

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.11615 of 2018

ORDER:

The petitioner is the complainant in CC.No.312 of 2017 pending on the file of learned XXIII Special Magistrate, Hyderabad. The 1st respondent is the accused. It is for the offence under Section 138 of NI Act on the private complaint taken cognizance during trial besides examination of the complainant as PW.1 and another witness PW.2, Branch Manager of AP Mahesh Cooperative Bank through whom the cheque drawn in favour of the complainant allegedly issued from the account of accused from his signature from his legally enforceable debt, presented dishonoured, asked to depose and the summons were served and the Branch Manager sent the Deputy Branch Manager to depose pursuant to the summons on 22.05.2018, Exs.P11 & P12 were marked in his evidence. Ex.P11 is the attested copy of the cheque return memo dated 11.04.2017 issued by the Bank and Ex.P12 attested copy of statement of account of the complainant. The accused cross examined PW.3 wherein he deposed that Exs.P11 & P12 are not in accordance with the Bankers Book of Evidence Act and there is no written authorization for him from the Branch Manager to depose. It is for that purpose sought for reopen the complainant's evidence and recall of PW.3 for further examination. Both the petitions in Crl.M.P.Nos.4400 & 4401 of 2018 were ended in

dismissal by common order after contest by accused. The observation of the learned Special Magistrate is that PW.3 did not produce authorization letter of the Branch Manager at the time of his evidence and he cannot be compelled to produce letter and he cannot be compelled to produce the certificate under Section 65-B of the Evidence Act in respect of the document produced by him and the Court cannot gather the evidence either on behalf of prosecution or defence and if the documents produced by the PW.3 not in accordance with law, complainant might have taken time to file proper documents or to ask the Branch Manager to come with the documents and instead of he cause examined PW.3 the Deputy Branch Manager of the Bank who deposed that the documents are not in accordance with the Bankers Book of Evidence Act and if the petition for reopen and recall of PW.3 is allowed it is filling of lacunas in the cross examination of PW.3 thereby cannot be permitted.

Undisputedly in the evidence of the complainant as PW.1 along with return cheque dishonoured memo issued by the Bank of the cheque dishonour filed and exhibited as one of the documents particularly Ex.P6 that is not disputed by the accused as can be seen from the record. Section 146 of the NI Act amended by Act No.55/2002 with effect from 06.02.2003 clearly prescribes that the Court shall in respect of the every proceedings under this Chapter on production of bankers slip or memo having thereon an official mark

denoting cheque has been dishonoured, presumption of the fact of dishonour of such cheque be drawn, unless and until such facts is disproved. Once Ex.P6 exhibited in PW.1's evidence, the burden is on the accused to disprove the cheque return memo and there is no insistence for the complainant to examine PW.3 for that purpose. However he was examined and even taken for arguments sake that what he deposed the gospel truth as of it is not as per the Bankers Book of Evidence Act it will not effect evidence of PW.1 and what Ex.P6 marked undisputedly, on its authenticity if at all from reading of deposition of PW.1. It is not even the evidence of PW.3 that there is no authorization. It is because from what bank manager summoned as witness he sent his deputy branch manager and the summon of the witness either to appear in person to give evidence on personal facts or to depose in person with records acquainted with the records. Once such is the case there is no specific written authorization that does not mean PW.3 came *suo motu* without even asking by the Branch manager. A mere non-obtaining or filing of written authorization does not mean he was not authorized even from reading of PW.3's evidence.

Having regard to the above which are not properly considered by the lower Court there is nothing to interfere with the order of the lower Court, however it will not prevent the petitioners if at all to summon the branch manager if at

all original authorization letter still required to call for and file.

Accordingly and in the result, this Criminal Petition is disposed of.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 26.11.2018
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