

HON'BLE SRI JUSTICE P. KESHA VA RAO

CRIMINAL REVISION CASE No.600 of 2018

ORDER

Heard the learned counsel for the petitioner as well as the second respondent.

The present criminal revision case is filed questioning the orders dated 09.02.2018 passed in CrI.M.P.No.233 of 2018 in C.C.No. 234 of 2017, on the file of the Court of the XIX Special Magistrate, Hyderabad.

The brief facts of the case are that the second respondent filed C.C.No.234 of 2017 against the petitioner for the offence under Section 138 of the Negotiable Instruments Act. The second respondent examined himself as PW-1 and marked the documents as Exs.P-1 to P-8. However, at the time of filing the documents, he failed to produce the documents i.e. bank statement and previous hand loan cheque which is given to the petitioner since the said two documents are not traced out at that relevant point of time. In those circumstances, the second respondent filed CrI.M.P.No.233 of 2018 under Section 311 Cr.P.C. requesting the Court below to recall PW-1 and receive the above said documents and mark them as exhibits in the interest of justice. After hearing, the learned XIX Special Magistrate, Hyderabad, allowed the petition by orders dated 9.2.2018. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioner, would contend that the Court below committed an error in allowing the CrI.M.P.No.294 of 2018 to mark the xerox copies of the documents

which are not admissible in evidence. To prevent the miscarriage of justice and also to avoid abuse of process of Court, the Court below ought not to have allowed the petition. To substantiate his contention, he relied on a decision reported in *SHALIMAR CHEMICAL WORKS LIMITED v. SURENDRA OIL AND DAL MILLS (REFINERIES) AND OTHERS*¹. Basing on the said judgment, he submitted that the admissibility of a document has to be decided at the stage of admission itself instead of leaving it to be decided subsequently.

Per contra, the learned counsel for the second respondent submitted that the impugned orders are passed on 9.2.2018. Pursuant thereto, the documents were marked on 3.3.2018. The petitioner filed the present revision case in this Court and obtained interim orders of stay of all further proceedings on 5.3.2018. Therefore, by the time this Court passed the stay orders, the documents were already marked by the Court below. The said contention has not been denied by the learned counsel for the petitioner. Under these circumstances, no further cause would survive and there are no merits in the revision case.

However, it is settled law that mere marking of a document will not amount to proving of a document. In the above said judgment, the Apex Court was pleased to consider the aspect of admission of documents in evidence and the proper procedure to be followed. In that case, the judgment was given based on a photo copy, which should have been rejected in the beginning itself. In fact, having admitted the photo copy, and then dismissing

¹ (2010) 8 SCC 423

the appellant/plaintiff's suit against infringement of trade mark, was a wrong procedure. However, in the case on hand, by the time the interim stay of all further proceedings granted by this Court, the documents were already marked and the matter is coming up for cross examination. Therefore, the judgment cited by the learned counsel for the petitioner, is not applicable to the facts of the present case since an opportunity will be given to the petitioner to cross examine PW-1 raising an objection and as such, no prejudice would be caused to him. At the cost of repetition, mere marking of a document, will not amount to that the document is proved.

However, since the documents are already marked, and since the petitioner is having an opportunity to cross examine and raise an objection with regard to admissibility of the documents, this Court is of the view that no prejudice would be caused to the petitioner. Under these circumstances, no further cause would survive and there are no merits in the present revision case. As such, the revision case is liable to be dismissed.

Accordingly, the criminal revision case is dismissed. However, it is needless to observe that the petitioner can raise an objection during the course of cross examination of PW-1 on the admissibility of the documents marked and the Court below is directed to consider the same as per law without influencing with the orders passed by this Court.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHA VA RAO, J

Date: 03.07.2018.
CCM

HON'BLE SRI JUSTICE P. KESHA RAO



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