

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.8094 OF 2014

ORDER:

This Criminal Petition is filed by the petitioner/accused under Section 482 Cr.P.C seeking to quash the order dated 30.06.2014 passed in CrI.R.P.No.237 of 2014 passed by the learned Metropolitan Sessions Judge, Hyderabad confirming the orders passed in CrI.M.P.No.1512 of 2014 in C.C.No.534 of 2013 dated 23.05.2014 passed by the learned XI Special Magistrate, Hyderabad.

Heard the learned counsel for the petitioner, Sri M.Satish Kumar, learned counsel for the 1st respondent/complainant and the learned Public Prosecutor (Telangana) for the State.

The above case was registered on the complaint given by the 1st respondent/complainant for the offence under Section 138 of the Negotiable Instruments Act and the present petition under Section 482 Cr.P.C. is an outcome impugning the order in CrI.R.P.No.237 of 2014 dated 30.06.2014 that was maintainable against the order dated 23.05.2014 in CrI.M.P.No.1512 of 2014 in C.C.No.534 of 2013 passed by the learned XI Special Magistrate, Hyderabad.

The factual back ground is the complainant examined as P.W.1. During the course of trial after 251 Cr.P.C. examination of the accused, to say the matter reached the stage under 145(3) of the Act. A perusal of the record shows that the accused did not choose to cross examine PW.1, despite several opportunities and ultimately after closure of the complainant's evidence and examination of the accused under Section 313 Cr.P.C. from the complainant side incriminating evidence/material, the accused even taken several adjournments to enter the defence did not itself to do so and even after arguments of the complainant heard before submitting

arguments by the accused he filed the petition supra before the learned Magistrate under Section 45 of the Evidence Act to send the disputed document to expert for comparison i.e., cheque in question. The same was ended in dismissal for several reasons in the elaborate order running about 16 paras by the learned Magistrate that was upheld by confirming in revision by its dismissal by the learned Sessions Judge of the orders referred supra. Now it is the contention that when it is the only remedy for the accused available to compare the disputed signature by an expert with specimen signature to be obtained in open Court as part of defence the dismissal of the applications by the two Courts below is unsustainable. Whereas it is the contention of the learned counsel for the complainant that this application is to protract the proceedings having failed to all his attempts before the trial Court as well as by maintaining revision thereby it deserves dismissal.

Perused the material. As per the facts referred, no doubt clearly speaks as if taken the ordeal at this stage by comparing disputed signature with available signature of the complainant, needless to say such opinion not called for at this stage to decide under or not of the application under Section 45 of the Evidence Act to send to expert. Needless to say the Court is not an expert. Once parties seek to send the document to the expert for comparison, Court generally has to permit and ultimately the power under Section 73 of the Evidence Act available to the Court is with reference to expert opinion under Section 45 of the Evidence Act supported by reasons under Section 51 of the Evidence Act so to compare and not taking ordeal of comparison despite no expertise. There is cross examination of PW.1 including by suggestion that the signature on the cheque is a forged one so also on the so called Ex.P2 date for which the cheques have been issued.

Having regard to the above, the factual matrix does not deserve on behalf of petitioner/accused to send the document to

expert, as it shows one of the reason to protract the disposal of the case. However, the observations regarding comparison made and there by no necessity to send the document to expert on the part of the Magistrate confirmed by the learned Sessions Judge are premature and untenable and as such uninfluenced there from the learned Magistrate can decide the case with any necessity of even invoking Section 73 of the Evidence Act.

Accordingly, this Criminal Petition is disposed of with the observations and the learned Magistrate shall no way influence his mind from earlier observations, but for to decide the case on own merits by continuation of further arguments of the complainant if any and of the accused.

Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 16-06-2015

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