

THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.1803 OF 2018

ORDER:

The petitioner is the accused in C.C.No.11 of 2016 on the file of the Special Magistrate-V, Hyderabad, which is outcome of the private complaint of the 2nd respondent for the offence under Section 138 of the Negotiable Instruments Act, 1881, and after appearance, he was put to trial and in the course of evidence, PW.1 even examined in chief on 19.08.2016 and several adjournments granted, including on 13.10.2016 subject to costs. There is neither cross-examination nor payment of costs, ultimately PW.1 cross-examination treated nil and subsequently, petitioner/accused came to the box and examined as DW.1 and exhibited two documents, Exs.D1 and D2, and it is at that stage, he filed the present petition about one year one month after PW.1 cross-examination treated nil, invoking Section 311 Cr.P.C., with the submissions that the cross-examination of PW.1 was essential. It was after contest from the counter of the 2nd respondent-complainant, ultimately, by the impugned order, dated 21.12.2017, in CrI.MP.No.2796 of 2017, the learned Special Magistrate dismissed the petition saying the petition itself is not maintainable for the laches and it is nothing but procrastination.

2. Heard learned counsel for the petitioner/accused, learned counsel for the 2nd respondent – complainant and the learned Public

Prosecutor representing the 1st respondent – State and perused the grounds and the impugned order.

3. As held by the Apex Court, in catena of expressions, including reiterated in the three Judge Bench expression of the Apex Court in **Rangappa v. Mohan**¹, right of defence in Negotiable Instruments Act, more particularly from the reverse onus clause once accrued from the account of the accused signature admitted is valuable that cannot be ignored by the Courts. In view of the principle and scope of law and from the settled expressions referred therein also, the defence of the accused can be decided even without coming to the witness box, including from the suggestions of the complainant and witnesses by preponderance of probability and once such is the case, the cross-examination of PW.1 by the petitioner/accused in a cheque bouncing case is highly valuable and essential, thereby out of the two limbs of Section 311 Cr.P.C., it comes under the second limb of where it is necessary for the just decision of the case, the Court shall recall or re-examine any witness. Having regard to the above and within the scope of the same, the trial Court ought not to have resorted to dismiss the application, even there are laches, to protect the valuable right of the petitioner/accused in Negotiable Instrument Act case.

¹ AIR 2010 SC 1898

4. From the principles and proposition supra, thereby subject to costs of Rs.5,000/- (Rupees five thousand only) payable by the petitioner/accused to the Army Welfare Fund within one week from the date of receipt of a copy of this order, the Criminal petition is allowed setting aside the dismissal order, dated 21.12.2017, passed in Crl.M.P.No.2796 of 2017 in C.C.No.11 of 2016 on the file of Special Magistrate-V, Hyderabad, by allowing that application permitting cross-examination of PW.1 by the petitioner/accused to be secured by the trial Court.

Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

DR. B. SIVA SANKARA RAO, J

February 22, 2019.
MD