

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.625 of 2017

ORDER :

The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') requesting to quash the order dated 08.11.2016 passed in CrI.M.P.No.4546 of 2016 in C.C.No.86 of 2013 on the file of the Special Magistrate, Nandyal.

2. The petitioner is admittedly an accused in the aforesaid calendar case. He made a request through CrI.M.P.No.4546 of 2016 under Sections 45 and 73 of the Evidence Act and also under Section 151 of C.P.C. to send the promissory note-Ex.P.8 and cheque-Ex.P.1 along with his admitted signatures for the opinion of the handwriting expert.

3. The offences alleged against the petitioner are under Sections 138 and 142 of the N.I.Act. The ground on which the petitioner moved such application is that Exs.P.1 and P.8 do not contain any signatures and he has never issued cheque as under Ex.P.8-promissory note, and, therefore, it necessitated to call for the opinion of the expert as to the genuinenity of the signatures occurring on Exs.P.1 and P.8. The said request was resisted by filing elaborate counter as can be seen from the order and narration of events made therein.

4. The learned Special Magistrate having heard both sides extensively and relying on decision in **R.Ramanjaneyulu v. State of Andhra Pradesh and another**¹, opined that the petitioner ought to have taken such step at the earliest point of time i.e., at the time of

¹ 2014 (1) ALD (CrI.) 987

examination under Section 251 Cr.P.C. or before the commencement of trial or enquiry, and the decision relied on by the learned counsel for the respondent/complainant is applicable to the facts and, therefore, dismissed the petition.

5. Sri Nimmagadda Satyanarayana, learned counsel for the petitioner, would represent that the very purpose of filing the petition will be defeated if the present petition is not allowed, and therefore, the same may be allowed, for the reason, the very defence of the accused right from the beginning has been that he has never issued the cheque as well as the promissory note, marked as Exs.P.8 and P.1 respectively, and the learned Magistrate went wrong in rejecting the request of the petitioner on the ground that the petition was filed at the time of arguments. It is also his submission that proceedings went one after another on procedural side and soon after 313 Cr.P.C. examination was done, the petitioner filed the present petition and that act of the petitioner cannot be at fault.

6. As can be seen from the order passed by the learned Special Magistrate, there has been some sort of delay being caused by the petitioner at the crucial stage. The petitioner filed Photostat copy of the docket proceedings of the Court below from 04.11.2015 to 11.02.2016. It shows that on 11.02.2016, non-bailable warrant was pending against the petitioner. Perhaps, thereafter the petitioner must have been attending the Court and got recalled the warrant, as 313 Cr.P.C. examination was done on 12.07.2016, and thereafter, the petitioner,

having taken three adjournments to adduce his evidence, examined himself as witness, deposing that the complainant was totally a stranger and he has no acquaintance with the complainant at any point of time and, thus, the complainant has foisted the calendar case and, after closure of evidence also, while case was posted for arguments on three occasions i.e., from 05.10.2016 to 26.10.2016, adjournments were sought and only on 19.12.2012 the present Crl.M.P.No.4546 of 2016 was filed, which was dismissed.

7. The question as to whether the cheque issued was for legally enforceable debt, that too, by the petitioner herein, is to be examined by the Court below. On the basis of the evidence let in by the petitioner and the de facto complainant, absolutely, there is no need at all to send the cheque or the promissory note for the opinion of the expert. Even otherwise, the petitioner would have taken his defence before the commencement of trial, but not at such stage when the case was coming up for arguments. Therefore, absolutely there is no infirmity in the order passed by the learned Magistrate warranting interference to set aside the same.

8. The present criminal petition is dismissed accordingly.

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

A. SHANKAR NARAYANA, J

30th January 2017.

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