

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1867 of 2017

ORDER:-

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.', for brevity), is filed by the petitioner/complainant, questioning the propriety and legality of the docket order, dated 20.06.2017, passed in CrI.M.P.No.1954 of 2017 in C.C.No.271 of 2016, by the IV Additional Judicial Magistrate of First Class, Kakinada, allowing the application filed under Section 45 of the Indian Evidence Act to refer the document containing the disputed signature along with the admitted signature, calling for opinion from an expert.

2. The 2nd respondent herein is the accused before the trial Court. He filed an application under Section 45 of the Indian Evidence Act requesting to send the document containing the disputed signature along with the admitted signatures and other documents to an expert for his opinion, alleging that the signature on the promissory note, dated 13.04.2014, does not bear his signature and the signature on the said promissory note is a rank forged one and to prove the said contention, the opinion of the expert is necessary and prayed for the relief stated above.

3. The petitioner herein/complainant filed counter contending that at the earliest point of time, notices were exchanged between the parties in the year 2014 and that except the pleading that the accused did not execute the promissory note in

favour of the complainant, there is no pleading of forgery and that as per law, the cases were filed at Vayalpadu in the year 2014 and as per the law declared by the Apex Court, the cases were returned and resubmitted to proper Court at Kakinada and that neither the advocate at Vayalpadu nor at Kakinada filed any petition under Section 45 of the Indian Evidence Act and that the documents need to be sent to an expert calling for his opinion and, accordingly, requested to dismiss the petition.

4. Upon hearing the learned counsel for the both the sides, the Court below, placing reliance on the judgment of this Court in *Mortha Vimala Vs. Gouthu Rajulu and another*¹, concluded that the opinion of the expert is necessary to demonstrate the contention of the accused that the signature on the promissory note is a rank forged one.

5. Aggrieved by the said order, the present Criminal Revision Case is filed by the petitioner/complainant on various grounds, mainly contending that in the absence of any plea that the signature on the promissory note is a rank forged one and when the matter was adjourned for ten times, the accused did not raise such plea. Therefore, referring the document containing the disputed signature along with the admitted signatures and other documents to an expert for his opinion is an error on the face of it and therefore, requested this Court to allow the Revision by setting aside the order passed by the Court below.

¹ 2015 (1) ALT 186

6. Though the matter reached for admission, the learned counsel for the petitioner/complainant did not appear before this Court and advance any argument. However, this Court cannot dismiss the Criminal Revision Case for default, but without waiting for the counsel for the petitioner, this Court can verify the material on record and pass appropriate orders, in view of the law declared by the Delhi High Court in *Misha Sharma Vs. Vinod Kumar Sharma*². Persuaded by the law declared by the Delhi High Court, I would like to verify the material on record and decide the appeal in accordance with the law.

7. The order under challenge is an interlocutory order against which, no Revision lies in view of sub-section 2 of Section 397 of Cr.P.C. Whether an order is final or interlocutory, the test laid by the Apex Court is to be strictly adhered to. The Apex Court, in *K.K. Patel v. State of Gujarat and another*³ and *Bhaskara Industries Limited v. Bhiwani Denim & Apparels Limited and others*⁴, laid down a feasible test as to whether an order is interlocutory or final. The only test is, if an order under challenge is allowed to sustain, would it culminate or terminate the entire proceedings. If it culminates the entire proceedings, it is final, or otherwise, an interlocutory order.

8. In view of the law declared by the Apex Court in the above referred judgment applying the test, it is clear that, if the order under challenge is allowed to sustain, would terminate or

² 1990 Cr.LJ. (NOC) 57 (Del)

³ AIR 2000 SC 3346

⁴ (2001) 7 SCC 401

culminate the entire proceedings is a determining factor to entertain a revision under Section 397 Cr.P.C.

9. In the instant case, the order passed by the Court below is to refer the disputed signature on the promissory note along with the admitted signatures and other documents to an expert for his opinion, on examination. Even if this order is allowed to be sustained pending culmination or termination of the entire proceedings in C.C.No.271 of 2016 on the file of the Court below, the order under challenge is interlocutory in nature and against it, no Revision is maintainable in view of the interdict contained under Section 397(2) Cr.P.C.

10. The petitioner/complainant, though contended that at the earliest point of time the respondent did not raise the plea of forgery, it is not a ground to deny the relief for the simple reason that in the reply notice itself, the accused contended that he never executed any promissory note as contended by the complainant and that he only came to know about the same after verifying the promissory note that the signature appearing on it is a rank forgery. Thus, the accused came to know that the signature on the promissory note is a rank forgery, thereby filed an application to refer the disputed signature on the promissory note along with the admitted signatures and other documents to an expert for his opinion.

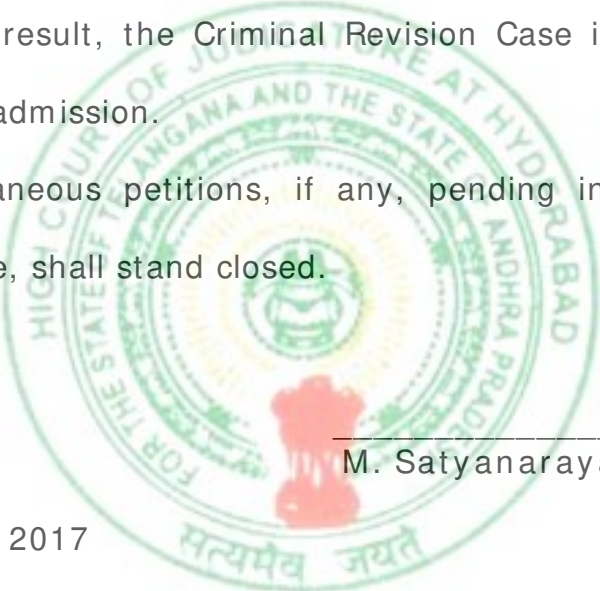
11. Though the expert's opinion is not a conclusive proof, it is a corroborative piece of evidence to set aside the contention of the petitioner/accused. Therefore, the trial Court, rightly placing

reliance on Mortha Vimala's case (1 supra) passed the impugned order. The order under challenge do not suffer from any illegality or irregularity warranting interference of this Court by exercising power under Sections 397 & 401 of Cr.P.C., which is limited in nature, and when the Court below exercised its discretionary power and passed the impugned order, this Court cannot disturb the said findings.

12. In view of the above discussion, the Criminal Revision Case is devoid of merit and is liable to be dismissed.

13. In the result, the Criminal Revision Case is dismissed at the stage of admission.

Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.



M. Satyanarayana Murthy, J

11th October, 2017
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