

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.568 of 2015

ORDER:

This Criminal Petition is filed by the sole accused under Section 482 Cr.P.C., to quash the orders dated 8.1.2015 passed by the Special Magistrate, Nandyal, Kurnool District whereby the learned Special Magistrate dismissed the application in CrI.M.P.No.3281 of 2014 in C.C.No.642 of 2008 filed by the petitioner under Section 45 of Indian Evidence Act to send Ex.D.1 document dated 7.6.2007 for expert opinion.

The brief facts of the case are that the petitioner herein is arrayed as accused for an offence under Section 138 of Negotiable Instruments Act. After taking cognizance of offence, the trial Court proceeded with the trial. Witnesses were examined and at the time of examination of the petitioner herein, she produced a receipt and deposed in the chief-examination that the complainant-first respondent herein received the entire amount covered by the cheque and that he also acknowledged the same under Ex.D.1 receipt. When the said receipt-Ex.D.1 was confronted to the complainant, the same was disputed by him stating that the signature therein is forged and the said receipt is created for the purpose of rebutting the presumption. Further he raised the following points:

(i) The petitioner herein has not taken such a plea while issuing reply to the statutory notice;

(ii) The petitioner has not raised the said aspect at the time of cross-examination of P.W.1;

(iii) The petitioner introduced the receipt-Ex.D.1 in the year 2014 at the time of filing of affidavit of chief-examination in the year 2014.

Hence, it is the case of the de facto complainant that the petitioner-accused is an employee of an educational institution being run by the complainant and the letter-pad containing the signature of the complainant is in possession of the petitioner, which were meant for the purpose of issuing the same to the

students and she has pressed it into service for the purpose of rebutting the presumption. It is also the case of the respondent-complainant that the said receipt was also not produced before the civil Court in the suit filed for recovery of money. Considering the said objections, the trial Court dismissed the application.

Heard and perused the material available on record.

It is true that at a belated stage, the above plea has been taken by the petitioner herein and this Court is of the view that there is a possibility of misutilization of letter-pad already signed by the first respondent-complainant since he is the Secretary of an educational institution wherein the petitioner-accused is working as a clerk. But at the same time, since the respondent-complainant disputed the issuance of receipt-Ex.D.1, for the just decision of the case, necessarily the said receipt should be sent to the handwriting expert.

Under the above circumstances, the impugned order is set aside and the trial Court is directed to send Ex.D.1-receipt for comparison of the signature therein which is alleged to have been signed by the complainant-first respondent herein along with admitted signature that is found either on the vakalat or chief-examination of the complainant. On forwarding the same, the handwriting expert is directed to give his opinion within a period of two months thereafter. On receipt of opinion from the expert, the trial Court is at liberty to proceed with the matter in accordance with law. If the expert opinion goes against the petitioner herein, the complainant-first respondent herein is at liberty to take appropriate action against the petitioner herein.

The Criminal Petition is disposed of accordingly.

Miscellaneous Petitions filed in this Criminal Petition, if any, shall stand closed.

RAJA ELANGO,J

21.03.2016.

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