

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

CRIMINAL PETITION NO.10643 OF 2017

**ORDER:**

This petition is filed under Section 482 of the Code of Criminal Procedure to quash the order in CrI.MP.No.202 of 2017 in CrI.A.No.82 of 2014 dated 26.09.2017 passed by the XIII Additional Sessions Judge-cum-Additional Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, Ranga Reddy district.

The petitioner filed an application under Section 391 Cr.P.C. to receive additional evidence alleging that the petitioner was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act ("the Act" for brevity) in C.C.No.267 of 2012 by Calendar and Judgment dated 22.01.2014. The main reason for filing document is that in the year 2000, the first respondent entered into a development agreement with the petitioner to construct his house. Accordingly, the petitioner constructed the house and completed the work. Apart from the agreed work, additional work was undertaken by the first respondent upon which the petitioner became due an amount of Rs.70,000/- to him and the same was endorsed by the first respondent on the reverse of development agreement. Earlier, the petitioner could not file the above document as it was misplaced and while he was searching in the house, he found the said document and now, he filed the said document as additional evidence in the appeal.

The first respondent filed counter denying the material allegations, *inter alia*, contending that the cheque was issued towards discharge of hand-loan of Rs.3,00,000/- by the petitioner

as agreed to pay Rs.3,15,000/- to Rs.3,00,000/- which is inclusive of interest. Therefore, to discharge the amount due under the hand-loan, cheque was issued.

The appellate Court dismissed the application assigning its own reasons declining to receive additional evidence in the appeal by exercising its power under Section 391 Cr.P.C.

The order passed by the Additional Sessions Judge is assailed in this Criminal Petition on the ground that the order of the Court below is erroneous since the dispute is with regard to issue of cheque and with regard to discharge of legally enforceable debt or liability, either in part or wholly but the appellate Court did not consider the importance of the document and committed an error by dismissing the petition.

During hearing, learned counsel for the petitioner reiterated the contention and requested this Court to direct the Court below to receive the document as additional evidence, whereas the counsel for the first respondent supported the order passed by the Court below.

The cheque was allegedly issued towards discharge of legally enforceable debt as per the allegations made in the complaint. The documents produced before this Court i.e. Calendar Case was filed in the year 2012 which was registered as C.C.No.267 of 2012 and the date of cheque was issued allegedly on 15.11.2011 but whereas the alleged agreement is of the year 2001 and the contention of the first respondent is that this document was already produced before the Court below but was not marked.

As seen from Section 391 Cr.P.C., the appellate Court may take further evidence or direct it to be taken (1) In dealing with any

appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate. (2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal. (3) The accused or his pleader shall have the right to be present when the additional evidence is taken. (4) The taking of evidence under this section shall be subject to the provisions of Chapter XXII, as if it were an inquiry.

The main requirement to receive any additional evidence is satisfaction of the appellate Court. Here, the appellate Court recorded satisfaction but whether the satisfaction recorded is in accordance with law is tested in this petition now. The Court below based on dates concluded that this document is not related to the cheque dated 15.11.2011 since the agreement was almost ten years earlier to the alleged cheque and admittedly it was in petitioner's possession but he did not produce on the lame excuse that it was traced recently without searching. It is also brought to the notice of this Court that the document was filed before the Magistrate Court itself along with petition and it was dismissed. Therefore, at this stage, the contention that the document was not available earlier and traced recently is not acceptable. I find no ground to receive the additional evidence at this stage since the order of the Court below is free from any illegality warranting interference of this Court by exercising power under Section 482

Cr.P.C. It is open to the petitioner to raise all pleas before the Court below in accordance with law. In view of my aforesaid discussion, the Criminal Petition is liable to be dismissed as it is devoid of merits.

In the result, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending shall stand dismissed.

**(M.SATYANARAYANA MURTHY, J)**

17<sup>th</sup> November 2017  
RRB

