

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

Criminal Revision Case No. 1110 of 2012

Order:

This Criminal Revision Case is filed against the orders, dated 29.06.2012, passed in CrI.MP No. 839 of 2012 in CC No.506 of 2011 by the learned XV Special Magistrate, Hyderabad.

2. The petitioner herein is the accused and the second respondent herein is the *de facto* complainant, who filed the complaint, under Section 138 of the Negotiable Instruments Act, against the petitioner/accused claiming Rs.15,00,000/- under the cheques. The contention of the second respondent/*de facto* complainant is that the petitioner/accused has issued cheques and when they were presented in his bank for collection they were dishonoured. On the other hand, the contention of the petitioner/accused is that in the year 2004 he issued three blank cheques to the second respondent/*de facto* complainant in connection with some other transaction and those three cheques have been used by the second respondent/*de facto* complainant by forging his signatures on the promissory notes. The promissory notes have been marked as Exs.P1 and P2 and the cheques in question have been marked as Exs.P3 to P5. After the evidence of the second respondent/*de facto* complainant was closed, the petitioner/accused has filed CrI.MP No.839 of 2012 in CC No.506 of 2011, under Section 243(2) Cr.P.C., to send the cheques Exs.P3 to P5 and the promissory notes Exs.P1 and P2 to the Director of Forensic Science Laboratory, Hyderabad, for determining the age of the signatures on Exs.P3 to P5 cheques and Exs.P1 and P2 promissory notes. The learned Magistrate has dismissed the said application. Hence, the revision.

3. The contention of the learned counsel for the petitioner/accused is that even in the

reply to the statutory notice issued to the petitioner/accused, he has specifically mentioned that the cheques have not been issued by him in discharge of any debt. It is also contended that the promissory notes which were pressed into service are forged one and since the burden is on the petitioner/accused to rebut the case of the second respondent/*de facto* complainant, a fair chance may be given to him to send the cheques Exs.P3 to P5 and the promissory notes Exs.P1 and P2 to the Director of Forensic Science Laboratory, Hyderabad, for determining the age of the signatures on the cheques and also about the genuineness or otherwise of the signatures on the promissory notes. In support of his contention, he has relied on a decision reported in **T. Nagappa v. Y.R. Muralidhar**, wherein the Hon'ble Apex Court in paragraphs 7, 8 and 9 observed thus.

"7. When a contention has been raised that the complainant has misused the cheque, even in a case where a presumption can be raised under [Section 118\(a\)](#) or 139 of the said Act, an opportunity must be granted to the accused for adducing evidence in rebuttal thereof. As the law places the burden on the accused, he must be given an opportunity to discharge it. An accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under [Article 21](#) of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognized by the Parliament in terms of sub-section (2) of [Section 243](#) of the Code of Criminal Procedure, which reads as under:

"[Section 243](#) - Evidence for defence. –

(1)

(2) If the accused, after he had entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice."

8. What should be the nature of evidence is not a matter which should be left only to the discretion of the Court. It is the accused who knows how to prove his defence. It is true that the Court being the master of the proceedings must determine as to whether the application filed by the accused in terms of sub-section (2) of [Section 243](#) of the Code is *bona fide* or not or whether

thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc. If permitted to do so, steps therefor, however, must be taken within a limited time. There cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protracting the trial or summon witnesses whose evidence would not be at all relevant.

9. The learned Trial Judge as also the High Court rejected the contention of the appellant only having regard to the provisions of [Section 20](#) of the Negotiable Instruments Act. The very fact that by reason thereof, only a *prima facie* right had been conferred upon the holder of the negotiable instrument and the same being subject to the conditions as noticed hereinbefore, we are of the opinion that the application filed by the appellant was *bona fide*.”

4. Taking into consideration the above facts and circumstances of the case and the law laid down by the Hon’ble Apex Court, I feel that a fair opportunity may be given to the petitioner/accused to send the cheques Exs.P3 to P5 and the promissory notes Exs.P1 and P2 to the Director of Forensic Science Laboratory, Hyderabad, for opinion.

5. Accordingly, the Criminal Revision Case is allowed and the impugned order, dated 29.06.2012, passed in CrI.MP No. 839 of 2012 in CC No.506 of 2011 by the learned XV Special Magistrate, Hyderabad, is hereby set aside. The learned XV Special Magistrate, Hyderabad, is directed to send the cheques Exs.P3 to P5 and the promissory notes Exs.P1 and P2 to the Director of Forensic Science Laboratory, Hyderabad, for determining the age of the signatures on the cheques and also about the genuineness or otherwise of the signatures on the promissory notes. The petitioner/accused is directed to deposit a sum of Rs.10,000/- (Rupees Ten Thousand only) tentatively in the Court below within a period of one month from today for sending the documents Exs.P1 to P5 to the Director of Forensic Science Laboratory, Hyderabad, for opinion.

6. As a sequel thereto, the miscellaneous applications, if any, pending in the Criminal Revision Case shall stand closed.

M.S.K. JAISWAL, J.

Date: 30.09.2015

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