

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

WEDNESDAY THE THIRTIETH DAY OF AUGUST
TWO THOUSAND AND SEVENTEEN

PRESENT

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2042 OF 2017
AND
CRIMINAL REVISION CASE No. 2222 OF 2017

Between:

Nuthalapati Manohara Prasad ... Petitioner

V/s.

Vankayalapati Surendra Babu & Anr. ... Respondents



Counsel for the Petitioner: Smt. Jyothi Eswar Gogineni

Counsel for the Respondents: Public Prosecutor [A.P.]

The court made the following: [common order follows]

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2042 OF 2017
AND
CRIMINAL REVISION CASE No. 2222 OF 2017

COMMON ORDER :

These Criminal Revision Cases are filed under section 397 and 401 of Cr.P.C. questioning the propriety and legality of the order in CrI.RP.No. 1 of 2017 and CrI.RP.No. 2 of 2017 passed by the Principal Sessions Judge, Guntur, dated 13/03/2017 setting aside the order passed by the IV-Additional Junior Civil Judge, Guntur, in CrI.MP.No. 4801 of 2016 in CC.No. 898 of 2015, dated 14/12/2016.

2. The respondent filed an application under section 91 Cr.P.C., with a request to send for the original promissory note dated 30/06/2010 in O.S.No. 201 of 2015 on the file of the Court of IV-Additional District Judge, Guntur for disposal of C.C.No. 898 of 2015, alleging that the complaint for the offence punishable under section 138 of Negotiable Instruments Act is coming up for cross-examination of PW-1 and that the petitioner allegedly issued the cheque towards discharge of legally enforceable debt for Rs.15,00,000/- and another promissory note dated 30/06/2010 for Rs.15,00,000/- by taking the original agreement for settlement and to prove the said fact during the cross-examination it is necessary to confront the document.

3. The Junior Civil Judge passed the order dismissing the application recording her own reasons and aggrieved by the same a Revision is preferred before District Court, Guntur and consciously made certain observations in Para No.13 of the order and these observations are extracted hereunder for better appreciation :

“ If a necessity arises to send certain documents for comparison by expert they will always prefer the original signatures instead of copies of signatures. This court is conscious of the aspect that necessity to send the disputed and admitted signatures to expert for comparison is a separate aspect and out of scope of the present petition and at relevant time subject to necessity the trial court may consider as per the merits existing by then. However, for the purpose of comparison by the court or even for confronting to witness it is always desirable to have original signatures instead of copies of signatures. On that ground request for summoning the promissory note deserves positive consideration”.

4. The counsel for the petitioner during argument contended that the observations extracted above are unwarranted, as no request in the petition filed for the purpose of establishing the signature on the cheque was not made before the court below and she also further contended that no revision is maintainable under section 91 of Cr.P.C., and it is only an interlocutory order and the order if allowed to sustain would not culminate the entire proceedings and consequently the revision is not maintainable before the Sessions Judge, Guntur. On this ground alone the order passed by the Sessions Judge is liable to be set aside.

5. The counsel for the respondent per contra would submit that the document is necessary for the purpose of establishing the signatures appearing on the cheque was not that of the petitioner but the court made certain observations with regard to the necessity of sending the document to the expert or to compare the disputed signatures with the admitted signatures and the Sessions Judge consciously passed such order keeping in mind the future requirement and such order cannot be interfered by this Court, while

exercising the powers conferred under sections 397 and 401 of Cr.P.C.

6. The first and foremost contention raised by the counsel for the petitioner is that the order is in the nature of Interlocutory, in view of bar under section 397 [2] Cr.P.C. But this view is not acceptable for the reason that in private case and revisions under section 397 Cr.P.C. could be filed against the order passed under section 91 Cr.P.C., but the Revisional Court should be slow to interfere with the trial court's discretion in the matter of summoning the document as held by the Apex Court in **ASSISTANT COLLECTOR V/s. L.R. MELWANI** ¹, where the discretion has not been exercised the Court should interfere in the revision in view of the law laid down in **K.V. KRISHNA MURTHY V/s. STATE OF ANDHRA PRADESH** ².

7. The above two judgments relate to procedure to pre-amendments of Criminal Procedure Code and the bar under section 397 [2] Cr.P.C., was introduced for the first time in 1973, therefore, the law applicable to pre-amendment provisions cannot be applied subsequent to 1973 Cr.P.C., amendment incorporated in sub-clause [2] of section 397 Cr.P.C. Therefore, the present revision is not maintainable on the first ground that it is an interlocutory order in view of bar under sub-section 2 of Section 397 Cr.P.C. as the order would not culminate the entire proceedings. The word interlocutory is not defined in the Criminal Procedure Code, but created an interdict in entertaining revision against interlocutory order. If the order is under challenge before the District Judge is allowed to sustain, it would not culminate or terminate the proceedings and thereby the

¹) 1970 CRL.LAW JOURNAL-885

²) 1975 : APLJ-98 : 1975 CRL. LAW JOURNAL-980

order passed in interlocutory stage would not determine the substantial rights of the parties.

