

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case nos.800 & 810 of 2017

COMMON ORDER:

These two revisions, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code') are filed by the accused assailing the separate orders dated, 16.12.2016, of the learned IV Additional Judicial Magistrate of First Class, Chittoor, passed in CrI.M.P.nos.3131 and 3132 of 2016 in C.C.no.46 of 2016.

2. The said miscellaneous petitions were filed by the complainant/2<sup>nd</sup> respondent herein under Sections 311 and 91 of the Code requesting to recall him for giving further evidence relating to a copy of current deposit pay-in-slip and to receive the said document on file. The trial Court, allowed both the applications of the complainant. Aggrieved thereof, the accused filed these two revision cases. Since both these revisions arise out of orders made in the miscellaneous petitions filed in one calendar case and as the facts urged and issues raised are common, both the revisions are heard together and are being disposed of by this common order. The parties in these revisions shall hereinafter be referred to as the accused/petitioner and the complainant/2<sup>nd</sup> respondent for convenience and clarity.

3. I have heard the submissions of *Sri Suresh Kumar Reddy Kalava*, learned counsel appearing for the petitioner/accused, and of *Sri T.Janardhan Rao*, learned counsel appearing for the 2<sup>nd</sup> respondent/complainant. I have also heard the submissions of the learned Public Prosecutor appearing for the 1<sup>st</sup> respondent/ State of Andhra Pradesh. I have perused the material record.

4. The facts, which lie in a narrow compass, in brief, are as follows:

The complainant filed the case requesting to punish the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, *inter alia*, contending that the cheque that was issued by the accused towards

a legally enforceable debt was dishonoured. The accused is resisting the said calendar case. During the pendency of the said case, the complainant filed the aforesaid petitions to receive on file the current deposit pay in slip and to recall him to give evidence with regard to the said document. The said petitions are also resisted by the accused. However, the learned Magistrate, as already noted, allowed both the petitions.

5. The case of the complainant, in brief, is this:

The accused borrowed an amount of Rs.5 lakhs from the complainant for the purpose of paying rent of his wine shop. For that purpose, the complainant deposited, on 15.06.2013, an amount of Rs.5 lakhs into the bank account of the accused in Chittoor District Cooperative Central Bank, Bangarupalyam Branch. To prove the said transaction, the copy of the current deposit pay in slip has to be exhibited. The said document is an essential document to establish the case of the complainant. Hence, both the subject applications are filed to receive the said document on file and to recall the witness for giving evidence with regard to the current deposit pay in slip.

6. Per contra, the case of the accused is in the nature of denial. His specific defence is this: 'The case set up by the complainant is false. When the accused went to the Bank, on 15.06.2013, to deposit an amount of Rs.5 lakhs into his account, the complainant who was present there took the current deposit pay in slip from him and filled the same with the complainant's own handwriting. However, later, the cash was deposited into the account of the accused by the accused himself. The said facts are evident from the statement of account issued by the Bank. Except the current account pay in slip, all other documents clearly mention that the deposit is 'self'. Hence, the petitions of the complainant are liable to be dismissed.'

7. Learned counsel for the accused would further submit as follows:

The trial Court erred in allowing the applications of the complainant. If really the complainant deposited the amount into the account of the accused

in the circumstances stated by him, he ought to have filed the current deposit pay in slip along with the complaint. The allegation that the complainant obtained the copy of the current deposit pay in slip is false. The contention of the complainant that he deposited the amount is utterly false. The contents of the pay in slip were filled in by the complainant in the circumstances stated by the accused. The learned Magistrate ought to have seen that the complainant developed the story, after a lapse of four years, to make a wrongful gain. Hence, the revision cases may be allowed and the orders impugned may be set aside.

8. Per contra, learned counsel for the complainant, while supporting the orders impugned in these revisions, submitted as follows:

The trial Court rightly gave an opportunity to the complainant to substantiate his case by correctly observing that the genuineness or the probative value of the document and the evidence can be ascertained at the time of appreciation of evidence and that if the evidence is brought on record, the said evidence would facilitate the Court in adjudicating the matter in a comprehensive manner. Observing accordingly and giving valid reasons, the trial Court, allowed the petitions filed by the complainant. Therefore, there is no merit in the revision cases and the revision cases are liable to be dismissed.

9. I have given detailed and thoughtful consideration to the facts and submissions.

10. The rival contentions including those with regard to current account pay in slip are already stated supra. It is for the trial Court to decide as to which of the two versions is correct. At the time of receiving the document or recalling a witness for the purpose of proving the contentions based on the document, there is no need to deeply examine the contentions of the parties and record any findings on merits of the main matter, as the law is well settled that the probative value of the evidence [either documentary or oral] has to be examined only at the appropriate later stage, that is, at the time of

appreciation of the evidence and adjudication of the issues involved in the case. If the document is received on file and an opportunity is given to both the sides to adduce evidence in support of the respective versions, the said course helps the parties in bringing on record the necessary evidence and also the trial Court in effectively adjudicating the *lis* and in giving a quietus to the dispute once and for all. Having regard to the facts and circumstances of the case, this Court finds that the trial Court is justified in passing the orders impugned in these revisions and that the said orders do not brook interference.

11. In the result, both the Criminal Revision Cases are dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

23<sup>rd</sup> June, 2017  
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M. SEETHARAMA MURTI, J