

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

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CRIMINAL PETITION No.2360 OF 2015

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ORDER:

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This petition is filed under Section 482 Cr.P.C., to quash the docket order dated 12.01.2015 in CrI.M.P.No.7012 of 2014 in C.C.No.1449 of 2012 on the file of the Additional Judicial Magistrate of First Class, Tiruvuru.

The petitioner herein is the accused in the said C.C., where he is alleged to have committed an offence punishable under Section 138 of Negotiable Instruments Act, 1881. Trial commenced and during the course of trial, the *de facto* complainant/the 2nd respondent marked Ex.P1 - promissory note, Ex.P2 - cheque and Ex.P3 - counter foil allegedly issued by the petitioner in his favour. According to the learned counsel for the petitioner, in the cross examination, both PWs.1 and 2 have stated that writings of the payee as well as the amount on the cheque were in their hand writing.

The petitioner filed CrI.M.P.No.7012 of 2014 under Section 45 of the Indian Evidence Act to send Exs.P2 and P3 to the Director, Andhra Pradesh Forensic Science Laboratory, Hyderabad, for comparison and to obtain an expert opinion. In the said petition, it is stated that the writings on Exs.P2 and P3 are by the same person; PW.1 did not agree to the same and so, there is necessity to determine whether both the writings are scribed by the same person or not. It is pertinent to note that in the said petition, the petitioner has not asked for comparison of the signature purporting to be his on both the documents.

Counter affidavit is filed by the 2nd respondent opposing the petition and contending that the petition is filed only to drag on the case and the allegations made by the petitioner are not correct.

By docket order dated 12.01.2015, the Court below dismissed CrI.M.P.No.7012 of 2014. In the said order, the Court below held that the petitioner was examined as DW.1 on 08.07.2014 and his further evidence was closed as he failed to adduce his

evidence in spite of being given opportunities. It also recorded that the petitioner as DW.1 had stated in his evidence that Exs.P1 and P2 were not given to the 2nd respondent, but to some other person by duly filling the date and signature and it is the duty of the accused to rebut the presumption by denying the issuance of cheque and he has to establish as to how the cheque went into the hands of the complainant. It also held that merely because of the writings on Exs.P1 and P2 by some other person,

it would not amount to material alteration and no useful purpose would be served by sending the said documents to Forensic Science Laboratory.

Challenging the said order, this Criminal Petition is filed by the petitioner.

Heard learned counsel for the petitioner.

Learned counsel for the petitioner contended that the Court below had erred in dismissing Crl.M.P.No.7012 of 2014 and that it ought to have allowed the petition and the writings on Exs.P2 and P3 are to be sent to an expert in handwriting to decide as to whether the writings on both these documents are scribed by the same person or not.

The petitioner has specifically not denied his signatures on Ex.P2 and P3. It is not the case of the petitioner that his signatures on Exs.P2 and P3 are forged. No doubt, he disputes the other writings in Exs.P2 and P3. As rightly held by the Court below, merely because the other writings in Exs.P2 and P3 do not belong to him, it cannot be said that there is a material alteration or forgery of his signature thereon. Therefore, I am of the opinion that there is no merit in this Criminal Petition and the same is liable to be dismissed.

The Criminal Petition is, accordingly, dismissed.

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

M.S.
RAMACHANDRA RAO, J

Date:07.04.2015

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