

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

Crl.R.C.No.2106 of 2018

ORDER :

Heard learned counsel for the petitioner/complainant. Notice served on learned counsel for the 1st respondent/accused and proof of sending by registered post also filed. No representation for the 1st respondent/accused and taken as heard and also heard learned Public Prosecutor representing the State and perused the impugned order dated 25.06.2017 of the X Special Magistrate at Hasthinapuram in Crl.M.P.No.498 of 2018 in C.C.No.69 of 2017, which is for the offence punishable under Section 138 of the Negotiable Instruments Act, where the complainant before commencement of trial filed the documents receive petition by filing certified copies, which are nine in number to receive, though mentioned Section 65 of the Evidence Act instead of Section 254(2) Cr.P.C.

The mere wrong quoting of provision of law or non quoting of provision once no way fatal. The only thing to consider is whether the documents can be received or not, which is premature to go into, but for during exhibition in evidence as to relevancy and admissibility under Section 136 of the Evidence Act, and if at all any objection raised including on the scope of Section 65 and 66 of the Evidence Act to mark subject to objection as laid down by the Apex Court in **Bipin Shantilal Panchal v. State of Gujarat and another**¹.

However, learned Magistrate dismissed the petition by saying in the absence of originals, the petition is not maintainable though

¹ AIR 2001 SC 1158

the certified copies granted are from the originals from perusal that too when these are the public documents for the originals marked elsewhere and any objection if at all for its marking is subject to objection to mark as laid down by the Apex Court in **Bipin Shantilal Panchal's** case referred supra, the dismissal order is unsustainable.

Accordingly and in the result, the revision petition is allowed setting aside the order dated 25.06.2018 of the X Special Magistrate at Hasthinapuram in CrI.M.P.No.498 of 2018 in C.C.No.69 of 2017 to receive the documents subject to payment of costs of Rs.3,000/- to the Army Welfare Fund, and file proof before the lower Court within one week from the date of receipt of copy of the order, failing which, the order of the Court below is holds good without any further reference.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

29.03.2019.
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