THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No.1398 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, by the unsuccessful petitioner/accused is directed against the order, dated 17.04.2017, of the learned II Special Magistrate at Hasthinapuram, Ranga Reddy District, passed in Crl.M.P.No.605 of 2017 in C.C.No.151 of 2016.

2. I have heard the submissions of *Sri J.U.M.V.Prasad*, learned counsel for the petitioner, *Sri A.Ravinder Reddy*, learned counsel appearing for the 1st respondent and of the learned Public Prosecutor appearing for the 2nd respondent, State of Telangana. I have perused the material record.

3. The facts, which are necessary for consideration, in brief, are as follows:

The 1st respondent/complainant filed C.C.No.151 of 2016 against the petitioner/accused requesting to take cognizance of the case and punish the accused for the offence punishable under Section 138 of the Negotiable Instruments Act. The petitioner/accused is resisting the said case. During the pendency of the said case, the petitioner/accused filed the afore-stated miscellaneous petition under Section 45 of the Indian Evidence Act, 1872, requesting the trial Court to send the cheque bearing No.283918, dated 02.05.2016, and the agreement of sale, dated 25.05.2014, to a handwriting expert for comparing the signatures said to be of the petitioner/accused on the said documents with her admitted signatures and submitting a report with an opinion as to the genuineness or otherwise of the disputed signatures on the afore-stated documents. The said petition was resisted by the 1st respondent/complainant. On merits, the trial Court dismissed the petition of the petitioner/accused. Therefore, the petitioner/accused is before this Court.

4. The case of the petitioner/accused and the submissions made on her behalf, in brief, are as follows:

The signatures said to be of the petitioner/accused on the cheque as well as the agreement of sale are forged. The calendar case is filed by the 1st respondent with false allegations. The 1st respondent in his cross-examination denied the suggestion given to him to the effect that the signatures on the said document are forged. He had also stated that he has no objection for sending the disputed documents to an expert for obtaining an opinion as to the genuineness or otherwise of the signatures said to be of the accused on the said document. A false case is filed on the basis of forged documents to extract some money from the petitioner/accused. Hence, it is just and necessary to send the disputed documents to a handwriting expert for obtaining an opinion as requested by the petitioner/accused. However, the trial Court erroneously dismissed the petition by not properly appreciating the facts of the case and the defence of the petitioner/accused. The trial Court erroneously observed that the Court can compare the disputed signatures and the admitted signatures while exercising powers under Section 73 of the Indian Evidence Act. The comparison of the signatures requires scientific knowledge and experience in the field. Further, the Court is not having necessary equipment for examination and comparison of the signatures. Therefore, it is not safe for the Court to compare the disputed signatures with the admitted signatures. In the order impugned, the Court below observed that the counsel for the petitioner/accused gave a suggestion to PW2 that during the years 2012-2015 the 1st respondent/complainant took away blank signed cheques and blank signed bond papers of the accused and the husband of the accused while the 1st respondent/complainant was working in the rice mill of the husband of the petitioner/accused and that the said suggestion discloses that the signatures are not disputed by the petitioner/accused. The said observation of the trial Court to the effect that the petitioner/accused is not disputing her signatures on the cheque-exhibit P3 and agreement of sale-exhibit P2 is erroneous. Sending of the documents to an expert is necessary to prove the innocence of the accused. If the request is not granted, the petitioner/accused would be the ultimate sufferer. The order is unsustainable and is liable to be set aside.

4.1 The case of the 1st respondent/complainant and the submissions made on his behalf, in brief, are as follows:

The accused raised a false defence to somehow delay the disposal of the calendar case and avoid payment of the amount due and payable to this respondent. In the facts and circumstances stated in the complaint of this respondent, the petitioner/accused has given the duly signed cheque; and, the sale agreement was duly executed. The contra allegations of the petitioner/accused are false. The trial in the calendar case is concluded. The trial Court also examined the petitioner as required under the provision of Section 313 of the Code. Account opening form of the accused was also summoned from the Bank concerned. At that belated stage, the application is filed under Section 45 of the Indian Evidence Act only to delay the proceedings and harass this respondent. Further, during the cross-examination of PW2, the learned counsel for the petitioner/accused gave a suggestion that the complainant, i.e., this respondent took away blank signed cheques and blank signed bond papers of the accused and her husband. The said suggestion was denied by PW2. Thus, the said suggestion makes it clear that the accused is not disputing her signatures on any of the material documents. The Court's power to compare signatures is undeniable as the Court is an expert of experts. In any view of the matter, the opinion of the expert is not a substantive piece of evidence and obtaining the opinion of expert in this case is not necessary in the facts and circumstances peculiar to this case. The petitioner/accused did not produce a document, containing the signatures, if any, of a contemporaneous period. No documents with the signatures of the petitioner/accused, which are of comparable standard, are produced by the petitioner/accused. The well reasoned order of the trial Court is sustainable both under facts and in law. The revision case is liable for dismissal.

5. I have given earnest consideration to the facts and submissions.

6. Be it noted that the 1st respondent/complainant in support of his case relies upon exhibit P3-cheque and exhibit P2-agreement of sale besides other material documents. The case is filed under Section 200 read with Section 190(1)(a) of the Code and 142 of the N.I.Act requesting to punish the accused for the offence punishable under Section 138 of the N.I. Act. After conclusion of the trial and examination of the petitioner/accused under Section 313 of the Code, the present application is filed by the petitioner/accused requesting to send exhibits P2 and P3 to a handwriting expert for comparison of the signatures said to be of the accused on the said documents with her admitted signatures and furnishing a report to the Court with an opinion as to the genuineness or otherwise of the disputed signatures on the said exhibits P2 and P3. In the petition, the petitioner/accused simply stated that the disputed signatures have to be compared with the admitted signatures, but did not state as to what are the documents containing the admitted signatures of the petitioner/accused. The petitioner/accused did not produce any documents, with her signatures, of a period contemporaneous to the periods of exhibits P3 and P2 and did not make available to the Court below any documents with her signatures of comparable standard. The trial Court, which recorded the evidence, is of the view that, there is no need in the instant case to seek an opinion of the expert and that it can exercise its powers under Section 73 of the Indian Evidence Act. The trial Court also noted in its orders that during the cross-examination of PW2, a suggestion was put to the said witness by the learned counsel for the petitioner/accused that the 1st respondent/complainant took away in the years 2012 - 2015, the blank signed cheques and blank signed bond papers of the accused and her husband while the 1st

respondent/complainant was working in the rice mill of the husband of the petitioner/accused and that the said suggestion given by the learned counsel for the petitioner/accused to PW2 discloses that the accused is not disputing her signatures on the cheque-exhibit P3 and agreement of sale-exhibit P2. The trial Court also observed in its order that when exhibit P3-cheque was deposited with the Bank of the accused for realization of the proceeds, the Bank did not dispute the signature and did not return the cheque with an endorsement that the signature on the cheque is not tallying with the specimen signatures of the drawer of the cheque and that the case is at an advanced stage and hence, the request of the petitioner/accused cannot be considered. Having recorded the above stated and other relevant findings, after proper appreciation of the facts and circumstances of the case, the trial Court dismissed the petition of the petitioner/accused.

7. 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.

8. In the result, the Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

07th June 2017
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