

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2604 of 2017

ORDER:

This revision case is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), questioning the propriety and legality of the order, dated 24.08.2017, in CrI.M.P.No.857 of 2017 in C.C.No.200 of 2014 passed by the Special Judicial Magistrate of First Class (Mobile) PCR, Adilabad, dismissing the application filed under Section 45 of the Indian Evidence Act to refer the disputed document i.e., cheque-Ex.P.1 to the handwriting expert for opinion along with admitted writing of the petitioner, based on Section 20 of the Negotiable Instruments Act, 1881.

2. Aggrieved by the order, the present revision is filed on various grounds mainly contending that the order passed by the Court below is erroneous, since, the cheque was not filled by the petitioner/accused and he did not deliver the cheque to the respondent No.2/complainant. Therefore, the writing on the cheque is to be examined by the experts and require to give opinion, which is necessary to decide the real controversy between the parties with regard to the delivery of blank signed cheque to respondent No.2 herein.

3. During hearing, Sri S. Surender Reddy, learned counsel for the petitioner, reiterated the same contentions, which urged in the grounds of revision.

4. It is the case of the petitioner/accused in brief that he handed over a blank signed cheque to respondent No.2 in connection with earlier transactions and even after discharge of the debt due earlier, the cheque was not returned and retained by respondent No.2 and filed complaint under Section 138 of the N.I.Act. The petitioner denied the issue of cheque. But, based on the evidence of PW.1, a petition is filed to refer the cheque to handwriting expert along with admitted writing of the petitioner obtained in the open Court to decide whether the handwriting on the cheque was the writing of the petitioner or not. Even assuming for a moment that the petitioner did not fill the columns in the cheque when he signed on the document, it is an inchoate instrument and according to Section 20 of the N.I.Act such instrument is enforceable. Similar question came up before the Division Bench of this Court in **Duggineni Seshagiri Rao v. Kothapalli Venkateswara Rao**¹, Their Lordships Justice Bilal Nazki and Justice E.Dharma Rao held in para 6 as follows:

“Four things are necessary for an instrument to be a promissory note: 1) It should be in writing; 2) It should have an unconditional undertaking; 3) It should be signed by the maker; and 4) it should be in favour of certain person or to a bearer.

Section 20 makes inchoate stamped instruments legal instruments. The dictionary meaning of ‘inchoate’ is ‘incomplete’. So, incomplete stamped instruments are as good as the instruments mentioned in Section 4 of the Act.

¹ 2001 (6) ALT 96 (D.B.)

Even if one looks to the definition of the 'promissory note' under Section 4, one would find that the requirements for making an instrument a promissory note do not contain the requirement of naming a person, it can be given in favour of a certain person or to bearer of the instrument. That makes it clear that, one who is holding the document is the person who derives rights out of that instrument. In other words, it would mean that the document with first three requirements as stated above, should be delivered to the payee, once it is delivered it becomes a promissory note. Name and other particulars can be filled up even at a later stage. When one reads Section 4 in conjunction with Sections 20 and 42 that is the only interpretation that can be placed on the meaning of 'promissory note' under Section 4 of the Act. Section 20 lays down that when a person signs and delivers to another person a paper stamped in accordance with law relating to negotiable instrument it becomes a negotiable instrument even if it is wholly blank or written with incomplete particulars. Similarly, Section 42 even recognizes instrument issued in the name of fictitious person to be a valid instrument. Although Section 42 relates to bills but it also accepts that an acceptor of a bill of exchange even if it was in drawn in a fictitious name it would create a genuine claim in favour of the holder. Therefore, even if a negotiable instrument is incomplete it would be a legal instrument provided it satisfies the first three conditions.

Holder of the instrument becomes a bearer of the instrument.”

“The plaintiff had been able to prove the execution of the document. On the other had, if the document was disputed or doubted the onus was on the defendant to show that the document was a forgery because a presumption is in

favour of plaintiff under Section 118 of the Negotiable Instruments Act.”

5. Similar view is taken by Single Judge of Punjab and Haryana in **Sukhminder Singh v. Nirbhai Singh**² and in this regard, I am persuaded by an unreported judgment of the High Court of Karnataka in C.R.P.Nos.1574, 1590 and 1591 of 1995, dated 01-10-1999 [H.Maregowda and etc. Vs. Thippamma and others].

6. If these principles are applied to the present facts of the case, the cheque was signed by the petitioner and handed over blank signed cheque in connection of earlier transaction and failure to return the cheque would not serve any purpose for referring to the document to an expert. In view of the law declared by this Court, the order passed by the Court below is free from any legal infirmity warranting interference of this Court in the revision.

7. Yet, the order passed by the Court below is interlocutory in nature, since the order is passed during pendency of the main petition, which would not culminate the entire proceedings. Therefore, in view of the bar under Section 397(2) Cr.P.C., the revision is not maintainable under Sections 397 and 401 of Cr.P.C as held by the Apex Court in **K.K. Patel v. State of Gujarat and another**³ and **Bhaskara Industries Limited v. Bhiwani Denim & Apparels**

² AIR 2013 Punjab and Haryana, Page 77

³ AIR 2000 SC 3346

Limited and others⁴. Hence, the revision is liable to be dismissed at the stage of admission even on the ground that no revision lies against an order under challenge. Consequently, I find no ground to interfere with the order passed by the Court below while exercising the power under Sections 397 and 401 of Cr.P.C.

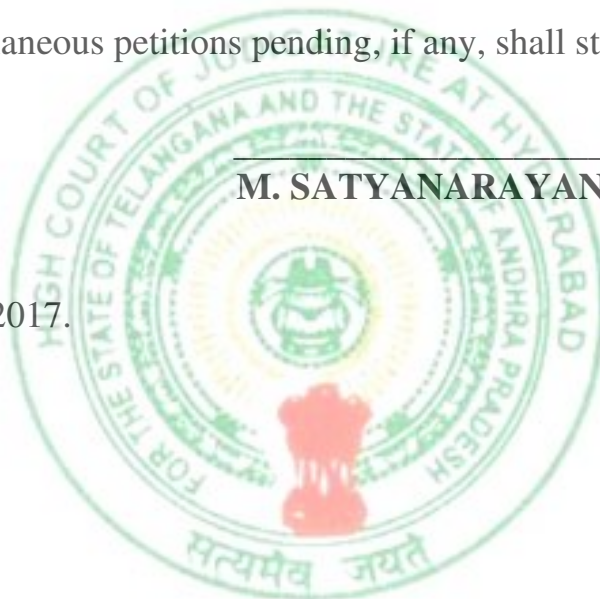
8. In the result, the criminal revision case is dismissed at the stage of admission, confirming the order passed by the Court below.

9. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

12th October 2017.

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⁴ (2001) 7 SCC 401