

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE Nos.3231 and 3234 of 2016

COMMON ORDER :

The self same accused of two private complaint cases in C.C.Nos.1466 and 1467 of 2014 on the file of the learned Judicial Magistrate of First Class, Tiruvuru, Krishna District, that were maintained against him by the self same complainant by name, K.Srinivasa Rao, claiming of respective two cheques issued each for Rs.30,000/-, respectively on the self same date 13.10.2014 by accused bearing cheque Nos.361800 and 361799, when maintained the said complaint cases that was taken cognizance for the offence under Section 138 of the Negotiable Instruments Act (for short 'the Act') against the accused and in the course of trial the accused filed two petitions in CrI.MP.Nos.5895 and 5896 of 2016, respectively in the two cases with self same prayer, respectively to send the disputed cheques, which are contained material alteration by tampering the blank signed cheques of the accused given to the complainant each by mentioning for Rs.30,000/-, by altering as Rs.3,00,000/- in one case by making '3' as '0' putting comma (,) after 300 by adding '3' by over writings to make

it 3 lakhs by adding the words 'three lakhs' and the other case even though there is a comma (,) after '30' to read as thirty thousand, by putting comma (,) after 300/- to read as 'three lakhs' by adding the words 'three lakhs', taking advantage of the blank cheques with only numerical mentioned without writing in words and the same to be send to the expert for decipher of the factum of material alteration to the defence of the accused that cheques are not supported by legally enforceable debt or sufficient consideration.

2. From contest by the complainant, in opposing the petitions before the lower Court saying in addition to the cheques there were promissory notes executed by the accused for the respective borrowals and thus the cheques are supported by consideration and it is not a material alteration respectively made by the complainant, but for at the time of giving and as such there is no any necessity to send these cheques to any handwriting expert for comparison and opinion and the petitions are meant to drag on the proceedings intentionally with no basis, the lower Court dismissed the two petitions, which are now impugned in the two revisions.

3. Heard both sides at length and perused the impugned orders and also the respective cheques in question.

4. Undisputedly, once the cheques were duly stated issued by the accused in favour of the complainant from the presumption available under Section 118 of the Act, there is also presumption under Section 139 of the Act, more particularly, from the expression of the three Judge Bench of the Apex Court in Rangappa v. Sri Mohan¹, under the reverse onus clause against the accused, the burden is on accused to rebut said presumption. It is one of the valuable rights of the accused in support of the defence to rebut the presumptions in saying the cheques issued were for Rs.30,000/- each and not for Rs.3,00,000/- each. If it is able to decipher by expert of any alteration, then to decide whether it is a material alteration respectively within the meaning of Section 87 of the Act, and its effect on the substratum of the case of the complainant to make out the offence under Section 138 of the Act or contra to it in support of the defence, as the case may be, for the Court to decide. Though, to some extent it can be said that the Court can compare, for Court is not an expert, as per the settled law the Court has to seek expert opinion to take it for its assistance to arrive a conclusion. Thus, the dismissal of the applications by the lower Court are unsustainable and are liable to be set side by allowing the applications.

¹ AIR 2010 SC 1898

5. Accordingly, the two Criminal Revision Cases are allowed by setting aside the impugned orders in CrI.MP.Nos.5895 and 5896 of 2016 and consequently those are allowed by directing the lower Court to obtain specimen writings of the accused and the complainant, to meet the purpose of the respective petitions to the extent necessary and to send the two cheques in question by keeping on record the certified Xerox extracts to the file, to seek the opinion of expert and to proceed there from. For the said purpose the petitioner/ accused has to deposit Rs.10,000/- each in the two cases respectively, within one week, from the date of receipt of copy of this order, for the lower Court to meet the expenses of expert, out of it and if necessary to direct deposit further or to return back any balance.

Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:21-02-2017

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