

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.9151 of 2017

ORDER:

The petitioner-Kalluri Sddaiah is the appellant in CrI.A.No.155 of 2017 pending on the file of the Special Judge for Trial of Cases under Scheduled Castes & Scheduled Tribes (Prevention Of Atrocities) Act-cum-VI Addl. Sessions Judge, Kurnool. The 1<sup>st</sup> respondent-P.Paghuveera is the complainant of C.C.No.35 of 2008 against the petitioner renumbered as C.C.No.1232 of 2013 on the file of the Judl. Magistrate of First Class, Kurnool, for the offence u/sec.138 of the Negotiable Instruments Act, and on trial, the case is ended in conviction. Impugning the said conviction judgment, the petitioner filed the appeal and pending the appeal, he filed the CrI.M.P.No.83 of 2017 to summon the registered mortgage deed bearing No.1101 of 2008 executed by him in favour of one K.Ramesh Babu filed in O.S.No.49 of 2010 on the file of the III Additional District Judge, Nandyal, and said petition along with CrI.M.P.No.518 of 2016 to receive the agreement, dt.05.05.2008 containing the signature of the petitioner as additional evidence filed were dismissed by the common order of the learned Sessions Judge, dt.29.08.2017. Impugning the same, the present petition is, so far as the CrI.M.P.No.83 of 2017 only is concerned, filed.

It is the submission of the learned counsel for the petitioner that even before the lower Court, he filed CrI.M.P.No.35 of 2012 to summon K.Ramesh Babu, plaintiff in O.S.No.49 of 2010 supra to produce the mortgage deed,dt.05.03.2008 which was allowed and

subsequently the CrI.M.P.No.1843 of 2012 for production of the document filed was however dismissed by order dated 01.03.2013 observing it is only to procrastinate the litigation and further observed that though an opportunity was given to the petitioner/ accused to produce contemporaneous signatures in the earlier petition in CrI.M.P.No.1017 of 2011, he did not produce any record.

Now the document (mortgage deed bearing No.1101 of 2008) is relevant to send the admitted signatures on the document to the expert to compare with that of the disputed signature in the case on hand on Ex.A.3 cheque and opinion as sought and allowed in CrI.M.P.No.1017 of 2011 in the C.C.No.35 of 2008 an application to send to the handwriting expert admitted signatures along with the disputed signatures on Ex. A.3.

Having regard to the above, this is a matter to be decided along with the main appeal of the relevancy to summon the document from said suit (O.S.No.49 of 2010) or not. Thereby the dismissal order of the lower appellate Court is set aside and the matter is remitted back to the lower appellate Court to decide the same along with the appeal on own merits.

Accordingly, the Criminal Petition is disposed of. Consequently, miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

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Dr. B. SIVA SANKARA RAO, J

Date: 13.10.2017  
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