

**THE HON'BLE SRI JUSTICE RAJA ELANGO**

**Crl.R.C.No.3306 of 2015**

**ORDER**

The petitioner preferred the present criminal revision case challenging the order of dismissal dated 24.11.2015 passed in Crl.M.P.No.100 of 2015 in Crl.A.No.414 of 2013 by the learned XVI Additional District and Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge, Ranga Reddy District at Malkajgiri.

2. The petitioner/accused was convicted for the offence under Section 138 of Negotiable Instruments Act, 1881 and sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for a period of four months. Aggrieved by the same, he filed Crl.A.No.414 of 2013. During the pendency of appeal, he filed the impugned application under Section 391 Cr.P.C. seeking to permit him to adduce further evidence and to call for the original loan agreement dated 05.02.2009 from the custody of the complainant for marking the same in his defence evidence. By the order impugned, the appellate Court dismissed the said application holding that the petitioner failed to establish valid reasons for adducing additional evidence. Challenging the same, the petitioner filed the present revision.

3. Heard and perused the material on record.

4. Learned counsel for the petitioner submitted that though the case of the complainant is based on the loan agreement dated 05.02.2009, he has not produced the original loan agreement before the trial Court and therefore, the presumption of law of

existence of legally enforceable debt or other liability has not been rebutted during trial. Thus, he prays to give an opportunity to the petitioner to lead further evidence.

5. As seen from the record, it is evident that the petitioner got executed the loan agreement dated 05.02.2009 in favour of the second respondent/complainant, but the complainant did not file the original loan agreement before the trial Court. The complainant stated in his counter that he has handed over all original documents to his counsel and he is not in possession of the said document and therefore, he filed a photostat copy of the said agreement. The grievance of the petitioner herein is that the said statement has not been recorded before the trial Court as evidence for the purpose of disproving the same by him before the appellate Court.

6. Considering the facts and circumstances of the case and since the original loan agreement cannot be called for at this stage as the petitioner is fully aware of non-existence of the said document from the initial stage before the trial Court and in view of the stand taken by the complainant that he is not in possession of the original document, an inference cannot be drawn by the appellate Court only to the extent of existence of loan agreement between the petitioner and the second respondent-complainant. Further, when the existence of agreement was not proved by the complainant, the question of rebutting the presumption does not arise.

7. With the above observation, the Criminal Revision Case is disposed of. Miscellaneous Petitions, if any, pending in this revision shall stand closed.

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**JUSTICE RAJA ELANGO**

4<sup>th</sup> February, 2016

sj