

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**CRIMINAL REVISION CASE No.1832 of 2017****ORDER:**

This Criminal Revision Case, under Sections 397 and 401 Cr.P.C., is filed questioning the Order dt. 24.04.2017 in CrI.M.P.No.509 of 2017 passed by IX Special Magistrate, Hyderabad, dismissing the application filed under Section 243(2) Cr.P.C. to summon Assistant Director and the Joint Director of A.P. Forensic Science Laboratories, Red Hills, Hyderabad, to give clarification on the Report dt. 23.11.2015 and Letter of the Court dt. 01.03.2015 in order to elicit the true facts for better adjudication.

The petitioner is the accused in C.C.No.413 of 2013 for the offence punishable under Section 138 of NI Act and he raised a specific contention in the petition that the complainant/R. Laxminarayana, Chandramouleshwar Varma, K.V.Ramana Murthy and Srinivas Murthy misused the blank cheque given to K.V.Ramana Murthy towards security for the loan amount taken by Chandramouleshwar Varma and he has filed this case to harass the petitioner and Ex.P.1 is the promissory note filled by him after forging his signature and hence the cheque was not issued in lieu of legally enforceable debt. The documents in this case were referred to the A.P. Forensic Science Laboratory and on examination, they issued a Report dt.23.11.2015 duly signed by the Assistant Director opining that the person who wrote the red enclosed signatures marked as 'S1 to S8' also wrote the red enclosed signatures marked as 'Q2 and Q3' and that it is not possible to offer any opinion on the red enclosed signature marked as Q.1 on the basis of present standards.

The Petition was filed under Section 243(2) Cr.P.C. for summoning the Assistant Director and the Joint Director of the A.P. Forensic Science Laboratories to examine them with reference to the Report dt. 23.11.2015. As per Section 243(2) Cr.P.C, if the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing. Provided that, when the accused has cross examined or had the opportunity of cross examining any witness before entering on his defense, the attendance of such witness shall not be compelled unless the Magistrate is satisfied that it is necessary for the end of justice.

However, the trial Court dismissed the petition based on the evidence available on record and recorded that no substance in the contention of the learned counsel petitioner to elicit true facts of the case for better adjudication. The requirement under Section 245(3) Cr.P.C is that if the Court satisfied that such application to issue summons to any witness or if the Magistrate concludes that it is made for the purpose of delay or for defeating the ends of justice, recording such reasons in writing pass appropriate order. Therefore, the Order passed by the trial Court is not in strict adherence to Section 245(3) Cr.P.C and hence, it is hereby set aside while directing the Magistrate to pass appropriate order in consonance with the requirement under Section 245(3) Cr.P.C. remitting the matter to the trial Court.

In the result, this Criminal Revision Petition is allowed setting aside the Order dt.24.04.2017 in CrI.M.P.No.509 of 2017 in

C.C.No.413 of 2017 passed by IX Special Magistrate, Hyderabad while remitting the matter to the Magistrate with a direction to pass appropriate Orders in strict adherence to Section 245(3) Cr.P.C.

As a sequel to it, miscellaneous petitions, if any pending in this appeal, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 12.10.2017

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Dt.12.10.2017

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