

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.11990, 11994 & 12007 of 2018

COMMON ORDER:

These three Criminal Petitions are outcome impugning the orders dated 31.10.2018 respectively by the self-same II Special Magistrate, Rajendranagar, Rangareddy District, in CrI.M.P.No.2161/2018 in C.C.No.213/2017, CrI.M.P.No.2159/2018 in C.C.No.212/2017, CrI.M.P.No.2158/2018 in C.C.No.570/2017.

2. The petitioners are A1 to A3 in the respective three Calendar Cases, outcome of the private complaints of respondent No.2 respectively for the so-called dishonour of three cheques respectively with the say that from the dishonour of cheques issued after undertaken to pay, from the statutory notice and from failure to pay, from the accrual of the cause of action filed the complaints that were taken cognizance and the accused are put to trial.

3. It is in the course of defence evidence the aforesaid miscellaneous petitions are filed with the self-same prayer respectively to receive true copy of the letter No.23346/2017 dated 04.04.2017 drawn on online website of police with regard to missing of five cheques bearing Nos.000129 to 000133 and to mark in "D" series. The cheques in question covered by three cases are (i) cheque bearing No.000130 dated 22.03.2017 for Rs.5.00 lacs in C.C.No.213/2017 (ii) cheque bearing No.000129 dated 18.03.2017 for Rs.5.00 lacs in C.C.No.212/2017 and (iii) cheque bearing No.000131

dated 10.04.2017 for Rs.5.00 lacs in C.C.No.570/2017. Said three cheques covered by three cases, leave about any one or two cases filed pending out of five cheques allegedly stolen from the house/shop of A2 during alleged gallata covered by Crime No.622 of 2017 on the report of A2 dated 03.04.2017. It is the averment that at that time not noticed about missing of cheques and it is immediately thereafter having noticed on next day i.e., 04.04.2017 through the cell phone to the police and copy also preserved by stored in laptop and on the online website of police it is reflecting of the online generated/transmitted information fed and a copy of it downloaded from the police website that is required to be received in defence evidence. Said petitions were dismissed from the contest by the complainant saying the cheques rooted from the account of the accused once not in dispute as contended by the complainant it is to dragon the matter on filing one petition or the other and thereby no grounds.

4. The impugned orders referred the expression of the Delhi High Court in **Kishan Tripathi @ Kishan Painter v. State** [2016 Lawsuit (Del) 1160] where the C.C.T.V. footage stored in the hard drive of the computer is the original media since self-generated without any human intervention and once it is not secondary evidence, the compliance with requirement of Section 65B Evidence Act does not arise. The other decision referred is the three Judge Bench expression of the Apex court in **Anvar P.V. v. R.K.Basheer** [(2014) 10 SCC

473] that producing copy of statement pertaining to electronic record not being the original record, the compliance with the requirement of Section 65B(4) Evidence Act is mandatory. However, the learned Special Magistrate in the impugned orders at Paragraph No.12 observed that the facts and propositions of law enunciated in the aforesaid decisions are not applicable to the facts of the case on hand.

5. The law is subsequently covered by several expressions of the Apex Court saying when the original is not in the custody of the person who produces the electronic evidence in secondary form, the compliance with Section 65B(4) Evidence Act is not required and it is further stated the certification need not be produced with original production of the electronic record as it could be even subsequently.

6. Herein, coming to the facts, the original complaint through the cell phone of A2 generated having been fed through the electronic device cell phone by transmission to the police official website. The cell phone device with the information covered therein showing transmitted to the police official website is thereby original. The petitioner can at best produce that cell phone containing original fed information transmitted to the police official website. It is not that case because he wants to download the complaint copy registered with the police official website and produce the same as secondary evidence. If that is the case, he has to obtain certificate from the police department or he has to certify that he generated from the official website of the police department. What he further says he

stored in his laptop the information transmitted from the cell phone to the laptop of him. There also he has to certify the process adapted even to exhibit that information stored in the laptop, if not the original information of the cell phone. Once such is the case, he can adopt either of the recourse or to mark the same, summon the police department to speak with regard to the official website by producing a copy of the same with certificate of the same to exhibit. Once that is the valuable evidence as part of the defence to probablise the defence version, it requires consideration no doubt as pointed by the learned counsel for the petitioners respectively.

7. With the above observations, these Criminal Petitions are disposed of giving liberty to the petitioners to file any such fresh petitions to consider by reopening the matter if necessary by the learned Special Magistrate concerned.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

10.12.2018

Note: Issue C.C. by 11.12.2018
(B/O)
MVA