

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.3946 of 2017

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the orders dated 27.04.2017 in CrI.R.P.No.18 of 2017 passed by the learned I Additional District and Sessions Judge, Guntur, wherein whereby the order passed in CrI.M.P.No.464 of 2016 in C.C.No.98 of 2015 on the file of the Principal Junior Civil Judge, Guntur, was confirmed.

2. Heard the learned counsel for the petitioner and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

3. A perusal of the record reveals that the petitioner herein is facing trial in C.C.No.98 of 2015 on the file of the Principal Junior Civil Judge, Guntur, for the offence punishable under Section 138 of the Negotiable Instruments Act. After completion of P.W.1's evidence, the complainant-respondent No.2 filed CrI.M.P.No.464 of 2016 under Section 311 Cr.P.C. to examine the scribe of promissory note-Ex.P.1. The trial Court after affording a reasonable opportunity to both parties, allowed the criminal petition on 29.11.2016. Feeling aggrieved by the order dated 29.11.2016 in CrI.M.P.No.464 of 2016, the petitioner preferred Criminal Revision Petition No.18 of 2017. The revisional court after affording a reasonable opportunity to both parties, dismissed the revision petition. Hence, the present petition.

4. The predominant contention of the learned counsel for the petitioner is two fold:

1. The name of the scribe of Ex.P1 promissory note is not shown as one of the witness in the list of witnesses;

2. The courts below committed grave error while allowing the petitions.

5. A perusal of the record clearly reveals that the trial Court has not committed any error while taking the cognizance of offence against the petitioner for the offence punishable under Section 138 of NI Act. It is the case of the second respondent that the petitioner herein executed a promissory note(Ex.P1) in his favour. It is the case of the petitioner that the petitioner executed the promissory note in favour of somebody else and not in favour of the complainant-Respondent No.2. Before filing of the complaint, the second respondent got issued a legal notice as contemplated under NI Act. The petitioner herein issued a reply notice admitting his signature on Ex.P1 promissory note. It is needless to say that the burden of proof lies on the person, who admits the execution of a promissory note. The petitioner is at liberty to adduce the evidence explaining the circumstances under which he executed Ex.P1 promissory note and in whose favour. Merely because the name of the scribe is not mentioned as one of the witnesses in the complaint by itself is not a valid ground to dismiss the petition filed under Section 311 Cr.P.C. Whether the person proposed to be examined is the scribe of Ex.P1 promissory

note or not can be decided at the time of full fledged trial. The examination of the proposed witness may be helpful to the trial Court in coming to just decision in this case. Examination of the scribe of the promissory note would not cause any prejudice to the petitioner. In fact, examination of the proposed witness one way may helpful to the petitioner to establish the stand taken by him. The trial Court as well as the revisional Court considered the material available on record in right perspective and arrived at a conclusion that examination of the scribe of the promissory note - Ex.P1 would not cause any prejudice to the petitioner. The Courts below have not committed any error and there is no illegality or irregularity in the order under impugned. The petitioner failed to convince this Court that the order passed by the Courts below is contrary to law. The Courts below have exercised the discretionary power basing on sound principles of law. There are no grounds much less valid grounds to interfere with the well considered orders of the Courts below. The petition lacks merits and bonafides and hence, the same is liable to be dismissed.

6. Accordingly, the Criminal Petition is dismissed. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 06.06.2017
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