

HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRL.P.No.10223 of 2009

ORDER:

The petitioner-accused seeks to quash the proceedings in Crl.M.P.No.2086 of 2009 in C.C.No.139 of 2006 dated 16.11.2009 on the file of the Additional Judicial Magistrate of First Class, Palakol, West Godavari District.

Brief facts of the case are that the petitioner-accused borrowed Rs.1,75,000/- on 12.12.2003 and Rs.1,80,000/- on 01.04.2004 from the 1st respondent-complainant for his business and family necessities and executed promissory notes. Thereafter, the petitioner-accused issued two cheques bearing Nos.091347 and 091348 for Rs.2,50,000/- and Rs.2,50,000/- on 04.06.2006 and 11.06.2006 respectively towards payment of the debt due under the promissory notes dated 12.12.2003 and 01.04.2004 and endorsed the same on the reverse side of the said promissory notes. When the said cheques were presented on 16.06.2006 in State Bank of India, Pandithavilluru, for realization, the same were dishonoured with an endorsement 'funds insufficient. Thereafter, after following the procedure provided for under Sections 138 and 142 of the Negotiable Instruments Act, the 1st respondent-complainant filed the private complaint and the same was taken on file by the trial Court as C.C.No.139 of 2006.

In the aforesaid C.C.No.139 of 2006, the 1st respondent-complainant was examined as P.W.1 and got marked Exs.P1

to P13. When the said case is coming up for the evidence of the petitioner-accused, he filed the aforesaid CrI.M.P.No.2086 of 2009 under Section 45 read with Section 73 of the Evidence Act to send the documents-Exs.P1, P2, P4 and P5, which contains the signatures of the petitioner-accused, to the handwriting expert for comparison with his admitted signatures. The trial Court, on a consideration of the entire material available on record, dismissed the said petition by order dated 16.11.2009, which reads as under:

“The Counsel for accused filed a petition under Section 45 read with 73 of Indian Evidence Act to refer the signatures Exs.P1, P2, P4 and P5 for expert opinion. Perused the entire record. It goes to show that the Counsel for accused did not take a plea with regard to age of ink at the time of cross-examination of P.W.1 or in further examination of P.W.1 and P.W.3. Hence, Petition dismissed.”

Learned Counsel for the petitioner-accused submitted that the signatures on the documents i.e., Exs.P1, P2, P4 and P5 do not belong to the petitioner-accused and the alleged promissory notes and cheques are forged one and to that effect a suggestion was also put to P.W.1-complainant during his cross-examination. He further submitted that to come to a just conclusion, it is necessary to send the promissory notes dated 12.12.2003 and 01.04.2004 and the endorsements Exs.P2 and P5 made on the reverse side of the said promissory notes Exs.P1 and P4 for expert opinion.

Having heard the learned Counsel appearing on either side and also taking into consideration the facts and circumstances of the case, particularly when the petitioner-accused disputes the execution of the pronotes as well as the

endorsements and also disputes his signatures, it would be in the interest of justice that the documents are to be examined and compared by an expert. Hence, the impugned order dated 16.11.2009 passed by the trial Court is set aside.

Accordingly, Crl.M.P.No.2086 of 2009 is allowed and the trial Court is directed to send the disputed documents along with admitted documents (Exs.P1, P2, P4 and P5) to the Forensic Science Laboratory, Red Hills, Hyderabad/handwriting expert, for comparison of the disputed signatures and handwritings with admitted signatures and handwritings. The expert be also asked to give report on the age of the ink on the said disputed documents.

The petitioner-accused is directed to deposit a sum of Rs.10,000/- tentatively towards fee to be paid to the Expert. The whole exercise shall be completed as expeditiously as possible, preferably, within a period of one month from the date of receipt of a copy of this order.

The trial Court is also directed to dispose of the aforesaid C.C.No.139 of 2006 expeditiously after receipt of the Expert report.

The Criminal Petition is accordingly disposed of. Miscellaneous petitions, if any, pending shall stand closed.

M.S.K.JAISWAL,

J

10-09-2015
Gsn

