

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.2056 of 2015

-

ORDER :

This Criminal Petition is filed by Petitioner/Complainant under Section 482 Cr.P.C seeking to set aside the order dated 12.01.2015 passed in CrI.M.P.No.1651 of 2014 in C.C. No.314 of 2013 on the file of VII Special Magistrate, Hasthinapuram, Ranga Reddy District, wherein the petition filed under Section 45 of the Indian Evidence Act to send Ex.P-1 promissory note to the expert for comparison with admitted signatures which was allowed.

2) The Complainant filed a private complaint against the accused under Section 138 of the Negotiable Instruments Act, 1881 and when the matter posted for arguments, when the accused had denied his signature of Ex.P-1 promissory note in his chief and cross-examination, the petitioner/accused filed a petition under Section 45 of the Indian Evidence Act seeking to send the same for expert opinion and also to recall and re-examine P.W-1 as it is essential to the proper adjudication of the case.

3) Heard the learned counsel for the petitioner as well as the 2nd respondent.

4) Now, point that arises for consideration is, whether Ex.P-1 promissory note of February, 2011 in discharge of which Ex.P-2 cheque dated 17.06.2013 said to have been issued requires to be send to the hand writing expert for comparison of the said disputed signature, and if so the impugned order of the Court below unsustainable and with what observations?

5) The defence of the accused against the claim of the complainant for the cheque dishonour as supported by legally enforceable debt or other liability from the partly covered by promissory note, for Rs.5,00,000/-; is that he did not borrow said amount and he did not execute said promissory note (Ex.P-1) and it is a fabricated document by the complainant, that in the year 2010 he availed a loan of Rs.20,000/- from complainant and repaid with interest through

deposits in Bank covered by Exs.D-1 and D-2 counter foils and at the time of advancing the said amount of Rs.20,000/-, complainant took blank cheques towards security for the said advance and used one of the cheques in this case by fabricating and forging the so called promissory note and if borrowed Rs.5,00,000/- and in discharge of which the cheque said to have been issued, thereby so called promissory note debt which propounded by the complainant as if covered by borrowal and executed by accused, in saying in discharge of it as a legally enforceable debt, the cheque issued is unenforceable as the cheque is given only for security for the blank cheques obtained and even Rs.20,000/- borrowed was repaid as stated supra, he did not return the blank cheques and he never executed the promissory note and therefore as part of the defence, the promissory note is required to be send to hand writing expert.

6) When it is the contention of the accused of the so called cheque is one of the blank cheques misused by the complainant obtained in the year 2010 as security and he did not issue any cheque for any legally enforceable debt or other liability due and the so called promissory note debt for which it is set up as the cheque issued is untrue and the promissory note itself is not supported by consideration and never executed by him and is a rank forgery, in support of the valuable right of the defence of accused and allowing of the application by the learned Magistrate supra in the factual background though not stated in such a detail, from saying Ex.P-1 promissory note genuineness of the signature in dispute requires to solicit expert opinion thereby it requires no interference against the order allowing CrI.M.P.No.1651 of 2014 dated 12.01.2015.

7) In the result, the criminal petition is dismissed. As a sequel, miscellaneous petitions pending, if any, in the above criminal petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

.11.2015

ksh

