

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION NO.14329 OF 2015

ORDER:

Heard both sides and perused the impugned order and other material on record.

The petitioner is the Accused/Appellant in CrI.A.No.340 of 2015, which was outcome of the conviction judgment in CC.No.700 of 2013 dated 21.04.2015, of the I Special Magistrate, Hyderabad, outcome of private complaint for the offence U/s.138 of Negotiable Instruments Act, maintained by the 2nd respondent/complainant for the so called borrowal of Rs.6,00,000/- and issuing of cheque dated 24.06.2013 for Rs.6,50,000/- in discharge of the same. The trial court after contest from the evidence on record placed covered by PWs1 & 2, Exs.P1 to P7, DWs 1 & 2, Exs.D1 & D2, including the petition kept in I.P.No.22 of 2013 filed by the accused, held that the accused issued the cheque for a legally enforceable debt and committed dishonour, even later failed to pay and thereby liable for conviction and sentenced to undergo one year simple imprisonment with fine of Rs.6,10,000/- with default sentence of four months with a condition that Rs.10,000/- goes to State and remaining as compensation. It is against which, accused maintained appeal supra. In the trial Court, what is contended with reference to the reply-Ex.P7 to the Ex.P6-notice, including from the evidence of accused-DW1 besides another witness examined as DW2, besides cross-examination of PWs 1 & 2 in that regard is that, the so called cheque and pro-notes were only given as security and thus there is no any legally enforceable debt or other liability. Same was negated by trial Court in the Judgment supra

which is subject matter of the Appeal. In the fag end of the appeal hearing, the CrI.M.P.No.3317 of 2015 was filed by the complainant/respondent no.2 under Section 391 Cr.P.C. to receive additional evidence which is the bank statement showing amounts paid from the bank account, showing the means, for the contention raised for the first time by the accused ins the grounds of appeal saying complaint has not means to lend which is without a factual foundation before the trial Court on lack of means of accused. The petition was allowed no doubt when the matter posted for judgment after hearing the arguments from the filing of the petition.

Section 391(1) Cr.P.C. reads that,

“... .. the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.”

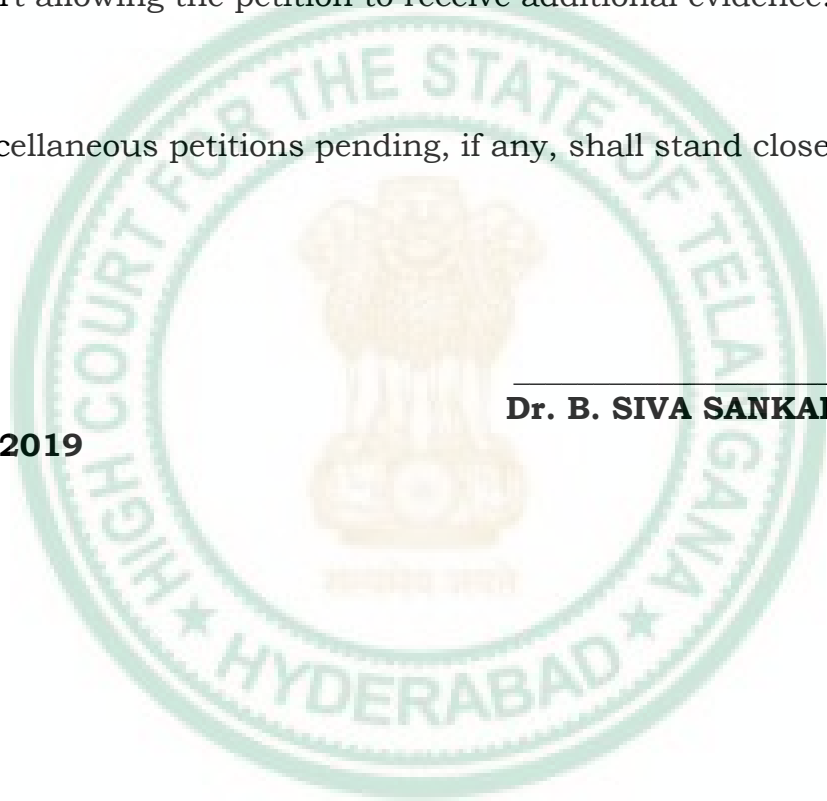
What is the pre-requisite is, whether it is necessary by recording reasons, any additional evidence application can be allowed. In fact, as referred supra, without factual foundation for the first time regarding the means of the complainant when accused raised a ground in the appeal and urged that it is necessary, then to show for the complainant of he got means and remitted the amounts from the account, there is nothing to find fault with said order of the lower Court, but for to have allowed by imposing reasonable costs.

Having regard to the above, the petition is disposed off rather than dismissal by modifying order of the lower court by allowing the petition by imposing costs of Rs.3,000/- to Army Welfare Fund and to file proof before the lower Court within one week from the date of receipt of the copy of this order if at all to receive additional evidence if he failed to pay, for all purposes, the petition stands allowed setting aside the order of the lower Court allowing the petition to receive additional evidence.

Miscellaneous petitions pending, if any, shall stand closed.

Dt.04.02.2019
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Dr. B. SIVA SANKARA RAO, J



THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO



CRIMINAL PETITION NO.14329 OF 2015

4th February, 2019

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