

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.359 OF 2018

ORDER:

This Criminal Revision Case is filed questioning the orders passed in CrI.M.P.No.1176 of 2017 in C.C.No.182 of 2016, dated 01.11.2017 on the file of Special Magistrate, Ibrahimpatnam, Ranga Reddy District, dismissing the petition filed under Sections 45 and 47 of Indian Evidence Act.

Heard the learned counsel for the petitioner. Though the notice is served on the 2nd respondent on 05.03.2018, he has not chosen to appear either in person or by any counsel.

The facts of the case are that the second respondent herein filed a private complaint against the petitioner herein for the offences under Sections 138 and 142 of Negotiable Instruments Act in the Court of Special Magistrate, Ibrahimpatnam, R.R.District. After completion of the evidence on behalf of the second respondent-complainant, when the matter came up for defence evidence, the petitioner herein filed a petition vide CrI.M.P.No.1176 of 2017 under Sections 45 & 47 of Indian Evidence Act to refer Ex.P.1-cheque for expert opinion on the disputed alterations since the date on the cheque was altered from 20.01.2013 to 20.07.2013 and the amount from Rs.45,000/- to Rs.3,45,000/-. The second respondent filed a counter stating that the burden lies on the petitioner herein to prove that he has not issued Ex.P.1-cheque under legally enforceable debt and he has to discharge the said burden by adducing cogent evidence but not by filing the present petition. The Court below after appreciating the contentions of

both sides, was pleased to dismiss the said petition by orders dated 01.11.2017. Aggrieved by the same, the present Criminal Revision Case is filed.

The learned counsel appearing for the petitioner would contend that the alterations in the date and the figures mentioned in the cheque are apparent to the naked eye and therefore, for proper adjudication of the dispute, it is just and necessary to refer the same to the handwriting expert. He also would contend that the observation of the Court that 'the Court has got every power under Section 73 of Indian Evidence Act to compare the writings on the cheque and findings will be given at the time of judgment with regard to the alleged alterations on the cheque', though is not disputed, but *prima facie*, it appears, there are material alterations in the said cheque and unless it is ascertained by an handwriting expert, the petitioner's rights and interests will be seriously prejudiced. He also brought to the notice of the Court regarding the alleged alterations in the said subject-cheque, which is filed in the material papers at page 14, and sought for referring the said cheque to an handwriting expert.

Having heard the learned counsel for the petitioner and after perusal of the material on record, it is revealed that the second respondent herein filed a private complaint vide C.C.No.182 of 2016 against the petitioner for the offence under Sections 138 and 142 of Negotiable Instruments Act. Pending the said C.C., CrI.M.P.No.1176 of 2017 has been filed, to refer Ex.P.1-cheque to handwriting expert to verify whether there are any material

alterations in the date as well as in the figures mentioned in the cheque.

When this Court has looked into Ex.P.1-cheque, which is filed in the material papers at page 14, *prima facie*, it appears, the said cheque has been altered with regard to the month and with reference to the figures. However, though the Court has got ample power under Section 73 of Indian Evidence Act to compare and give a finding, still when *prima facie*, it is established that there are alterations, the Court below ought to have allowed the petition in sending Ex.P.1-cheque to handwriting expert. In these circumstances, this Court is of the opinion that there is substance in the argument advanced by the learned counsel for the petitioner in referring Ex.P.1-cheque to the handwriting expert.

Accordingly, the Criminal Revision Case is allowed setting aside the orders dated 01.11.2017 passed by the Special Magistrate, Ibrahimpatnam, R.R.District and I.A.No.1176 of 2017 in C.C.No.182 of 2016 shall stand allowed. The Special Magistrate, Ibrahimpatnam is directed to refer Ex.P.1-cheque to an handwriting expert and invite his opinion with regard to the alterations thereon, as discussed above.

Pending miscellaneous petitions, if any, shall stand closed.

P.KESHAHA RAO,J

03rd JULY 2018.

Tsr