

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.994 OF 2017

ORDER:

The revision petitioner is the accused in C.C.No.51 of 2012 which is outcome of a private complaint of revision respondent No.2/ defacto-complainant for the offence u/sec. 138 of the Negotiable Instruments Act(for short, 'the Act') and the same from the accrual of the cause of action filed and taken cognizance and after supply of copies from securing appearance of accused and on contest from the evidence of defacto-complainant as P.W.1 and the accused as D.W.1 with reference to Exs.P.1 to P.11 and D.1, the trial Court convicted the accused by judgment dated 14.05.2014 to undergo six(6) months Simple Imprisonment and to pay compensation of Rs.4,50,000/- to the defacto-complainant, in default to suffer Simple Imprisonment for six months. By impugning the same, the revision petitioner/accused maintained the CrI.A.No.365 of 2014 on the file of the XIII Addl.District & Sessions Judge, Ranga Reddy at L.B.Nagar. It is during pendency of the appeal, the accused also filed the application in CrI.M.P.No.78 of 2016 u/sec. 391 CrPC r/w 45 of the Indian Evidence Act, to send Ex.D.1 affidavit to the handwriting expert for comparison and opinion. The averments in support of said prayer are that during the course of trial, in the cross-examination of the complainant/ P.W.1, he denied the signature on Ex.D.1 affidavit dated 14.12.2005. In fact, before the trial Magistrate, he filed CrI.M.P.No.581 of 2014 to send the Ex.D.1 affidavit to expert for

opinion and it was taken as one of the grounds in the appeal that on the self-same day of its filing even ordering notice, it was ended in dismissal and judgment was delivered convicting him on the self-same day and it is in violation of principles of interest of justice.

2. The counter filed by the defacto-complainant in opposing the petition covered by the impugned order and in support of the impugned dismissal order is with contest that similar petition during trial filed was ended in dismissal on 12.05.2014 from hearing and on consideration and it is on the contest of the defacto-complainant that he never executed Ex.D.1 affidavit and there is a finding given by the trial court on Ex.D.1 and thereby the petition pending appeal to send the Ex.D.1 to the handwriting expert is unsustainable and is liable to be dismissed.

3. The impugned order of the lower appellate Court from the contest reads that from perusal of cross-examination of P.W.1, it appears that he was questioned as to whether he put his signature on the Ex.D.1 affidavit executed on a non judicial stamp paper worth Rs.20/- and P.W.1 denied said execution and also stated that the signature on it is not that of him. The lower appellate Court observed that there was no mention about the existence of Ex.D.1 affidavit in the Ex.B.1 reply notice if at all in existence and the trial Magistrate also compared signature on Ex.D.1 with available signatures of the defacto-complainant and found not similar and the opinion of handwriting expert is not even conclusive proof for Court to come to independent conclusion and

the observation made by the trial Magistrate from his comparison of Ex.D.1 signature not that of complainant is right or not is to be decided in deciding the appeal and thereby no grounds to allow the application. It is impugning the same, the present revision is filed.

4. It is drawn attention of the Court from the observations in the judgment and also filing of the application before the trial Court and its dismissal on the same day of pronouncement of judgment. No doubt that application was filed at the fag end of the matter when it was pending for judgment. Under the reverse onus clause, the defence available to the accused is available one from it at all the cheque issued with his signature not in dispute, where routed from his account, from the presumption available against him.

5. Here, it is a matter of appreciation in hearing the appeal including as to the dismissal of the application by the lower Court to see whether it is correct or not. Once such is the case for the lower appellate Court to decide the present application, it requires hearing of the appeal rather dismissal of the application before hearing the appeal. Thereby the impugned order of the lower appellate Court is liable to be set aside.

6. In the result, the revision is allowed by setting aside the impugned order and allowing the CrI.M.P.No.78 of 2016 by restoring to the file of the lower appellate Court with a direction to hear application along with the main appeal and decide, any necessity of sending the Ex.D.1 affidavit containing the disputed signatures of the complainant therein to the handwriting expert, it

is along with available admitted and specimen signatures if at all from such necessity and otherwise not, as a case may be, on merits.

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

Dr. B. SIVA SANKARA RAO, J

Dt.01.06.2017
Vvr.

