

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10462 OF 2017

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure questioning the order dated 16.10.2017 in CrI.M.P.No.4114 of 2017 in C.C.No.441 of 2016 passed by the Special Magistrate-III, Visakhapatnam, wherein, the Court below dismissed an application filed under Section 45 of the Indian Evidence Act in a case relating to an offence punishable under Section 138 of Negotiable Instruments Act, to send Exs.P-1 & P-2 – Promissory Notes and Ex.sP-3 Cheque for expert opinion, since the specific plea was raised as to forgery of signatures on Exs.P-1 & P-2. But, the Court below dismissed the petition on the ground that, it is belated.

The present criminal petition is filed raising several contentions. One of the contention raised by the learned counsel for the petitioner is that petition under Section 45 of Indian Evidence Act can be filed at any stage and placed reliance on the judgment of the Apex Court in **Girish Kumar Suneja v. C.B.I¹**, wherein, the Full Bench of the Supreme Court made it clear that delay is not a ground to dismiss the application filed under Section 45 of Indian Evidence Act.

At this stage, this Court took an objection about maintainability of the petition, in view of the judgment in **Girish Kumar Suneja¹** case, where, the Full Bench of the Apex Court held as follows:

¹ AIR 2017 SUPREME COURT 3620

“Therefore, when Section 397(2) prohibits interference in respect of interlocutory orders, Section 482, cannot be availed of to achieve same objective. In other words, since Section 397(2) prohibits interference with interlocutory orders, it would not be permissible to resort to Section 482. To set aside an interlocutory order prohibition in Section 397 will govern Section 482 thereof.”

In view of the law declared by the Supreme Court in **Girish Kumar Suneja**¹ case, where no revision is maintainable against interlocutory order, in view of bar under Section 397(2) Cr.P.C, similarly petition under Section 482 Cr.P.C is also not maintainable. Hence, the petition is liable to be dismissed.

However, liberty is given to the petitioners to file appropriate application.

With the above direction, the petition is dismissed without touching the merits of the case. No costs.

Consequently, miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:01.11.2017

SP