

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.618 of 2016

ORDER:

The present Criminal Revision Case, under Section 397 r/w. Section 401 of Cr.P.C., is filed by the petitioner/Accused aggrieved by the order dated 02.02.2016 passed in CrI.M.P.No.324 of 2016 in C.C.No.62 of 2013 on the file of I Additional Judicial Magistrate of First Class, Tadepalligudem, rejecting the application filed by him under Section 45 of the Indian Evidence Act, 1872 seeking to send Exs.P-1 and P-2, which are Promissory Note dated 27.11.2011 and Cheque dated 14.12.012, respectively, to the Handwriting Expert for the purpose of comparing his signatures with admitted signatures and for his opinion.

The facts, in brief, are that the 1st respondent/complainant filed the present complaint against the petitioner/Accused for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The said complaint was taken on file as C.C.No.62 of 2013 on the file of the Court of I Additional Judicial Magistrate of First Class, Tadepalligudem. During the course of trial, the petitioner/Accused filed an application in CrI.M.P.No.324 of 2016 in C.C.No.62 of 2013 under Section 45 of Indian Evidence Act, seeking to send Exs.P-1 and P-2, which are Promissory Note dated 27.11.2011 and Cheque dated 14.12.012, respectively, to the

Handwriting Expert for the purpose of comparing his signatures with admitted signatures and for his opinion. After considering the evidence and material on record, the Court below dismissed the said application through the impugned order dated 02.02.2016. Aggrieved by the said order, the petitioner/Accused filed the present Criminal Revision Case.

Learned counsel for the petitioner/Accused submits that in order to prove the defence of the petitioner/Accused, it is very much necessary to send the documents under Exs.P-1 and P-2 to the Handwriting Expert. The learned counsel would further submit that the petitioner/Accused is ready to produce the contemporaneous signatures and hence the order passed by the Court below in rejecting to send the documents to the Handwriting Expert is illegal and improper.

On the other hand, learned counsel for the respondents opposed the same contending that in view of the plea taken by the respondent/complainant in the cross-examination, sending the alleged documents to the Handwriting Expert for his opinion would not arise.

As seen from the evidence on record, the respondent/complainant, who was examined as P.W.1, was subjected to cross-examination at length. In order to appreciate the issue raised, it is apt to reproduce the relevant portion of the cross-examination of P.W.1, which

is as under:

“My younger brother Kaju Srinivas also lent amount to the accused for an amount of Rs.3,00,000/-. He is doing kirana business. I know the father of the accused. I know one Mutyala Murthy who is clerk of accused's father. It is true I purchased one shop from the father of accused previously and the same was got registered. It is true later the said Murthy is not working under the father of accused. I do not know their disputes.

Accused gave filled cheque to me. Ex.P-1 promissory note was scribed on the date of transaction itself. It is not true to suggest that the said Murthy took the blank signed cheques of accused while leaving his father's office and that I fabricated the same with the help of Murthy and got filed this complaint. It is not true to suggest that accused never issued Ex.P-2 cheque to me or to my younger brother and that we have no financial capacity to lend huge amount. I know the contents of Ex.P-4 notice. It is not true to suggest that I did not demand accused by way of notice for repayment of the promissory note amount by cash. We agreed for repayment of the amount with Rs.2-00 interest.”

A reading of the above cross-examination of P.W.1 makes it abundantly clear that the petitioner/Accused gave a filled cheque to the respondent/complainant and to the suggestion that one Murthy took the blank signed cheques of accused, while leaving his father's office and that the respondent/complainant fabricated the same with the help of the said Murthy and got filed this complaint was denied, meaning thereby that one Murthy is alleged to have taken the signed cheques from the accused while leaving his father's office and that the respondent/complainant used the said cheques for filing the present complaint. That being the suggestion given, the plea taken by the petitioner/Accused that the signatures on the cheque and promissory note were not

signed by him and that the same requires an opinion from the Handwriting Expert cannot be accepted. Even otherwise also, the opinion of the Expert is not binding on the Court as it is only advisory in nature.

For the aforesaid reasons, I do not see any merit in this Criminal Revision Case warranting interference with the impugned order passed by the Court below.

Accordingly, this Criminal Revision Case is dismissed. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

22.04.2016.

Msr

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