

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.2450 of 2017

ORDER :

The petitioners are A.1 to A.3 of C.C.No.475 of 2016 on the file of the Addl.Junior Civil Judge, Repalle taken cognizance for the offences punishable u/ sec.120-B, 193, 196, 463, 465, 474 and 471 read with 34 IPC, by following the procedure u/ sec.200 to 204 CrPC by the learned Magistrate on the private complaint, dt.13.01.2016 of the 2nd respondent/ complainant filed against four accused besides the petitioners viz: A.1-Daiparthi Manohara Rao, A.2-Annangi Sreenivasa Rao and A.3-Sankuru Venkata Ratnam and another Kareti Subbarao (A.4) for the offences supra.

2. The contents of the private complainant are that the A.2 filed a suit O.S.No.325 of 2010 before the Prl.Junior Civil Judge, Repalle, for recovery of alleged debt covered by promissory note, dt.03.11.2007 in which the A.3 is attestor and the A.4 is scribe of an endorsement on the back of it and the complainant as defendant contended in the suit that he executed promissory note in favour of deceased D.Sheshaiah (father of A.1-D.Manohara Rao) on 03.11.2001 and also discharged the same with interest. Since said Sheshaiah was a bona fide person, complainant did not take back the promissory note even discharged the debt thinking Sheshaiah would not do any harm to him by taking advantage of it and after ten years, the suit was brought into light, after death of said Sheshaiah, by his son A.1-D.Manohar Rao and the complainant explained to him of what happened in the past and said that he is not liable to pay the debt to his father Sheshaiah. Thereby the A.1, conspired with others, forged signatures of deceased Sheshaiah by taking advantage of promissory note dt.03.11.2007 (mistakenly mentioned as 2002), might have brought promissory note making digit '7' from '2' by material alteration by forgery and fabrication and the word in Telugu 'రెండు' also corrected as 'ఏడు' for the purpose of

limitation in fabrication of the transfer endorsement in favour of the complainant in cause filing the suit and the other accused also gave false evidence intentionally in the judicial proceeding by its fabrication, the FSL Expert opined that the alterations were present in the promissory note and thereby the accused committed the offences.

3. Along with the private complaint, the documents filed are certified copy of the promissory note mentioning date as 03.11.2007 marked as Ex.A.1 in the suit, expert opinion, dt.11.04.2012 in the suit, the judgment of the JCJ, Repalle in the suit dt.04.02.2013. It is therefrom based on the sworn statement of the complainant in CFR No.234 of 2016, the learned Magistrate taken cognizance. The cognizance order of the learned Magistrate, dt.17.11.2016 speaks *"On perusal of the sworn statement of the complainant and others photo copies of documents filed by the complainant, prima facie it is proved that the accused conspired together and brought into existence the suit promissory note in O.S No.325 of 10 on the file of Junior Civil Judge's Court, Repalle. Hence this case is taken on file against the accused Nos.1 to 4 for the offences under Secs.120(B), 193, 196, 463, 465, 474, 471 read with 34 IPC"*.

4. The private complaint as referred supra was dated 13.01.2016. The judgment of the trial Court in dismissal of the suit O.S.No.325 of 2010 was on 04.02.2013 and against which the appeal A.S.No.4 of 2013 was ended in dismissal by Judgment dt.05.03.2014 confirming the trial Court's dismissal decree and judgment. On perusal of the copy of the promissory note shows material alterations of '2' as '7' in numerical and in words portion in Telugu also 'రెండు' as 'ఏడు' and also the transfer endorsement was dt.16.08.2008. The promissory note was in the name of D.Sheshaiah. In the trial Court, the plaintiff A.Sreenivasa Rao(A.2) was the P.W.1. The defendant/plaintiff who is complainant herein is D.W.1. One S.Venkat

Ratnam who is A.3 herein is P.W.2 and one K.Subba Rao who is A.4 as P.W.3 whose evidence is eschewed and the Expert N.Krishna Prasad as C.W.1. There is no evidence of D.Manohar Rao-A.1 or anybody on behalf of his father deceased D.Sheshaiah to prove the transfer endorsement writing in favour of the plaintiff A.Sreenivasa Rao-A.2. The finding of the trial Court in the suit O.S.No.325 of 2010 was that the C.W.1 in his report marked Ex.C.1 pursuant to the order in I.A.No.1064 of 2011 to send the promissory note to the handwriting Expert for identification of the disputed alteration of the digit '7' in the year column and 'ఏడు' in the words column in Telugu of the promissory note that was allowed and sent for report and the report was received and the Expert-C.W.1 deposed that on his careful examination of the documents in all regions, handwriting, identification, it is found that there is forgery with sophisticated instrument like magnifiers, stereo microscope, Video spectral comparator, digital portable microscope and high magnification zoomed stereo microscope. As per identification of tampering the questioned portion "Q.1" numeral "2" is mechanically altered as numeral "7". The questioned portion "Q.2" letter "రెండు" mechanical tampering part as letter 'ఏ' are observed clearly in the instrument. He further opined that there is an alteration in the red enclosed earmarked 'Q.1, Q.2' numeral '2' is altered as numeral '7' in 'Q.1' on the letter 'రె' is altered as 'ఏ' in 'Q.2'. From the Expert opinion, It is to make out time barred promissory note of the year 2002 to 2007 to make a false claim the same was done. The trial Court also mentioned expression of this High Court in AIR 1966 AP 267 in Allampati Subba Reddy Vs. Neelapareddy Ramana Reddy wherein there was observation at para-6 that the date of promissory note is merely a description which indicates the time when the promissory

note was executed and in most of the cases the date is very material in calculating the date of performance of the contract and if it is otherwise in time and further observed that it is immaterial whether the alteration is made in the date or month or year and any such alteration being material must necessarily result in the enforceability from the bar under Section 87 of the Act. From the above, the trial Court held that any alteration in date, month or year of suit promissory note would amount to material alteration and renders the instrument as void as against any one who is party thereto.

