

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL PETITION No.2711 of 2017

ORDER:

The present petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), is filed questioning the order, dated 24.03.2017, in CrI.M.P.No.3227 of 2016 in Crime No.150 of 2015 passed by the III-Additional Judicial Magistrate of First Class, Kothagudem, whereby and whereunder, the learned Magistrate has acceded to the request of the State represented through the Station House Officer, P.S.Kothagudem III Town, for collecting the specimen signatures and handwriting of the respondents therein i.e., accused Nos.1 and 3 to 6, for the opinion of handwriting expert by comparison with the document bearing No.BEO28701 with serial No.567, dated 09.02.2006, in connection with the offences punishable under Sections 420, 468 and 471 read with 34 of IPC.

In fact, the respondents in the aforesaid CrI.M.P resisted the request of the prosecution before the Court below by raising various pleas. However, the learned Magistrate opined that the opinion of the handwriting expert as to the signatures and handwritings on the document collected during the course of investigation from the 1st respondent/accused No.1 is necessary to arrive at correct finding and to finalise the investigation and, accordingly, allowed the petition viewing the request as a request made under Section 311-A of the

Code, though, the said provision of law was not quoted in the application by mistake.

Heard Sri M. Srinivasa Rao, learned counsel for the petitioners, and the learned Additional Public Prosecutor for the State of Telangana for the respondents.

Whether the mandatory requirement of the proviso to Section 311-A of the Code is complied with or not, would be the question germane to decide in an application of this nature. The said requirement is absolute, as there is no quarrel in regard to it nor a question is raised as to the arrest of the respondents in the aforesaid Crl.M.P., incidentally, the petitioners herein, and their release on bail. The submission of the learned counsel for the petitioners has been that when a document is collected from the custody of petitioner No.1, against whom the allegations of forgery and fabrication have been levelled, besides the offence of cheating even, the said document cannot be used against him or the opinion that would be collected from the handwriting expert on comparison of the handwritings and signatures cannot be used against him. But, of course, there is no statutory bar to support the said submission nor there is any decisional law touching the said submission. Unless it is shown that the order under challenge passed by the learned Magistrate is patently illegal, certainly, it cannot be overturned. In the present case, the petitioners failed to show that patent illegality has crept into in the order under challenge passed by the learned Magistrate.

Hence, the Criminal Petition is dismissed at the stage of admission itself.

Miscellaneous petitions, if any, pending in the Criminal Petition shall stand closed.

A.SHANKAR NARAYANA, J

Date: 31.03.2017

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