

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

CRIMINAL PETITION No.2798 of 2019

ORDER:

This Criminal Petition under Section 482 of Code of Criminal Procedure (Cr.P.C.) is filed by the accused questioning the correctness of the order dated 14.03.2019 of learned Special Judicial Magistrate of First Class, Prohibition and Excise Court, Srikakulam in CrI.M.P.No.5306 of 2018 in C.C.No.235 of 2014. By the impugned order, the learned Magistrate refused to receive eight documents that were filed by the accused.

2. Respondent No.2 is complainant in C.C.No.235 of 2014. Initially for respondent No.2, appearance was made by a learned counsel. Subsequently, as the learned counsel died, the petitioner had taken out fresh personal notice to respondent No.2. Despite notice being served, none entered appearance.

3. Sri Vinod Kumar Tarlada, the learned counsel for petitioner and learned Assistant Public Prosecutor submitted arguments.

4. C.C.No.235 of 2014 is a case on a complaint filed by respondent No.2 herein seeking to prosecute the sole accused, who is petitioner herein for an offence under Section 138 of the

Negotiable Instruments Act, 1881. The said complaint was filed alleging that the accused had borrowed money and in repayment of it, he had issued cheques and since they were dishonoured for insufficiency of funds, a statutory notice was served and since no payments were made, the complaint was lodged. Learned Magistrate took cognizance for the offence and accused was summoned and he made his appearance and the plea of the accused was recorded and trial commenced wherein the complainant testified as PW.1. He was subjected to cross-examination on two occasions. In the cross-examination accused indicated his defence stating that the complainant was running a chit fund business and on two occasions the accused subscribed to the chits and he became highest bidder in the auction and received prize money and in that regard, he had issued certain blank cheques to the complainant. The version of the defence further indicates, as could be seen from the cross-examination of PW.1 that subsequently the accused discharged the money that he owed in the chit transaction and issued notices to the complainant for return of his blank cheques which he failed to return. The further suggestion given was the payments received were also noted in a small book.

Broadly that was the defence version that was suggested to PW.1 and that was denied by the witness.

5. It is in the above referred context of facts, the accused filed Crl.M.P.No.5306 of 2018 in C.C.No.235 of 2014 before the learned trial Court seeking permission to receive eight documents which would help him in substantiating his defence.

Those eight documents are listed as mentioned below:

- 1) Xerox copy of letter, Dt. 12.04.2013
- 2) Original ANL parcel service courier receipt, Dt. 15.4.2013
- 3) Xerox copy of letter, Dt. 8.7.2013 along with 3 unfilled cheques and one filled cheque Dt. 18.6.2010
- 4) Original DTDC courier receipts – 2 Dt. 28.8.2015
- 5) Office copy of legal notice, Dt. 28.8.2015
- 6) Original postal receipt, Dt. 28.8.2015
- 7) Original postal return cover
- 8) Original two payment pass books – 2 Nos.

6. Questioning that, the complainant filed his counter objections stating that those documents are fabricated and created for the purpose of this case and they were filed at a belated stage to delay the proceedings and harass the complainant and the documents do not bear the signatures of the complainant and some of the documents are only photostat

copies. It is for those reasons, he sought the learned trial Court to dismiss the petition.

7. After due hearing and in consultation with the material on record, the learned Magistrate passed the impugned order stating that three of the documents are only photostat copies and therefore they cannot be marked. It is required to be stated here that simply because a document is a photostat copy that by itself is no ground to refuse to receive the document. Indian Evidence Act, 1872 provides for primary evidence and secondary evidence. When the contentions urged by the accused in his defence indicate that he addressed letters to the complainant, letters could not be with the accused and the accused was in possession of only photostat copies. These aspects should have been considered by the trial Court when it considered these photostat copies. Without adverting to such analysis of facts and circumstances, it simply refused to receive those three documents. The truth or otherwise of the contents of these documents is a matter that should be decided in the trial and not at the threshold of receiving documents.

8. In the impugned order, learned trial Court mentioned about two books which the accused intended to file and these books were refused to be received on the ground that they did not bear the signatures of the complainant though those books were attributed by the accused as against complainant. This is an incorrect approach since it is always within the power of the trial Court to decide whether such documents without signatures would really prove a fact or not. Such decision could be taken up only when they are brought on record as evidence. Simply because a piece of document is a very weak one cannot be a ground to refuse to receive the documents.

9. By the impugned order, learned trial Court refused to receive four documents referring to courier receipts and parcel service receipts. In the context of the cross-examination of PW.1 wherein the defence was revealed the factum of these documents should have been considered after they are received and such consideration should be at an appropriate stage in the trial.

10. Before the trial Court the accused pleaded that these documents could not be traced earlier and therefore there was

some delay in filing them. That ground cannot be called as incorrect. The objections raised by the complainant before the trial Court was that these were fabricated documents. Whether a document is fabricated or not could be decided only when the document is brought into evidence and not otherwise. Another contention raised by the complainant before the trial Court was that they were filed at a belated stage. According to learned counsel for quash petitioner, only the evidence of PW.1 was over and therefore, trial has not come to an end. That serves an answer to that contention. Another contention raised by the complainant before the trial Court was that these documents do not bear his signatures and therefore they do not bind him. That again is a contention that can be considered only after the document was received and tendered in evidence and not otherwise. Mere exhibiting documents without appropriate proof of the contents of those documents is of no use. Moreover, complainant holds full liberty to speak his version of the case concerning these documents when those documents are brought on record.

11. In the above referred facts and circumstances, this Court finds that the learned trial Court ought to have received the

documents and instead it refused to receive the documents and that occasioned failure of justice which requires correction.

12. In the result, this Criminal Petition is allowed. Order dated 14.03.2019 of learned Special Judicial Magistrate of First Class, Prohibition and Excise Court, Srikakulam in Crl.M.P.No.5306 of 2018 in C.C.No.235 of 2014 is quashed. The said petition stands allowed. Learned trial Court shall receive the list mentioned documents and proceed further with the trial of the case.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dr. V.R.K.KRUPA SAGAR, J

Date: 18.08.2023
Ivd

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

CRIMINAL PETITION No.2798 of 2019

Date: 18.08.2023

Ivd