidence.

4. The learned counsel for the respondent/complainant supported the order of the lower Court.

5. Heard and perused the material on record.

6. Once the documents were confronted admittedly to P.W.1 in his cross-examination which he denied and therefore the application under Section 45 of the IE Act filed earlier before the another Court at Hastinapuram and they were taken return no doubt by then before

that Court, D.W.1 was cross-examined but did not exhibit those documents in his evidence and now wants to receive to exhibit in his evidence by recall. When the accused pleads part payments out of the amounts due which is covered by the alleged cheques, leave about defence of no amounts borrowed under the cheques and those were taken for security for earlier amount, once these are the crucial documents for the purpose of the defence of the accused, the dismissal order of the lower Court is unsustainable but for allow subject to costs.

7. Having regard to the above, the Criminal Petition is allowed, directing the lower Court to allow the petition (Crl.M.P.No.2093 of 2017) subject to costs of Rs.2,000/-(Rupees two thousand only) payable within one week before the lower Court from the date of receipt of the order in permitting to receive the documents and recall of D.W.1 for further evidence.

8. Miscellaneous petitions, if any, pending in the Criminal Petition, shall stand closed.

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Dr. JUSTICE B. SIVA SANKARA RAO

Date:27.11.2018
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