

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*[Special Original Jurisdiction]*

WEDNESDAY THE FOURTEENTH DAY OF FEBRUARY  
TWO THOUSAND AND EIGHTEEN

PRESENT

**HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO**

CRIMINAL REVISION CASE NO. 383 OF 2018

Between:

Vallu Apparao

...

Petitioner/Respondent  
Defacto-complainant

V/s.

Nimmaraju Rajesh & Anr.

...

Respondents/Respsondents

Counsel for the Petitioner :

Sri G.L. Nageswar Rao

Counsel for the Respondents :

None appeared for R-1  
Public Prosecutor [ AP ] for R-2

The court made the following:

[order follows]

**HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO****CRIMINAL REVISION CASE NO. 383 OF 2018****ORDER :**

Heard Sri G.L. Nageswara Rao, learned counsel for the Revision Petitioner and this Court is of the view that this Criminal Revision Case can be disposed of at the admission stage without the necessity of affording notice to the first respondent/accused.

2. This Criminal Revision Case is filed by the petitioner/defacto-complainant, aggrieved by the order dated 25/01/2018 in Criminal Revision Petition No. 119 of 2017 passed by the learned Principal District Judge, West Godavari at Eluru, whereby the learned District Judge has set aside the order dated 08/11/2017 in CrI.MP.No. 7380 of 2017 in CC.No. 412 of 2016 passed by the Judicial Magistrate of First Class, Special Mobile Court, Eluru and directed the trial court to follow the procedure to appoint the Advocate-Commissioner for recording evidence of the proposed witness.

3. C.C.No. 412 of 2016 is a case under section 138 of Negotiable Instruments Act. The first respondent/accused filed CrI.MP.No. 7380 of 2017 stating that on the date of alleged cheque dated 05/2/2016, he was undergoing Ministerial Training Course for forty days; i.e., from 19/01/2016 to 26/02/2016 at Berachah Prophetic Ministries of Chennai, vide Exs.D-2 and D-3, training certificates and therefore, it is preposterous to contend he issued the subject cheque. In order to prove his *alibi*, the first respondent/accused requested in his petition that the trial court may be pleased to appoint Advocate-Commissioner to record the evidence of Dr.Ezekiah Francis, who was the Dean of Berachah,, Prophetic Ministries, situated at Beracha Campsite, [Poondi], Parikuum, Tiruvallur district. The Revision Petitioner/defacto-complainant opposed the said petition and the trial court by its order dated 08/11/2017 dismissed the petition holding that since the documents were already marked as exhibits, recording of the evidence of the proposed witness would not serve any useful purpose. Aggrieved thereby, the first respondent/accused preferred Criminal Revision Petition No. 119 of

2017, wherein the Principal District Judge while setting aside the impugned order directed the trial Court to follow the procedure and appoint Advocate-Commissioner for recording the evidence of proposed witness.

4. I have given my anxious consideration to the impugned order.

The learned District and Sessions Judge observed that mere marking of the documents would not be sufficient to believe the contents of the documents and the concerned party has to examine the person, who issued those documents. Learned Sessions Judge observed that in order to prove Exs.D-2 and D-3, the first respondent/accused has to examine Dr.Ezekiah Francis. On this observation, the learned Sessions Judge, allowed the Criminal Revision Petition No.119 of 2017 and as a sequel set aside the impugned order passed by the Magistrate. I found no illegality or perversity in the order impugned. It is the cardinal principle of law that mere marking of a document would not amount to proof of any document unless the said document is admitted. That is not the case with Exs.D-2 and D-3 in the instant case. Therefore, the responsibility

lies on the first respondent/accused to examine the person, who issued

Exs.D-2 and D-3 to vindicate his stand.

5. In that view, the impugned order passed by the learned District and Sessions Judge, West Godavari at Eluru, is impregnable.

Accordingly, this Criminal Revision Case is dismissed at the admission stage. No costs.

6. As a sequel, miscellaneous petitions if any, pending in this Criminal Revision Case shall stand closed.



*JUSTICE V. DURGA PRASAD RAO.*

**HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO**

CRIMINAL REVISION CASE NO. 383 OF 2018

**[ DISMISSED AT THE ADMISSION STAGE ]**



Date: 14/02/2018  
Circulation No.75  
Court Master : I s L