

**HONOURABLE SRI JUSTICE RAJA ELANGO**

**CRIMINAL PETITION No.2094 OF 2016**

**ORDER:**

-

This criminal petition, under Section 482 Cr.P.C., is filed by the petitioner-Accused seeking to quash the order, dated 08.02.2016 in CrI.M.P. No.469 of 2016 in CC No.359 of 2015 passed by the Special Magistrate-IV, Visakhapatnam.

The petitioner is accused in CC No.469 of 2016 for the offence punishable under Section 138 of the Negotiable Instruments Act. The complainant – 2<sup>nd</sup> respondent filed an application under Section 254(2) Cr.P.C., seeking to issue summons to one K. Siva Sankar, for the purpose of giving evidence in respect of loan transaction between him and the petitioner-accused. The petitioner-accused opposed the same by filing counter. The Court below allowed the above application through the order impugned. Against the same, the accused filed the present application.

The main grievance of the petitioner is that the complainant did not mention the name of the person, whom he intends to examine as a witness, neither in the legal notice nor in the complaint and without considering the same, the learned Magistrate allowed the application filed by the petitioner for summoning the said witness.

Heard and perused the material available on record.

Whenever any application is filed for summoning of a person to give evidence in the case, non-mentioning of the name of that person in the legal notice or in the complaint is not a ground to reject the said application. The defence of the petitioner is that he lost the cheque said to have been given by him to the complainant towards repayment of the said loan amount, and the complainant misused the same and he has not availed any loan from the de facto complainant. But, the case of the complainant is that he gave an amount of Rs.2,00,000/- to the petitioner

in the presence of two persons and therefore, he intends to examine one of that person to substantiate the fact that he has given the amount in his presence. If it is the case of the petitioner that he has not taken any loan from the complainant, he can cross-examine the said witness. Therefore, this Court is not inclined to interfere with the order passed by the trial Court.

Accordingly, the Criminal Petition is dismissed. However, the petitioner is at liberty to question the demeanour of the witness by way of cross-examination and also if he so desirous, he can recall the complainant and also cross-examine him regarding the aspect of non-mentioning of the said witness in the legal notice as well as in the complaint. Miscellaneous petitions pending if any, shall stand closed.

---

**RAJA ELANGO, J**

**February 19, 2016.**  
**CTL**