

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No.1904 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is directed against the order, dated 25.04.2017, of the learned I Additional Judicial Magistrate of First Class, Tadepalligudem, passed in CrI.M.P.No.716 of 2017 in C.C.No.583 of 2015.

2. I have heard the submissions of *Sri P.N.Murthy*, learned counsel for the petitioner, and of the learned Public Prosecutor appearing for the 1st respondent-State of Telangana. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:-

“The 2nd respondent-complainant ('complainant', for brevity) filed the above said Calendar Case against the petitioner/accused ('accused' for brevity) for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, stating *inter alia* that the accused having executed a promissory note issued a cheque towards the discharge of the said promissory note debt, which is a legally enforceable debt, and that the said cheque was dishonoured when presented for collection and was returned along with a memo with the endorsement, 'insufficient funds' and that therefore, the complaint is filed after following the procedure envisaged under law. The accused is resisting the Calendar Case. While the trial is in progress, after PWs 1 and 2 were examined, the accused filed the subject petition viz., CrI.M.P.No.716 of 2017 requesting to send exhibit-P1, Cheque, and exhibit-P2, Promissory Note, to a hand writing expert with his admitted

signatures and obtain a report of the expert with his opinion as to the genuineness or otherwise of the disputed signatures on the said cheque and the promissory note. The said application was resisted by the complainant. On merits and by the order impugned in this revision, the trial Court dismissed the said petition. Therefore, the accused is before this Court.”

4. The case of the petitioner-accused, in brief, is as follows: ‘The petitioner never borrowed the alleged amount and did not execute the alleged promissory note and never issued the subject cheque allegedly towards any legally enforceable debt much less the alleged promissory note debt. He did not fill up the contents of both the documents. The said documents are concocted. He has no acquaintance with the complainant. The said cheque was not confronted to PW2 during his examination. In view of the evidence so far brought on record, it is necessary to send the cheque as well as the promissory note to a hand writing expert and obtain a report with his opinion.’

5. Per contra, the case of the 2nd respondent-Complainant, as already noted, is that the accused borrowed the amount and issued the cheque and that his defence is untenable and that in the facts and circumstances of the case and the evidence of PWs 1 and 2 on record, there is no need to obtain any opinion from any expert and that the request of the accused is intended to delay the disposal of the case.

6. At the hearing, the learned counsel for the petitioner/accused would submit as follows: - ‘The accused in his defence and also during trial categorically stated that the promissory note and the cheque are concocted. Suggestions accordingly were also given to PW2 in his cross-examination and he denied the said suggestions. In the facts and circumstances of the case, the only option available to the accused is to

make a request to send the disputed documents with the disputed signatures to an expert and obtain an opinion. It is, therefore, just and fair to give an opportunity to the accused to substantiate his defence by allowing the petition. But, the trial Court erroneously dismissed the petition.'

7. I have bestowed my attention to the facts and submissions. I have carefully gone through the material record.

8. The only contention of the accused is that the promissory note and the cheque do not contain his signatures and that the said documents are fabricated and, therefore, it is in the interest of justice to send the said disputed documents with the disputed signatures to an expert along with his admitted signatures for comparison and furnishing his report with his opinion as to the genuineness or otherwise of the signatures said to be of the accused on the promissory note and the cheque. As rightly observed by the trial Court in its order, when PW1 was cross-examined, no suggestion was given to him that the said two documents are forged and that they do not contain the signatures of the accused. Though it is the contention of the accused that necessary suggestion was given to PW2, who is said to be one of the attestors of exhibit P1-Promissory note, a plain perusal of the copy of the deposition of PW2 would show that he asserted that the accused issued a cheque along with exhibit P1 promissory note and that the accused signed and issued the said cheque by mentioning the amount as Rs.4,00,000/- on the said cheque. He denied the suggestion that no transaction took place and that they all created exhibit P1 promissory note. Thus, even in the suggestions given to PW2, there was no specific reference to the cheque, which was said to have been signed and issued by the accused. As rightly observed in the orders of the trial Court, the

accused did not take the plea of forgery when PWs 1 and 2 were cross-examined and he also failed to issue a reply to the statutory notice having received it under exhibit P6 acknowledgment.

9. Be it also noted that the learned counsel for the 2nd respondent/complainant also contended that the cheque when deposited with the Bank of the petitioner/accused for realization of the proceeds, the Bank did not dispute the signature on it and did not return it with an endorsement that the signature on the cheque is not tallying with the specimen signatures of the drawer of the cheque and hence, the request of the petitioner/accused cannot be considered and the revision is liable for dismissal. Further, the accused simply stated that the signatures on the disputed documents have to be compared with the admitted signatures, but he did not state as to what are the admitted signatures and what are the documents, on the record before the trial Court, that bear his admitted signatures. On a careful and detailed examination of the facts and submissions, this Court is of the considered view that the order impugned, which is a well reasoned order, does not suffer from any infirmity and, therefore, does not brook interference.

10. The Criminal Revision Case is accordingly dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M.SEETHARAMA MURTI

July 17, 2017
Lmv