

THE HON'BLE SRI JUSTICE P. KESHA VA RAO

CRIMINAL PETITION No.9266 of 2011

ORDER:

Heard the learned counsel for the petitioner as well as the respondents.

2. The petitioner herein, who is the accused in STC.No.43 of 2008, filed the present Criminal Petition to quash the orders dated 12-09-2011 in CrI.MP.No.464 of 2011 in STC.No.43 of 2008 by the Additional Judicial Magistrate of First Class, Kadiri, Ananthapur District.

3. The facts of the case are that the second respondent herein filed a complaint for the offence under Section 138 of the Negotiable Instruments Act. In the present case, the complainant himself examined as P.W.1 and two other bank officials were also examined as P.Ws.2 & 3. At that stage, the complainant filed a petition under Section 311 Cr.P.C., to recall P.W.1 for re-examination for the purpose of producing the acknowledgement of debt dated 10-10-2007 executed by the respondent in his favour in STC.No.31 of 2008, which was marked as Ex.P1. The said document could not be marked earlier in the present case when the petitioner was examined as P.W.1, as the said document was not marked in STC.No.31 of 2008 and the same was marked subsequently. Therefore, the petitioner filed a petition to send for Ex.P.1 from the records in STC.No.31 of 2008 on the file the Court of Additional Judicial First Class Magistrate, Kadiri. He also contended that failure to produce the document earlier in the case is not at all wilful. In order to mark the said document, P.W.1

has to be recalled to give further evidence on his behalf. The said application was opposed by the petitioner herein. However, the Court below, after hearing the parties, was pleased to allow the Crl.MP.No.464 of 2011 holding that the acknowledgment of debt dated 10-10-2007 is not marked and the same was marked in STC.No.31 of 2008, which is between the present complainant and the accused. Thus, the said acknowledgment is also essential in the present case and no prejudice would be caused to the accused in marking the said document. Thus, it is a fit to case to allow the petition by recalling P.W.1 for marking of the certified copy of the acknowledgement of debt dated 10-10-2007. Aggrieved by the same, the present Criminal Petition is filed by the petitioner, who is the sole accused in STC No.43 of 2008.

4. A perusal of the impugned order in the present Criminal Petition indicates that there is no irregularity or illegality in the orders passed by the Court below. However, mere marking of the acknowledgment of debt dated 10-10-2007 would not prejudice the rights of the petitioner, since he will be given an opportunity to cross-examine the witness. In fact, in other connected STC No.31 of 2008, the acknowledgment of debt is already marked. Apart from the same, the said fact is in the knowledge of the petitioner and it is part of the record in another STC No.31 of 2008 between the same parties. Therefore, this Court finds no merit in the contentions raised by the petitioner.

5. Accordingly, the Criminal Petition is dismissed.
6. Miscellaneous petitions pending consideration, if any, in this Criminal Petition, shall stand closed in consequence.

JUSTICE P. KESHAVA RAO

Date:24.10.2017
mrb