8. In **Mohan Lal Magan Lal Thacker v. State of Gujarat**⁴, the Constitution Bench had laid down the tests to ascertain whether the order under challenge is interlocutory or not, which read as under:

1. *Was the order made upon an application such that a decision in favour of either party would determine the main dispute?*
2. *Was it made upon an application upon which the main dispute could have been decided?*
3. *Does the order as made determine the dispute?*
4. *If the order in question is reversed, would the action have to go on?"*

9. The only test is, if an order under challenge is allowed to sustain would it culminate or terminate the proceedings. If it culminates the entire proceedings it is final or other wise it is an interlocutory order.

10. If the principles laid down in the above judgments are applied to the present facts of the case, the order under challenge passed under section 91 Cr.P.C. is only an interlocutory order. The Apex Court in **Amar Nath and others V/s. State of Haryana and others**³ made it clear that the orders summoning documents, calling for reports etc., are interlocutory in nature. Therefore, no Revision can be entertained by exercising the powers conferred under section 397 Cr.P.C. but the Sessions Judge entertained the Revision and allowed the same. More curiously the Sessions Judge made certain unwarranted observations, which are not germane for deciding the revision by the Sessions Judge, in view of limited grounds raised

³) AIR-1977 SC-2185

before Magistrate. After all the respondent herein, the petitioner before the trial court requested to send for the document by exercising the powers conferred under section 91 Cr.P.C., only for the limited purpose for establishing the signature appearing on the cheque was not that of accused. PW-1 during his cross-examination ignoring the contention raised in the petition, the Sessions Judge recorded several unwarranted observations which are extracted in the preceding paras, they are un-necessary for deciding the revision by the Sessions Judge. He also observed that even for comparison of signatures by the Court by exercising its power original signatures are necessary. In fact it was not the contention of the respondent before this Court and the petitioner before the Sessions Judge either in the petition or during the arguments but the Sessions Judge invented different reason and therefore the order passed by the Sessions Judge is irregular and passed the order under challenge in this Revision without jurisdiction and as no revision is maintainable against the interlocutory order in view of the bar under section 397 [2] Cr.P.C., and in view of the law declared by the Apex Court in the judgment referred supra.

11. In view of my foregoing discussion, the order passed by the Magistrate under section 397 Cr.P.C., is only an interlocutory order and no Revision is maintainable. Therefore, the order passed by the Sessions Judge in CrI.RP.No. 1 of 2017 and CrI.RP.No. 2 of 2017 is irregular and contrary to the bar under section 397 [2] of Cr.P.C., and consequently the order is liable to be set aside without deciding other contentions.

12. In the result, these Criminal Revision Cases are allowed, setting aside the order passed by the Principal Sessions Judge,

Guntur, dated 13/03/2017, excluding the order passed by the IV-Additional Junior Civil Judge, Guntur, in CrI.MP.No. 4801 of 2016 in C.C.No. 898 of 2015, dated 14/12/2016, by leaving it open to the respondent to file appropriate application.

13. As a sequel, miscellaneous petitions if any, pending in these Criminal Revision Cases shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY.



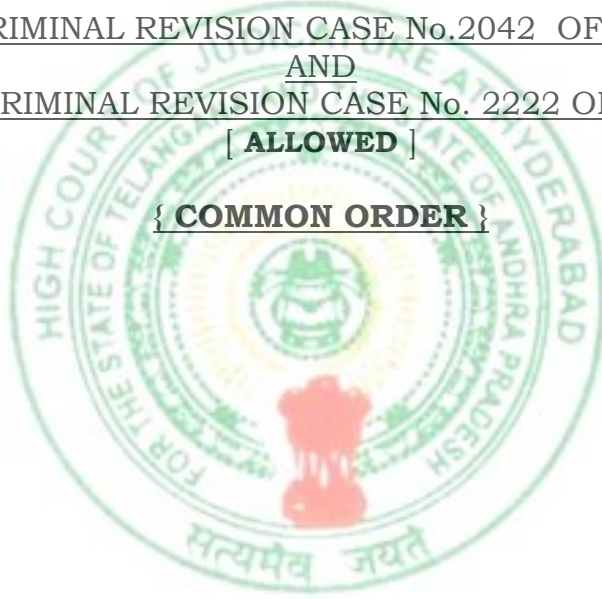
30/08/2017
I s L

N B : Furnish CC today.
B/o. IsL.

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2042 OF 2017
AND
CRIMINAL REVISION CASE No. 2222 OF 2017
[**ALLOWED**]

{ **COMMON ORDER** }



Date: 30/08/2017
Circulation No. 261
Court Master : I s L