

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 791 of 2015

ORDER:

Assailing the order dated 20.04.2015 passed in CrI.M.P.No.376 of 2015 in C.C.No.48 of 2014(Old C.C.No.942 of 2014) on the file of the IV Special Magistrate, Kukatpally at Miyapur, wherein and whereunder an application filed under Section 45 read with 73 of the Indian Evidence Act, 1872, was rejected, the present Revision is filed.

2. The brief facts, which lead to filing of the present Revision, are as under :-

The respondent/complainant herein filed a private complaint against the petitioner/accused for an offence punishable under Section 138 of the N.I. Act. During the course of trial, the accused filed the present application under Section 45 read with 73 of the Indian Evidence Act, 1872 to send Exs.P-1 and P-6 i.e., cheque and promissory note to an expert for comparing the signatures of the accused with her admitted signatures and elicit the truth. The same was opposed by the complainant by way of filing a counter. After considering the rival arguments, the trial court dismissed the application. Challenging the same, the present Revision came to be filed.

3. Learned counsel for the petitioner mainly submits that the finding of the trial court that the admissibility of Ex.P-6-promissory

note, whether it is forged or not can be decided at the time of judgment and that the court has got ample powers to compare the signatures of the petitioner with the signatures on Exs.P-1 and P-6 with the signatures available on record and as such there is no necessity to send Exs.P-1 and P-6 to the Director, F.S.L. is erroneous and incorrect. The same is opposed by the learned counsel for the respondent.

4. It is to be noted that the complainant, who got examined herself as P.W.1 denied the suggestion that Ex.P-6-promissory note do not contain the signature of the accused and that it is forged one and also with regard to the contents of Ex.P-6. The accused, who was examined as D.W.1 stated that she gave Ex.P-1 cheque in the chit transaction to P.W.1. It has been stated in the chief-examination that she has not executed any promissory note in favour of P.W.1. It was also stated by her that Ex.P-6 promissory note does not bear her signature. To a suggestion as to whether Ex.P-1 contains signature of the accused, she admits that Ex.P-1 cheque was signed by her but the contents were not filled by her. She admits that Ex.P-1 was given to P.W.1 towards security purpose while lifting the chit. Insofar as Ex.P-6 is concerned, the accused denies the suggestion that it was signed by her in the presence of P.W.2 after receiving Rs.4 lakhs from the complainant.

5. From the defence taken by the accused and the answers elicited in the cross-examination of P.W.1 and D.W.1, referred to above, it is clear that there is a dispute with regard to the signature and writings on

Ex.P-6-promissory note. Hence, it would be just and proper to send the said document along with the admitted signatures and writings of the accused available on record to an Expert for his opinion. Insofar as Ex.P-1 -cheque is concerned, the accused himself has admitted the signature on the cheque, but, however, denies the contents of the cheque. It is well known fact that it is not always necessary that the contents of the cheque should also be written by the accused. In order to discharge the burden, suffice would it be to establish the circumstances under which the cheque came to be issued and whether it was issued in discharge of the legally enforceable debt. Since the issuance of cheque is not disputed, the circumstances under which it was issued, would be decided during the course of trial. As the signature and execution of promissory note is denied by the petitioner, it would be just and proper to send only Ex.P-6-pronote to the Director, FSL to elicit the truth for proper adjudication.

6. Accordingly, the Criminal Revision Case is partly allowed and the order under challenge is set-aside to the extent of not sending Ex.P-6 pronote to an Expert for his opinion. Insofar as Ex.P-1 is concerned the Revision is dismissed. Consequently, Miscellaneous Petitions pending if any in this Revision shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date: 09.09.2016

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