

**THE HONOURABLE SRI JUSTICE RAJA ELANGO**

**CRIMINAL REVISION CASE No.257 of 2015**

**ORDER:**

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1. This Criminal Revision Case is filed by the petitioner-accused aggrieved by order dated 21.1.2015 passed in CrI.M.P.No.71 of 2014 in C.C.No.699 of 2011 by the II Additional Judicial Magistrate of First Class, Tanuku.

2. The petitioner-accused is facing trial in the above C.C. for the offence under Section 138 and 142 of the Negotiable Instruments. During the course of trial, the petitioner-accused filed the above CrI.M.P. under Section 45 of the Indian Evidence Act seeking to send Ex.P6-acknowledgement to the hand writing expert so as to enable him to prove his defence. The trial Court dismissed the above CrI.M.P. Aggrieved by the same, the petitioner filed this revision.

3. Heard and perused the material available on record.

4. It is the case of the petitioner that statutory notice was not served on him by the complainant. He is disputing the signature on Ex.P6-acknowledgement. Basing on Ex.P6 it is alleged by the complainant that notice was received by the petitioner. It is the case of the petitioner that as Ex.P6 did not contain his signature, it cannot be said that statutory notice was served on him.

5. The trial Court while dismissing the above CrI.M.P. observed as follows:

“Admittedly Ex.P6 reveals initial ‘A’ and other name starting with “NA”. Admittedly, the name of the accused is S. Madhubabu and signatures on Ex.P2 cheque and Ex.P6 acknowledgement are different as per comparison under Section 73 of the Indian Evidence Act. Hence, here forging of signature of the accused by the complainant does not at all arise since it is the duty of the postal department to serve notice and receive acknowledgement etc. So, the accused has to summon the postman so as to ascertain to whom he served the notice and from whom he got obtained Ex.P6 acknowledgement.

On the other hand, admittedly, the Counsel for the petitioner-accused has not suggested in the cross-examination of P.W.1 that the signature on Ex.P6 does not belong to the accused, except suggesting that he created all documents. So, the petition under Section 45 of the Indian Evidence Act to send Ex.P6 acknowledgement to prove that the signature on Ex.P6 does not belong to the petitioner-accused, does not at all arise in this case. It is the duty of the accused to prove the defence calling upon the postal authorities. On the other hand, the settled law is very much available with regard to service of notice to the accused and if he would have failed to serve the notice on the accused and served to the others, basing on technicalities, the same will be considered by the time of disposing of the complaint. So, it is enough to argue the same at the arguments stage since signature on Ex.P6 itself reveals that it does not belong to the accused, since initial shows "A" and the name on the said acknowledgement shows as starting with "NA". Thus, it is not the burden of the Court, it is the duty of the accused to prove with rebuttable evidence before the Court to prove his defence. Hence, this Court is not inclined to allow this petition."

After hearing the arguments and after considering the above observations made by the trial Court, this Court is of the view that the order under revision does not warrant any interference by this Court and hence, the revision case is liable to be dismissed.

6. Accordingly, the Criminal Revision Case is dismissed. Consequently, the miscellaneous petitions pending, if any, shall stand dismissed.

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**JUSTICE RAJA ELANGO**

Dated: 23<sup>rd</sup> November, 2015

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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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23.11.2015

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