

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.17061 OF 2016

ORDER:

Challenging the order, dated 31.10.2016, passed by the learned Special Magistrate-I, Visakhapatnam in CrI.M.P. No.2745 of 2016 in C.C. No.302 of 2011, the present Criminal Petition is filed under Section 482 of Code of Criminal Procedure, 1973.

2. The petitioner herein, who is sole accused in the aforesaid Calendar Case alleged to have committed the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, made the application in CrI.M.P. No.2745 of 2016 making a request to send the documents marked as Exs.P2 and P3, which are sale deed, dated 8.7.2005 and General Power of Attorney-cum-sale, dated 22.8.2008, for the opinion of hand-writing expert as to whether the signatures occurring on Exs.P-2 and P3 are that of the petitioner on the ground that his signatures were forged in both the documents, and that he never entered into the transactions mentioned therein with the respondent, and dishonoured cheque was not supported by legally enforceable debt or other liability, and only to see that he would accede to the reliefs in O.S. No.329 of 2008 and O.S. No.165 of 2009 filed by one Kolli Krishna Rao and Nadella Rajendra Kumar and others for declaratory relief pending on the file of XII Additional District Judge, Visakhapatnam, who are the relations of respondent,

pressed into service these two documents and, therefore, made such a request.

3. The said request was resisted by the respondent No.2 - complainant. Respondent No.2 referred to Criminal Petition No.1559 of 2012 filed by the petitioner to quash the proceedings in the very same Calendar Case and referred to the observations made by this Court in paragraph no.6 stating that the petitioner cannot now raise contrary version, more particularly, when the Calendar Case has reached the stage of examination under Section 313 Cr.P.C. of the petitioner and sought to dismiss the petition

4. The learned Special Magistrate; referring to the defence pleaded by the petitioner in course of evidence and observing that the only burden on the petitioner is to prove that the dishonoured cheque was not supported by any legally enforceable debt or other liability as the respondent discharged initial burden resting on him by entering into witness box and deposing as a witness and marking the documentary evidence on his behalf; opining that the petition under challenge is filed only to drag the matter further, dismissed the petition.

5. In the grounds, the petitioner herein extracted Section 311 of Cr.P.C. dealing with recalling of a witness, and the ruling of the

Hon'ble Supreme Court in **Mrs. Kalyani Baskar v. Mrs. M.S. Sampoornam**¹.

6. Heard Sri T.M.K. Chaitanya, learned counsel for the petitioner and Sri B. Kamalakara Rao, learned counsel for respondent No.2.

7. The learned counsel for the petitioner, no doubt, tried to impress upon this Court by referring to the provisions of Section 311 of Cr.P.C., while submitting that the learned Special Magistrate committed an error in rejecting the request and ought to have allowed the petition when it is specifically alleged that Exs.P-2 and P-3 are the Photostat copies and were marked without noting down any objections; that they are fabricated by forging the signatures of petitioner and, therefore, sought to set aside the same and to afford an opportunity to reopen the case and direct the learned Special Magistrate to send Exs.P-2 and P-3 for the opinion of the hand-writing expert on the signatures occurring therein purported to have been made by the petitioner.

8. On the other hand, the learned counsel for respondent No.2 would submit that the remedy as to whether Exs.P-2 and P-3 are genuine or fabricated documents is else-where and it travels beyond the scope of examination on issue in deciding an offence punishable under Section 138 of the Negotiable Instruments Act, and even such a

¹. 2007 (1) Crimes 106 (SC)

request was made at the time when the accused was supposed to answer the questions under Section 313 of Cr.P.C. and the Calendar Case relates to the year 2009, as originally it was registered as C.C. No.377 of 2009 and later renumbered as C.C. No.302 of 2011, and even the petitioner earlier filed a Criminal Petition No.1559 of 2012 to quash the proceedings in the present Calendar Case and was unsuccessful and, thus, supported the order of the learned Special Magistrate.

9. Perused the order passed by the learned Special Magistrate. The fact that evidence was recorded by the learned Special Magistrate and the Calendar Case reached the stage of examination under Section 313 of Cr.P.C. is not in dispute. It is needless to mention that, when the petitioner filed Criminal Petition No.1559 of 2012, this Court dismissed it on 03.04.2014, rejecting the request to quash the proceedings in the present Calendar Case holding that the points agitated by the petitioner have to be decided only during trial and the objections raised by the petitioner or the defence available to him can be proved by producing appropriate evidence before the trial Court.

10. The petitioner has set up the ground of fabrication of Exs.P-2 and P-3 by forging his signatures and the objections he raised at the time of marking the Photostat copies were not noted down and, therefore, it necessitated to file the petition under challenge. Even, on an extrinsic examination of the grounds agitated, certainly, they are

not convincing. It was open to the petitioner before PW.1's evidence was closed to make such a request, which the petitioner did not resort to. But, the petitioner only approached the Court at the stage when he is required to be examined under Section 313 of Cr.P.C. The Calendar Case is of 2009, and eight (8) years have been elapsed. This apart, as could be seen from the purport of Section 311 of Cr.P.C., the petitioner is not pointing out any mistake that crept into in the evidence for rectification. Therefore, the order passed by the learned Special Magistrate does not suffer from any illegality. There is no merit in the present petition.

Therefore, the present Criminal Petition is dismissed at the admission stage itself. As a sequel thereto, Miscellaneous Petitions, if any, pending in the petition, stand closed.

January 30, 2017.
Mgr

A. SHANKAR NARAYANA, J