THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No.8 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, by the unsuccessful petitioner/accused is directed against the order, dated 24.11.2016, of the learned I Additional Judicial Magistrate of First Class, Khammam, passed in Crl.M.P.No.853 of 2016 in C.C.No.503 of 2014.

2. I have heard the submissions of *Sri Mummaneni Srinivasa Rao*, learned counsel for the petitioner, *Mrs Annapurna Sri Ram*, learned counsel appearing for the 2nd respondent/complainant and of the learned Public Prosecutor appearing for the 1st respondent, State of Telangana. I have perused the material record.

3. The facts, which are necessary for consideration, in brief, are as follows:

The 2nd respondent/complainant filed C.C.No.503 of 2014 against the petitioner/accused requesting to punish him for the offence punishable under Section 138 of the Negotiable Instruments Act. The petitioner/accused is resisting the said case. During the pendency of the said case, the petitioner/accused filed the afore-stated miscellaneous petition under Section 45 of the Indian Evidence Act, 1872, requesting the trial Court to send the promissory note, dated 22.11.2012, for Rs.3,50,000/- and the cheque bearing No.021503, dated 03.03.2014, to a handwriting expert for comparing the signatures said to be of the petitioner/accused on the said documents with his admitted signatures and hand writing and submitting a report to the Court with his opinion as to the genuineness or otherwise of the disputed signatures on the afore-stated disputed documents. The said petition was resisted by the 2nd respondent/complainant. On merits, the trial Court dismissed the petition of the petitioner/accused. Therefore, the petitioner/accused is before this Court.

4. The case of the petitioner/accused and the submissions made on his behalf, in brief, are as follows: 'The signatures said to be of the petitioner/ accused on the cheque as well as the promissory note are forged. That apart, the age of the ink of the signatures and the contents of the promissory note & the cheque is quite different. Hence, it is clear that the said documents are fabricated by the 2nd respondent/complainant to make a wrongful gain. The petitioner/accused is the sole proprietor of his concern and he never borrowed any amount and never issued any cheque and never executed the promissory note. He is strongly denying the issuance of the cheque. For the said reasons and to prove his innocence, it is just and necessary to send the disputed documents to a handwriting expert for obtaining an opinion as requested by the petitioner/accused. In his deposition, the 2nd respondent/complainant stated that the petitioner/accused is related to him and that the father-in-law of the petitioner/accused is the elder brother of his wife and that exhibit-P5 promissory note was executed on 22.11.2012. He also denied the suggestion that he lent the money to the accused on 07.04.2009, as 'not true'. However, the trial Court erroneously dismissed the petition of this petitioner/accused by not properly appreciating the facts of the case and the defence. The observation of the Court below that a perusal of the deposition of PW1 discloses that the petitioner herein admitted the signatures on the promissory note and the cheque is incorrect. Sending of the document to an expert is necessary to prove the innocence of the petitioner-accused. If the request is not granted, the petitioner/accused would be the ultimate sufferer. The order is unsustainable and is liable to be set aside.'

4.1 The case of the 2nd respondent/complainant and the submissions made on his behalf, in brief, are as follows: 'The accused raised a false defence to somehow delay the disposal of the calendar case and avoid payment of the amount due and payable to this respondent. The petitioner/accused executed the promissory note and gave the duly signed cheque, in the facts and circumstances stated in the complaint of this respondent. The contrary allegations urged by the petitioner/accused are false. The application is filed under Section 45 of the Indian Evidence Act only to delay the proceedings and harass this respondent. Further, during the cross-examination of PW1, the learned counsel for the petitioner/accused gave a suggestion that, on 07.04.2009, PW1 obtained the blank signed promissory note and blank signed cheque from the petitioner/accused. The said suggestion was denied by PW1. The said suggestion makes it clear that the accused is not disputing his signatures on any of the material documents. The well reasoned order of the trial Court is sustainable both under facts and in law. The revision case is liable for dismissal.'

5. I have given earnest consideration to the facts and submissions.

6. Be it noted that the 2nd respondent/complainant in support of his case relies upon the cheque and the promissory note and other material documents. The case is filed under Section 200 read with Section 191 of the Code and 142 of the N.I.Act requesting to punish the accused for the offence under Section 138 of the said Act. The present application is filed by the petitioner/accused requesting to send the said two documents to a handwriting expert for comparison of the signatures said to be of the accused on the said documents with his admitted signatures & handwriting and for furnishing a report to the Court with an opinion as to the genuineness or otherwise of the disputed signatures on the said documents. In the petition, the petitioner/accused simply stated that the disputed signatures have to be compared with the admitted signatures; but, did not state as to what are the documents containing the said admitted signatures of the petitioner/accused. Further,

the trial Court noted in its orders that a perusal of the deposition of PW1 discloses that the petitioner herein admitted the signatures on the promissory note and the cheque. As rightly observed by the trial Court, during the cross-examination of PW1, a suggestion was put to the said witness by the learned counsel for the petitioner/accused that, on 07.04.2009, PW1 obtained the blank signed promissory note and blank signed cheque from the petitioner/ accused. Be it also noted that the learned counsel for the 2nd respondent/complainant also contended that the cheque, when sent for collection to the Bank of the petitioner/accused for realization of the proceeds, the Bank did not dispute the signature on it and did not return it with an endorsement that the signature on the cheque is not tallying with the specimen signatures of the drawer of the cheque and hence, the request of the petitioner/accused cannot be considered and the revision is liable for dismissal.

7. On a careful and detailed examination of the facts and submissions, this Court is of the considered view that the order impugned, which is a well reasoned order, does not suffer from any infirmity and, therefore, does not brook interference.

8. In the result, the Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

29th June 2017
Vjl