

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CrI.R.C. No.2744 of 2016

JUDGMENT:

This criminal revision case is filed under Sections 397 and 401 Cr.P.C. challenging the order dated 18.10.2016 passed in CrI.M.P.No.4417 of 2016 in STC No.4 of 2016 on the file of the V Additional Judicial Magistrate of I Class, Tirupati, Chittoor District.

2. Heard the learned counsel for the petitioner.

3. The contention of the learned counsel for the petitioner is three fold. (1) The 2nd respondent has obtained Exs.P.1 promissory note and P.2 cheque from one Sambireddy and filed the false case under Section 138 of the Negotiable Instruments Act. (2) The findings recorded by the trial court are perverse and therefore, it is a fit case to allow the revision and (3) Even if the revision case is allowed, the same may not cause any prejudice to the 2nd respondent.

4. A perusal of the record reveals that the petitioner herein facing the trial in STC No.4 of 2016, on the file of the V Additional Judicial Magistrate of I Class, Tirupati, for the offence punishable under Section 138 of the Negotiable Instruments Act. It is the case of the 2nd respondent that the petitioner herein borrowed an amount of Rs.7,00,000/- and executed Ex.P.1 promissory note on 13.08.2014, in his favour. It is further case of the 2nd respondent herein that to discharge the said debt, the petitioner issued Ex.P.2 cheque bearing No.014603 dated 13.08.2015 drawn on ICICI Bank, Vijayawada Branch, in his favour. When the 2nd respondent presented the cheque for collection, the same was returned on 17.08.2015 with an endorsement 'funds insufficient'. The 2nd respondent got issued a notice as

contemplated under the provisions of the Negotiable Instruments Act. The petitioner herein issued a reply. Having no other alternative, the 2nd respondent herein filed STC No.4 of 2016.

5. When the matter is coming up for defence side evidence, the petitioner herein filed the present petition under Section 45 of the Indian Evidence Act, to send Ex.P.1 promissory note and Ex.P.2 cheque for comparison to determine the age of the ink.

6. It is the case of the petitioner that he issued a cheque and executed promissory note in the year 2009 in favour of one Sambireddy, who is a resident of Tirupati town. It is further case of the petitioner that the said Sambireddy, got filed the present case in the name of the 2nd respondent herein.

7. A perusal of the record clearly reveals that the petitioner herein admitted his signature on Ex.P.1 promissory note and Ex.P.2 cheque. In the reply notice, the petitioner has taken a specific plea that he has executed promissory note for an amount of Rs.8,50,000/- and to discharge the same, he has given the cheque in favour of one Sambireddi for an amount of Rs.8,50,000/-. It is not in dispute that the amount mentioned in Exs.P.1 and P.2 is Rs.7,00,000/-. Thus, the plea taken by the petitioner in the reply notice is quite contrary to the recitals on Exs.P.1 & P.2. The petitioner unequivocally admitted his signature on Exs.P.1 promissory note and P.2 cheque. The burden of proof lies on the petitioner to establish that Exs.P.1 and P.2 are not supported by consideration in view of Section 118 of the Negotiable Instruments Act.

8. It is a settled principle of law that the opinion given by an expert is not substantial piece of evidence. It is not elicited in the cross-

examination of the *de-facto* complainant that the petitioner executed Ex.P.1 promissory note and issued Ex.P.2 cheque in favour of Sambireddi, in the year 2009. If the court feels difficulty to decide the issue involved in the case without the opinion of an Expert, then only the court can send the disputed document for comparison. In the instant case, the court can decide the validity or otherwise of Ex.P.1 promissory note and Ex.P.2 cheque without the opinion of the expert.

9. At the time of arguments, learned counsel for the petitioner submitted that the matter is coming up for arguments. It is not uncommon to file this type of petitions at the fag end of the trial to protract the litigation. The trial court considered various aspects and dismissed the petition by assigning cogent and valid reasons. If there is any illegality, irregularity or impropriety in the orders of the trial court, certainly this court can set aside the same while exercising the jurisdiction under Section 397 Cr.P.C. As observed above, there is no illegality or irregularity in the orders of the lower court.

10. Having regard to the facts and circumstances of the case, this criminal revision case is dismissed at the stage of admission. Miscellaneous petitions, if any pending in this case, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 01.11.2016.

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