

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.3085 of 2015

-

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the Petitioner/accused in C.C.No.232 of 2013 on the file of the XIV Special Magistrate, Hyderabad, to quash the order dated 23.03.2015 in CrI.M.P.No.364 of 2015.

2. Heard the learned counsel for the petitioner/accused so also the learned Public Prosecutor representing State-1st respondent before admission and before notice to the 2nd respondent/complainant and perused the material on record.

3. Undisputedly, the case is for the offence under Section 138 of the Negotiable Instruments Act(for short, 'the NI Act') for the dishonour of cheque in question. Disputing existence of any legally enforceable debt or other liability, the accused herein filed CrI.M.P.No.2418 of 2014 under Section 45 of the Indian Evidence Act to send the disputed signature on Ex.P.6 to the Expert i.e. F.S.L. and same was allowed by the learned Magistrate with a conditional order that the document Ex.P.6 to be sent to Expert on a condition to deposit a Demand Draft for Rs.3,000/- drawn in favour of Director, FSL, Hyderabad with the contemporaneous documents having signature of petitioner/accused relating to the year 2011 and directed the petitioner to furnish specimen signatures and accordingly pursuant to the above order, the trial Court forwarded the Ex.P.6 along with contemporaneous documents produced by the petitioner/accused to the Director, FSL, Hyderabad for examination and opinion. But, the same are returned by the Expert stating the documents are not sufficient and to forward some more contemporaneous documents. For which the petitioner since not in possession and custody of contemporaneous documents in respect of Ex.P.6 dated 14.02.2011, filed a petition in CrI.M.P.No.364 of 2015 seeking to call for the account opening form dated 12.07.2012 and cheque dated 13.07.2012 of the account

No.912010035926217 of Axis Bank, Begumpet, Hyderabad in order to send the same to the handwriting Expert. This petition is opposed by the complainant/respondent contending that it is a belated one and the signatures of the year 2012 are not contemporaneous for the disputed signature on Ex.P.6 is of the year 2011, with a gap of 11 months in between. It is further contended that the petitioner-accused is adopting delay tactics in the trial of the case by filing petitions. The trial Court dismissed said petition almost in upholding the contention of the respondent-complainant. It is said order now impugned.

4. From hearing both sides and from perusal of the material with reference to the facts of the case, it shows the trial Court went wrong in observing that it is only delay tactics and putting spokes to disposal and it is one such device. It is only after Expert opinion received with reasons for opinion under Section 45 and 51 of the Indian Evidence Act, the Court being not an Expert by itself has to form an opinion independently, if necessary examination of the Expert. It is premature to say from the gap between three admitted signatures which are covered by the bank account opening form and one of used cheques as well as the income tax statement with reference to the disputed signatures in Exs.P.6 and the specimen signatures subscribed as the originality in signature with natural strokes, pen lift and halt etc., may not be of much in variance within months or one or two years gap generally but for any special and health factors and circumstances, that too, it is the Expert that has to say with reference to it. Having regard to the above, the impugned order is liable to be set aside and the documents are required to be called for to send the Expert to subserve the ends of justice.

5. Accordingly and in the result, the Criminal Petition is allowed while setting aside the order dated 23.03.2015 in CrI.M.P.No.364 of 2015 on the file of the XIV Special Magistrate, Hyderabad by directing the trial Court to call for said documents from the bank and after receiving the same sent to the handwriting Expert and after receiving expert opinion dispose of the

case preferably within one month. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date: 23.07.2015
Vvr