

HON'BLE SRI JUSTICE P. KESHA VA RAO

Criminal Revision Case No.1953 of 2014

ORDER:

Heard the learned counsel for the petitioner. Pursuant to the order dated 16.10.2014, the notice taken out on the first respondent through registered post acknowledgement due has been served as evident from the track report submitted in this Court through a memo dated 28.10.2014 vide USR No.2930 of 2014.

The present criminal revision case is filed questioning the order dated 02.07.2014 passed in CrI.M.P.No.1384 of 2013 in C.C.No.1081 of 2009 on the file of the Court of the IV Additional Judicial First Class Magistrate, Warangal dismissing the petition filed under Section 294 Cr.P.C. to receive the documents enlisted therein as additional evidence.

The facts in brief are that the petitioner filed C.C.No.1081 of 2009 against the first respondent for the offence under Section 138 of the Negotiable Instruments Act. In the said calendar case, the petitioner examined herself as PW-1 and filed her affidavit in lieu of her evidence in chief examination on 14.03.2011. On 21.03.2011 Exs:P-1 to P-3 were marked. Again, on 11.01.2012 Exs:P-4 to P-6 were marked. Subsequently, the petitioner filed CrI.M.P.No.390 of 2012 and the same was allowed. Pursuant to which, on 27.02.2013 Exs:P-7 to P-16 were marked. The first respondent/accused cross-examined PW-1 on 01.04.2013 and concluded on 29.04.2013. After her cross-examination, the petitioner filed CrI.M.P.No.1384 of

2013 under Section 294 Cr.P.C. on 03.07.2013 stating that the enlisted documents are relevant and material for the just decision of the case. It is relevant that the said documents have already been referred in the complaint filed by her. However, the first respondent filed counter opposing the same and contested the said petition. After hearing, the learned Magistrate by orders dated 02.07.2014, dismissed the said petition. Aggrieved by the same, the present criminal revision case is filed.

Learned counsel for the petitioner would contend that the observation made by the learned Magistrate in the impugned order that the petitioner was cross examined on 11.01.2012 and she has chosen to file the present petition on 03.07.2013, is factually incorrect. He also contended that though the calendar case is of the year 2009, the cross examination of PW-1 was concluded only on 29.04.2013. At any stretch of imagination, it cannot be said that the subject petition is filed either to prolong the litigation or to cover up any laches.

Having heard the learned counsel for the petitioner and from the perusal of the material on record, it is evident that after completion of the cross examination of the petitioner on 29.04.2013, the present petition in CrI.M.P.No.1384 of 2013 is filed on 03.07.2013 under Section 294 Cr.P.C. to receive the documents viz. (i) undertaking given by the accused dated 07.11.2006, (ii) notice issued by APSFC Branch at Warangal to the complainant dated 02.03.2007 and (iii) letter submitted by the accused to the Senior Branch Manager, APSFC, Warangal, dated 22.05.2007. According

to the petitioner, the said documents are relevant and material to prove her case. When the cross examination of PW-1 is concluded on 29.04.2013, the observation made by the learned Magistrate that the present petition is filed on 03.07.2013 i.e. about 15 months after the cross examination of PW-1, is incorrect. However, from the record it is evident that the observation made by the learned Magistrate is factually contrary to the record. Therefore, this Court is of the opinion that the ground on which the petition is dismissed by the learned Magistrate, is on a wrong premise taking the date as 11.01.2012. In fact, the cross examination was concluded on 29.04.2013 only. Under these circumstances, the criminal revision case is liable to be allowed.

Accordingly, the criminal revision case is allowed setting aside the impugned order, dated 02.07.2014 passed in CrI.M.P.No.1384 of 2013 in C.C.No.1081 of 2009 on the file of the Court of the IV Additional Judicial First Class Magistrate, Warangal.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

P. KESHAVA RAO, J

Date:26.09.2018
CCM

HONOURABLE SRI JUSTICE P. KESHA VA RAO



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Date:26.09.2018

ccm