

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No. 2219 of 2017

ORDER:

This Criminal Revision Case is filed under Sections 397 & 401 of Cr.P.C questioning the propriety, legality and regularity of the order dated 30.06.2017 passed by the III Additional Junior Civil Judge, Tirupati, in CrI.M.P. No.1034 of 2017 in C.C. No.346 of 2013 in receiving the promissory note in evidence by condoning the delay on an application filed by the 2nd respondent/ complainant under Section 254 (1) Cr.P.C.

The petitioner herein is the accused. Respondent No.2 herein, who was the complainant, filed an application under Section 254 (1) Cr.P.C to receive the document after condoning the delay, contending that the petitioner/ accused borrowed a sum of Rs.4,00,000/- from the complainant and executed a promissory note for the said amount in favour of complainant agreeing to repay the same together with interest at 24% per annum on demand or order, as and when demanded by complainant, the accused issued two cheques bearing Nos.483977 and 483978 both dated 4.03.2013 for Rs.2,00,000/- each drawn on Andhra Bank, AIR Bye-Pass Road Branch, Tirupati, towards discharge of part amount due under the said transaction. But on presentation, the said cheques were returned with endorsement "insufficient funds". Hence, the complainant issued a legal notice on 13.05.2013 to the accused, but as the same was returned by the accused, the complainant filed the above complaint.

Subsequently, in support of her contention, she wants to file the demand promissory note, which was executed by the accused. Therefore, she filed the above application seeking permission of the Court to receive the document by condoning the delay in filing the same. The Court below, accepting the reason assigned by 2nd respondent/complainant allowed the said application through the impugned order dated 30.06.2017.

Aggrieved by the said order, the petitioner/ accused filed the present revision, mainly contending that the document was received after a lapse of more than three years, hence, the same cannot be received without any proper explanation for the delay, and apart from that, there was no reference in the entire complaint about the execution of the demand promissory note and when such is the case, the said document is a fabricated one which was brought into existence for the purpose of the present case.

Heard both sides and perused the material on record.

Section 254 Cr.P.C permits the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution and also to hear the accused and take all such evidence as he produces in his defence. Thus, from the scope of Section 254 (1) Cr.P.C, the Magistrate is bound to receive the documents whatever produced before the Court by complainant or by accused pleads guilt and conviction, where there is no admission of the guilt and conviction under Section 252 or 253 or if the accused does not make such admission, the Magistrate must proceed to hear the prosecution

and to take all such evidence as may be produced in support of the prosecution, any acquittal short of this procedure is illegal and is liable to be set aside. The Magistrate must record the evidence of all the witnesses which the prosecution intends to examine. The Magistrate is not authorised to question the accused a second time and to acquit the accused on the plea of guilty. Therefore, a complainant may examine any witness at the trial not given list of witnesses under Section 204 (2) Cr.P.C after hearing the respondent.

In the present case, the learned Magistrate heard both the complainant and accused and received the document in evidence by condoning the delay, exercising the power under Section 254 (1) Cr.P.C. But the contention of the petitioner is that there was no reference about the execution of such document in entire complaint and that when the very genuineness of promissory note is in doubt, the execution of such document cannot be decided in a petition under Section 254 (1) Cr.P.C and it can be decided only after full fledged trial.

Therefore, it is left open to the petitioner to raise any contention regarding genuineness of the document—demand promissory note during trial and if such contention is raised, it is for the Magistrate to record the finding about the said transaction. But in receiving the document, the Magistrate did not commit any error. Therefore, I did not find any ground to interfere with the order passed on 30.06.2017 in CrI.M.P. No.1034 of 2017 in C.C.

No.346 of 2013 by the learned III Additional Junior Civil Judge,
Tirupathi.

Having regard to the above, the revision is dismissed.
However, it is left open to the petitioner to raise all contentions
during trial in the main CC.

Consequently, miscellaneous petitions, pending if any in this
revision, shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt.09.08.2017
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