

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL REVISION CASE No.209 of 2017

JUDGMENT:

The present Criminal Revision Case is filed questioning the order dated 16.01.2017 in CrI.M.P.No.50 of 2017 in C.C.No.744 of 2015 on the file of XIV Additional Judge-cum-XVIII Additional Chief Metropolitan Magistrate, Erramanzil, Somajiguda, Hyderabad, whereby and whereunder, an application filed by the petitioner – accused under Sections 73 and 45 of Indian Evidence Act (for short, 'the Act') read with Section 243 of the Code of Criminal Procedure (for short, 'the Code'), requesting to send Ex.D1 – cheque for the opinion of the handwriting expert by comparison of admitted signatures with disputed signature on Ex.D1, was dismissed.

2. Heard Sri S.Surender Reddy, learned counsel for the petitioner, and Sri Kollu Rajasekhar, learned counsel for respondent No.2.

3. The learned Additional Chief Metropolitan Magistrate, having considered the arguments advanced before him and the averments made in the petition and the counter, respectively, while dismissing the petition, some how, compared the admitted signatures of the petitioner occurring on memo of appearance with that of the disputed signature occurring on Ex.D1 reverse side, invoking the power vested on him under Section 73 of the Act, tendered opinion that they appear to be

similar and identical and, thereby, rejected the request holding that the petition cannot be entertained.

4. Learned counsel for the petitioner would submit that the amount of Rs.2,50,000/- was not drawn by submitting the cheque issued by the complainant, as the cheque for Rs.2,50,000/- issued by the complainant was, in fact, not signed by the petitioner and it was signed by some one else and that is the consistent defence putforth by the petitioner throughout and that compelled the petitioner to make a request under Section 45 of the Act for getting the opinion of an handwriting expert. According to him, the learned Additional Chief Metropolitan Magistrate went beyond the scope and dismissed the petition by making certain observations.

5. Learned counsel for respondent No.2, per contra, would submit that the very application was laid under Section 73 of the Act, besides under Section 45 of the Act and, therefore, the learned Additional Chief Metropolitan Magistrate rightly exercised his discretion and recorded a tentative finding. Thus, he supports the order under challenge.

6. This Court, on 30.01.2017, while ordering notice before admission, granted stay of pronouncement of judgment by the learned Additional Chief Metropolitan Magistrate.

7. Learned counsel for respondent No.2 – complainant would submit that the arguments on behalf of the complainant were already tendered and the Calender Case is coming up for arguments on behalf of

the petitioner – accused, which fact, of course, is not disputed by the learned counsel for the petitioner herein. In such an event, it is desirable to observe that the learned Additional Chief Metropolitan Magistrate ought not to have recorded a definite finding on the comparison he made of the admitted and disputed signatures of the petitioner and ought to have postponed it till the arguments were heard on both sides and then ought to have recorded that finding.

8. Mere fact that the provisions of Section 73 of the Act also mentioned in the application under Section 45 of the Act is no ground to enter into arena of examination of disputed and admitted signatures at the stage when arguments were already commenced and completed on behalf of one party. Therefore, the finding recorded by the learned Additional Chief Metropolitan Magistrate, on comparison of admitted and disputed signatures of the petitioner needs to be set aside and is, accordingly, set aside. In the event of exercising power under Section 73 of the Act, the learned Additional Chief Metropolitan Magistrate shall hear the arguments on behalf of the petitioner – accused also and then arrive at a finding by comparison of the admitted and disputed signatures.

9. However, having regard to the facts and circumstances that are occurring in the present case where the Calender Case reached the stage of arguments even and the complainant tendered his arguments, the petitioner approaching the court with an application of this nature at that stage, certainly, cannot be encouraged. There is no merit. The order

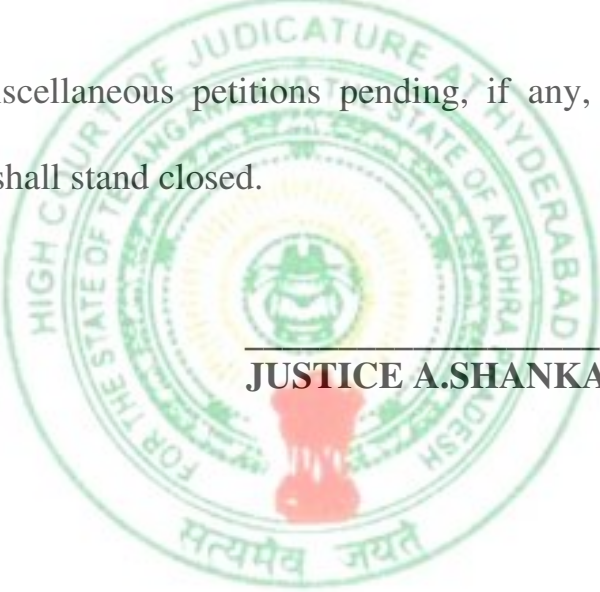
under revision, therefore, requires no interference except to the extent of the finding recorded with regard to the comparison of the admitted and disputed signatures of the petitioner, as stated above.

10. The present Criminal Revision Case is, accordingly, dismissed. However, the learned XIV Additional Judge-cum-XVIII Additional Chief Metropolitan Magistrate, Erramanzil, Somajiguda, Hyderabad, is directed to dispose of the Calender Case within one month from the date of receipt of a copy of the order, affording an opportunity as directed in the above.

11. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

30.10.2017

v v



JUSTICE A.SHANKAR NARAYANA