

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WEDNESDAY ,THE FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HONOURABLE SRI JUSTICE K.LAKSHMAN

CRIMINAL PETITION NO: 8918 OF 2021

Between:

K. Subbaiah (John), Occ. Business, Aged 35 years, R/o. D.No. 101/129,
Viswanathapuram, Kadapa, Andhra Pradesh - 516004.

...PETITIONER/ACCUSED

AND

1. State of Telangana, represented through Public Prosecutor, High Court at Hyderabad, Hyderabad.
2. M/ s. Radhika Traders, Rep. by its Proprietor, N. Srinivas, S/o. N. Audi Seshalah, Aged 40 years, Occ. Business, R/o. Westface, Near Pillar No. 137, Attapur, Rajendranagar Mandal, Ranga Reddy District.

...RESPONDENTS

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash the order dated 27.01.2020 in Cri.MP. No. 18/2020 in CC No. 278 of 2018 on the file of II Special Magistrate, Rajendranagar, Ranga Reddy District (Presently transferred and re-numbered as C.C. No. 1867/2021 on the file of Pri. JCJ cum XIV Additional Metropolitan Magistrate, Cyberabad, Rajendranagar, Ranga Reddy District), in the interest of justice .

I.A. NO: 1 OF 2021

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to grant stay of all further proceedings in CC. No. 278/2018 on the file of II Special Magistrate, Rajendranagar, Ranga Reddy District (Presently transferred and re-numbered as C.C.No. 1867/2021 on the file of Pri. JCJ cum XIV Additional Metropolitan Magistrate, Cyberabad, Rajendranagar, Ranga Reddy District).

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri P. V. L. BHANU PRAKASH, Advocate for the Petitioner and the Public Prosecutor on behalf of the Respondent No.1,

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE K.LAKSHMAN

CRIMINAL PETITION No.8918 OF 2021

ORDER:

Heard Sri P.V.L. Bhanu Prakash, learned counsel for the petitioner and the learned Public Prosecutor for respondents.

2. This petition is filed under Section 482 of Cr.P.C to quash the proceedings in CrI.M.P.No.18 of 2020 in C.C.No.278 of 2018, pending on the file of II Special Magistrate, Rajendranagar, Ranga Reddy District (presently transferred and re-numbered as C.C No.1867/2021 on the file of PrI.JCJ-cum-XIV Additional Metropolitan Magistrate, Cyberabad Rajendranagar, Ranga Reddy District). The petitioner herein is sole accused. The offence alleged against the petitioner herein is under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act').

3. The petitioner herein has filed a petition under Section 311 Cr.P.C vide CrI.M.P.No.18 of 2020 in C.C.No.278 of 2018 to reopen the evidence of P.W1 and to recall P.W.1 in order to enable the accused to cross-examine P.W.1. Vide order dated 27.01.2020, the Court below dismissed the said petition.

4. A perusal of the record would reveal that the petitioner herein filed a petition under Section 311 Cr.P.C stating that during cross-examination of D.W3, counsel for the complainant has put some questions to D.W3 regarding certain alleged messages sent on mobile by D.W3 to the complainant. It is stated that neither the mobile messages alluded to, were

shown in the open Court, nor the documents relating to the same were filed into the Court and no copy was served. It is also stated that the subject matter relating the above said questions put to D.W.3, regarding certain alleged messages sent on mobile by D.W.1 to the complainant, does not find place in the pleadings (i.e., complaint) of the complainant. On the said grounds, the petitioner herein sought reopening of evidence and recalling of PW-1 to cross-examine him on the above mentioned aspects.

5. The Court below dismissed the said application on the ground that examination of accused under Section 313 Cr.P.C was closed that too after imposing costs. Thereafter, the petition under Section 311 Cr.P.C was filed on 10.01.2020. During cross-examination, DW-3 categorically admitted that there were exchange of messages between him and the complainant through whatsapp from his mobile number to the mobile number of PW-1.

6. The above said facts would reveal that the DW-3 was examined on 04.12.2019 and petition under Section 311 Cr.P.C was filed on 10.01.2020.

7. A perusal of cross-examination of DW-3 would also reveal that there were exchange of messages between his mobile number and the mobile number of complainant. DW-3 was examined by the counsel for the complainant at length. With regard to offence under Section 138 of the Act, initial burden lies on the complainant to prove that the cheque in dispute was

issued to discharge legally enforceable debt. Thereafter, the burden will shift to the accused. The grounds on which the petitioner sought to reopen the evidence of P.W.1 and recall P.W.1 are not satisfactory.

8. Considering the said facts, the Court below rightly dismissed the application filed under Section 311 Cr.P.C vide order 27.01.2020. It is also relevant to note that CC is of the year, 2018 and the impugned order was passed on 27.01.2020 and the petitioner has filed the present petition only on 29.11.2021. The only explanation offered by the petitioner herein for the said delay is that he has filed Revision challenging the impugned order and the same was returned in the month of February, 2021. The said reason of the petitioner is not convincing.

9. Therefore, viewed from any angle, this criminal petition is liable to be dismissed and accordingly dismissed.

Miscellaneous Petitions, if any, pending, shall also stand closed.

Sd/-N.CHANDRASEKHAR RAO
ASSISTANT REGISTRAR
SECTION OFFICER

//TRUE COPY//

To,

1. The II Special Magistrate, Rajendranagar, Ranga Reddy District .
2. The Prl. JCJ cum XIV Additional Metropolitan Magistrate, Cyberabad, Rajendranagar, Ranga Reddy District)
3. The Station House Officer, Rajendranagar Police Station, R.R. District.
4. Two CCs to Public Prosecutor, High Court for the State of Telangana, at Hyderabad [OUT]
5. One CC to SRI. P. V. L. BHANU PRAKASH, Advocate [OPUC]
6. Two CD Copies
7. One Spare Copy

CDL

HIGH COURT

DATED:01/12/2021

ORDER

CRLP.No.8918 of 2021



DISMISSING THE CRIMINAL PETITION .

MR
24/12

(9)