5. In the suit filed based on the material alteration in date as 03.11.2007 with transfer endorsement on 16.08.2008 in favour of the plaintiff by the original payee by name D.Sheshaiah who died on 12.01.2009. Basing on the office copy of the notice dt.30.10.2010 marked as Ex.A.3 besides promissory note and transfer endorsement marked as Exs.A.1 and A.2 the trial Court came to the conclusion of same is material alteration of the time barred promissory note to make it as if in time and the appellate Court confirmed the same by holding there is material alteration of the time barred debt to make it as if in time. In this regard, It cannot be said that the complainant is holder in due course without knowing defects of the promissory note as a close perusal to a naked eye in the first line in the numerical and words, it is crystallising of the alteration had he properly perused. In fact, against the defendant/complainant-D.Ravi, the deceased D.Sheshaiah-father of A.1 herein maintained earlier O.S.No.34 of 2004 based on promissory note dt.03.02.2001 for Rs.30,000/- preceded by notice dated 08.02.2004 in connection with a chit transition of the alleged promissory note obtained as contested by D.Ravi as defendant and that suit was decreed by not believing the discharge plea. From this, it is clear that the promissory note is a materially altered one by putting ante-date with correction of '2' as '7' of numerical and writing words of 'రెండు'

as 'ఏడు'. The only thing is how the A.1 can be made liable when not a party to the suit or to the promissory note endorsement of transfer-Ex.A.2 not even deposed merely because he happened to be one of the 3 or 4 sons of late Sheshaiah, that too when Sheshaiah was alive by the time transfer endorsement made in favour of A.2 the plaintiff in O.S.No.325 of 2010. When the transfer endorsement-Ex.A.2 was not shown of signature of D.Sheshaiah forged one and not that of D.Sheshaiah that was scribed by K.S.Pao-A.4 herein, there is nothing to say the transfer endorsement as forged one. Once such is the case, the holder in due course, bona fide belief without knowing the defects of the pronote if obtained endorsement for collection or for consideration cannot be made liable for the penal consequence. However the fact remains as P.W.1-the A.2 herein deposed before the trial Court in the course of evidence as if there is no material alteration by denied the overwriting in respect of the material alteration and Ex.A.1 and P.W.2-A.3 herein the alleged attestor to Ex.A.1 also denied said corrections and material alterations in the date column in numerical and words column of Ex.A.1. Once such is the case, it is not known who forged and made the material alteration to attract the offence under Section 463, 465 and 474 against any of the A.1 to 4. However, the fact remains particularly A.2 and A.3, the plaintiff and the so called sole attestor of the pronote-Ex.A.1 in the Court deposed falsely if at all. However, the fact remains as pointed out by the learned counsel for the accused persons a perusal of the photostat copy of the promissory note-Ex.A.1 filed as part of the papers at page 34, the alteration was initially and not subsequently and the scribe was the defendant-complainant with mention as 'స్వహస్తం' of who has written and put his signature and underneath the signature on the stamp and below to that he clearly mentioned the date, month and year as 03.11.2007 and had it been

materially altered, it could be on the bottom also at his date and for 2001 or 2002 but he could not put the date 2007 that was missed consideration before the Courts below and thereby they are not liable for the penal consequences. Further the private complaint is not a bar for forgery made outside the Court. So far as the offences u/ sec.463,465 and 471 IPC is concerned, as discussed supra, there is nothing to show who forged it prior to the transfer endorsement obtained by the plaintiff/A.2 from the deceased Sheshadri-father of the A.1 in 2008 or subsequent to that or at that time with knowledge of A.2 and there is no evidence in this regard either using as genuine a forged document as forgery for the purpose of cheating or any forgery of document in question from alleged material alteration to sustain the complaint. So far as the other two offences of false evidence before the Court concerned only against the A.2 and A.3 as referred supra that is a bar to the private complaint but for if at all to initiate the proceedings by the Court from the evidence is given in the Court proceedings and it is not even a complaint before the Court u/ sec.340 Cr.P.C. to file a private complaint by the Court. Thus there is a bar to that, leave apart there is no any finding in the judgment while dismissing the suit of what A.2 and A.3 as P.Ws.2 and 3 deposed is a false evidence. So far as the A.2 from what is discussed supra, the complainant as defendant executant as promissory note put his signature of the year '2007' of the revenue stamp affixed underneath it with no alteration of the year '2007' though at the first line in the numerical in the words of alteration as '7'. Once such is the case, it can not be said that the A.2 and A.3 even liable for perjury.

6.Having regard to the above, without consideration of these aspects, the cognizable taken by the learned Magistrate in issuing summons against the accused no way sustainable.

7. With these observations, the Criminal Petition is allowed by quashing the proceedings against the petitioners/ A.1 to A.3 in C.C.No.475 of 2016 on the file of the Addl.Junior Civil Judge, Repalle. The A.1 to A.3 are acquitted and their bail bonds shall stand closed.

Miscellaneous petitions pending if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:31.12.2018
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