

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.35 of 2016

ORDER :

This Criminal Revision Case is filed under Sections 397 and 401 of the Code of Criminal Procedure (Cr.P.C.), against the order dated 09.10.2015, passed in CrI.M.P.No.8260 of 2015 in C.C.No.409 of 2014 on the file of Judicial First Class Magistrate, Special Mobile Court, Eluru, wherein and whereunder an application filed under Sections 73 and 45 of the Evidence Act requesting to send promissory note to the handwriting expert was rejected.

The facts in issue are as under:

The respondent herein filed a complaint against the accused for the offences punishable under Sections 138 and 142 of Negotiable Instruments Act (for short, 'the N.I.Act'), Section 420 of IPC read with Sections 190 and 200 of Cr.P.C. The case was set out for trial on 15.12.2014. On 13.01.2015, P.W.1 was examined, Exs.P1 to 6 were marked and the matter was posted for cross examination of PW1. The cross-examination of PW1 concluded on 23.06.2015 and the matter was posted for further evidence. On 16.07.2015, the examination of PW2 was completed and the accused was examined on 24.07.2015 under Section 313 of Cr.P.C. Thereafter the matter was posted for defence evidence. While things stood thus, the petitioner filed an application for receiving certain documents from the Court of Senior Civil Judge at Eluru and on 07.09.2015, the trial Court received the documents. Thereafter, an application came to be filed seeking opinion of the expert in respect of documents received from the Senior Civil Judge Court at Eluru. After considering the rival submissions, the trial Court rejected the application on the ground that the application

came to be filed at a belated stage, i.e., when the case was posted for arguments. Challenging the same, the present revision is filed.

Learned counsel for the petitioner mainly submits that there is no legally enforceable debt and that the petitioner will be put to great prejudice if the promissory note is sent to the hand writing expert.

Learned counsel for the first respondent opposed the application contending that a revision under Section 397 of Cr.P.C. is not maintainable against the order passed under Section 45 of the Evidence Act, which is interlocutory order. He further submits that the present application came to be filed only with a view to delay the proceedings.

A perusal of the material placed before the Court would show that an application under Section 91 of Cr.P.C. came to be filed vide CrI.M.P.No.6693 of 2015 for summoning original promissory note dated 18.06.2011, containing signature of the accused and sending it to forensic laboratory for the opinion of the expert. The said application was allowed on 19.08.2015, pursuant to which the original promissory note was placed before the trial Court. But, however, it is to be noted that by then the evidence of the complainant was over and the matter was posted for defence evidence. Without getting the promissory note marked by recalling the concerned witnesses or through any of the witnesses, the petitioner now wants the said document to be sent to hand writing expert by taking the signatures of the accused in the Court along with the promissory note for comparison. Further, learned counsel for the respondent submits that if the contents are to be tested with the signature taken now in the Court, there is every possibility of accused changing his signature or there is possibility of the accused signing differently to defeat the contents of the promissory note.

Even otherwise, it is to be noted that if the said promissory note is

not marked in the said C.C., question of sending un-marked documents to hand writing expert for the purpose of proving that the signature on the said promissory note is not that of the accused, would not arise.

Accordingly, the revision is dismissed. However, it is always open to the petitioner to avail the remedies, if any, available under law.

As a sequel, Miscellaneous Petitions, if any, pending in this revision shall stand closed.

JUSTICE C. PRAVEEN KUMAR

16.03.2016.
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