

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
CRIMINAL REVISION CASE No.1991 of 2012

ORDER:

1 This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. assailing the order dated 18.09.2012 passed in CrI.M.P.No.779 of 2012 in C.C.No.80 of 2011 (Old C.C.No.288 of 2011) on the file of the Court of the XXIII Special Magistrate, Hyderabad wherein and whereby the petition filed by the petitioner under Sections 45 and 47 of the Indian Evidence Act was dismissed.

2 For the sake of convenience, the parties to this revision case will hereinafter be referred to as they are arrayed before the trial Court to avoid confusion.

3 The contention of the learned counsel for the petitioner is that the trial Court dismissed the petition on erroneous grounds. She further submitted that it is not possible for the petitioner to establish that the cheque in question was forged one without sending the same to the expert for comparison and opinion.

4 The facts leading to filing of the present revision case are briefly as follows:

5 The petitioner is facing trial for the offence punishable under sections 138 and 142 of Negotiable Instruments Act on the file of the Court of the XXIII Special Magistrate, Hyderabad. While the matter is pending, the petitioner filed CrI.M.P.No.779 of 2012 praying the trial Court to send Ex.P.1 cheque dated 04.06.2009 to the expert for comparison and the same was dismissed.

6 The crucial question that falls for determination in this revision case is 'whether there is any illegality or irregularity in the order passed by the trial Court warranting interference of this Court?'

7 A perusal of the record reveals that after dishonour of the cheque, the complainant got issued a legal notice Ex.P.7 dated 15.11.2011 directing the petitioner to pay the amount covered under the cheque within 15 days from the date of receipt of the notice. The contention of the petitioner is that the complainant made material alterations in Ex.P.1 cheque, and the same cannot be proved without sending the same to expert. The petitioner issued Ex.P.8 reply notice to the Ex.P.7. The complainant examined himself as P.W.1. It is needless to say that the party to the proceedings has to take the stand at the earliest point of time. In the instant case, the petitioner has not taken the specific plea in Ex.P.8 that there is material alteration in the cheque in question. The counsel for the petitioner has cross examined the complainant at length. In the cross examination no suggestion was put to the complainant that there is material alteration in Ex.P.1. It appears, when the matter is coming for arguments, the petitioner filed the present petition. Non-taking of plea of material alterations by the petitioner in Ex.P.8 reply notice creates any amount of doubt in the mind of the Court with regard to the bonafides of the petition filed by the petitioner. Without eliciting anything from P.W.1 with regard to the alleged material alterations, the petitioner is not entitled to file the present petition. It appears that the present petition is filed when the matter is coming up for arguments. The possibility of filing this type of petitions with an ulterior motive to drag on the proceedings as long as possible cannot be ruled out completely. Even if the petition is allowed, the same will not improve the case of the petitioner for not taking such a plea at the earliest point of time in Ex.P.8.

8 The trial Court has considered various aspects in right perspective and dismissed the petition. The findings recorded by the trial Court are based on material available on record. There is no

illegality or irregularity in the order passed by the trial Court, warranting interference of this Court by exercising revisional jurisdiction under Section 397 Cr.P.C. The present Criminal Revision Case is devoid of any merit and the same is liable to be dismissed.

9 In the result, the Criminal Revision Case is dismissed as devoid of merit. As a sequel, miscellaneous petitions pending in this Criminal Revision Case, if any, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 15.07.2016

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