

THE HON'BLE SRI JUSTICE RAJA ELANGO

Criminal Petition No.3329 of 2016

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. challenging the order dated 20-01-2016 in CrI.M.P.No.2092 of 2015 in C.C.No.164 of 2015 passed by the I Special Magistrate, Hyderabad, allowing the petition filed under Rule 25 of Criminal Rules of Practice seeking a direction to produce the original receipt executed for mortgaging gold ornaments for the purpose of marking the same as exhibit in the main case.

Admittedly, the second respondent filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioners/accused. It is the specific case of the second respondent/ complainant that after the marriage, the petitioners/A-1 and A-2 mortgaged the entire gold ornaments without the knowledge and consent of the complainant and when an objection was raised, A-1 and A-2 voluntarily executed a declaration-cum-undertaking jointly in the presence of two witnesses stating that they mortgaged the gold items with one pawn broker in which the dates, receipt numbers and the gold items were mentioned. The second respondent/ complainant filed a petition under Rule 25 of the Criminal Rules of Practice and Circular Orders seeking a direction to the petitioners/

A-1 and A-2 to produce the said declaration-cum-undertaking for the purpose of marking the same as exhibit in the case, and the trial Court, considering the said document as material one for the purpose of marking as exhibit, allowed the petition directing the petitioners/A-1 and A-2 to produce the original receipt. Aggrieved by the said order, the present criminal petition is filed.

Heard the learned counsel for the petitioner and the learned Public Prosecutor.

Having heard the learned counsel for the petitioners/A-1 and A-2 and on perusal of the material on record including the order under challenge, this Court is of the view that the order passed by the trial Court suffers from serious infirmity and illegality, as it does not have any power or authority to compel the accused person to produce any document, which is incriminating in nature. Rule 25 of the Criminal Rules of Practice and Circular Orders does not confer any such power or authority on the Magistrate to insist the accused person to produce any document, like the present one, as the said Rule speaks about the power of the Magistrate for passing an order for remanding the accused and also for insisting upon the copies of documents in the Case Dairy in relation thereto, but it never speaks about the power to insist the accused person to produce a document in his custody like the present case. It is not known as to how the learned Magistrate directed the petitioners/A-1 and A-2 to produce the receipt without there being any authority and he wrongly misinterpreted the said provision in directing the production of the said document.

In view of the circumstances stated above, this Court is of the view that in the absence of any specific authority or power, no order for production of any document can be passed invoking Rule 25 of the Rules, and thus the order dated 20-01-2016 becomes null and void, as it suffers from serious legal infirmity and illegality, warranting interference of this Court in exercise of jurisdiction under Section 482 Cr.P.C., and hence, the said order is liable to be set aside.

Accordingly, the Criminal Petition is allowed and the order dated 20-01-2016 in CrI.M.P.No.2092 of 2015 in C.C.No.164 of 2015 passed by the I Special Magistrate, Hyderabad is hereby set aside and consequently, CrI.M.P.No.2092 of 2015 in C.C.No.164 of 2015 is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending, shall stand closed.

RAJA ELANGO, J

Date: 15-03-2016

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