

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRL.R.C.No.2393 of 2014

ORDER:

1 This revision is filed under Section 397 and 401 Cr.P.C. challenging the order dated 05.11.2014 passed in CrI.M.P.No.2405 of 2014 in C.C.No.174 of 2014 on the file of IV Additional Judicial Magistrate of I Class, Kakinada.

2 For the sake of convenience, parties to this revision will hereinafter be referred to as they are arrayed before the trial Court.

3 The factual matrix that led to filing of the present revision is as follows:

4 The respondent filed a private complaint against the petitioner under Section 138 of the Negotiable Instruments Act on the file of V Additional Junior Civil Judge, Kakinada. After following the due procedure, the learned V Additional Junior Civil Judge, Kakinada has taken cognizance of the offence against the petitioner under Section 138 of N.I. Act and numbered the complaint as C.C.No.60 of 2009 and issued summons. During the pendency of the case, the petitioner filed CrI.M.P.No.3417 of 2010 under Section 45 of the Indian Evidence Act to send the disputed signature on the cheque and promissory note to the handwriting expert for comparison with his admitted signatures and the said petition was allowed on 13.10.2010. Thereafter, the matter was transferred to the Court of IV Additional Judicial Magistrate of I Class, Kakinada in view of the pendency of C.C.No.19 of 2012 and 13 of 2012 for joint trial and disposal. The Court below received the opinion of the handwriting expert. After completion of 313 Cr.P.C. examination, the petitioner filed CrI.M.P.No.2405 of 2014 in C.C.No.174 of 2014 to send specimen signatures of the petitioner on the bank account opening form and the disputed signatures on the cheque and the promissory note to the handwriting expert for comparison. The respondent opposed the said petition inter alia contending that the petition is filed only to drag on the proceedings. The trial Court, after hearing both sides, dismissed the petition. Hence the present revision.

5 Heard Sri MRS. Srinivas the learned counsel for the petitioner and Sri A. Hariprasad Reddy, the learned counsel for the respondent.

6 The learned counsel for the petitioner submitted that the finding of the trial Court that the petition is filed at a belated stage is not sustainable either on facts or on law. He further submitted that the respondent has no right whatsoever to oppose the petition, having filed the memo to call for the bank account opening form of the petitioner to send the same to the handwriting expert along with the disputed signatures for comparison. The trial Court ought to have sent the bank account opening form along with the disputed signatures to the expert having allowed the memo filed by the respondent.

7 *Per contra*, the learned counsel for the respondent submitted that there is no illegality or irregularity in the orders passed by the trial Court to interfere. He further submitted that the trial Court has assigned cogent and valid reasons to its findings.

8 Now the point for consideration in this revision case is “Whether the order passed by the trial Court is legally sustainable or not?”

9 The learned counsel for the petitioner has drawn my attention to the principle laid down in ***Medikonda Rama Swarajyalakshmi Vs. Posina Sathyanarayana and another***. The relevant portion of the said judgment is extracted hereunder:

“.....From going through the impugned order, I find that the petition filed by the revision petitioner has been dismissed on the ground that the petitioner/ 1st defendant has filed the present petition at a belated stage and the same is intended only to protract the matter and enjoy the benefits from the land for some more time. But, in my opinion, it cannot be dismissed on the ground of belatedness. Even though the opinion of the handwriting expert cannot be conclusive, it is important piece of evidence to hold whether the suit document is forged document or not. Though, no doubt, the Courts have also got power under Section 73 of the Evidence Act to compare the disputed signature in order to give a finding on the issue involved, but at the same time, the Courts normally take the assistance of the handwriting expert. In these circumstances, I think it appropriate to send the disputed document for the opinion of the handwriting expert.....”

10 Let me consider the facts of the case on hand with the principle enunciated in the case cited *supra*.

11 It is an admitted fact that the petitioner filed CrI.M.P.No.3417 of 2010 with a prayer to send the disputed signatures on the cheque and the promissory note along with the admitted signatures of the petitioner to the handwriting expert for comparison in order to ascertain whether the signatures on the promissory note and the cheque belong to the petitioner or not. The trial Court allowed the said petition on 13.10.2010. A perusal of the record reveals that the respondent

herein filed a memo before the trial Court on 28.01.2011 to call for the specimen signatures of the petitioner on the bank account opening form of Andhra Bank, Kakinada branch. The petitioner filed objections vehemently opposing the same. Ultimately, the trial Court allowed the memo on 14.2.2011, which fact is very much known to the petitioner. The petitioner has not taken any steps to file a memo before the trial Court with a request to send his specimen signatures on the bank account opening form to the expert along with the disputed signatures on the promissory note and the cheque for comparison. For the reasons best known to him, the petitioner kept quiet for a period of two years. A perusal of the record reveals that the expert submitted the report stating that the admitted signatures of the petitioner are similar to that of the signatures on the promissory note and the cheque in question. The facts of the case are not similar to the facts of the case cited supra. In the instant case, the petitioner filed the petition way back in the year 2010. The trial Court has not dismissed the petition on the sole ground that the petitioner filed by the petition at a belated stage. However, the trial Court dismissed the petition on the ground that the petition is filed only to drag on the proceedings. Therefore, the decision cited supra is no way helpful to the petitioner to substantiate his stand. Suffice it to say that the opinion expressed by the expert is not a substantial piece of evidence. It is not out of place to extract the relevant portion in para No.4 of the petition, which reads as under:

“It is submitted that the petitioner/accused suspects the bonafides of the report given by the expert.”

12 The petitioner himself has selected handwriting expert of his own choice. After receipt of the opinion of the expert, the petitioner is suspecting the bonafides of the report given by the expert. When the petitioner himself has no confidence or faith on the report of the expert, no purpose will be served by sending the specimen signatures of the petitioner on the bank account opening form along with the disputed signatures on the promissory note and the cheque to expert once again. If the petitioner feels that the expert has not given correct opinion, he can establish the same by following the due procedure. The petitioner himself has vehemently opposed for sending of his specimen signatures on the bank account opening form to the expert in the year 2010.

Now the petitioner came forward with a request to send the same to the expert for comparison for the reasons best known to him.

13 The trial Court has rightly considered the material available on record and dismissed the petition by assigning cogent and valid reasons. While exercising the revisional jurisdiction, the court shall not lightly interfere with the orders passed by the Courts below. If there is any illegality or incurable irregularity in the orders passed by the trial Court, then this Court can interfere with such findings by exercising the revisional jurisdiction. The trial Court has not committed any illegality or irregularity while dismissing the petition. The revision lacks merits and bonafides.

14 Accordingly, this Criminal Revision Case is dismissed at the stage of admission. Consequently, miscellaneous petition if any pending in this revision case shall stand closed.

T.SUNIL CHOWDARY, J.

Date: April, 2015.

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