

HONOURABLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.1233 of 2018

ORDER:

Heard the learned counsel for the petitioner as well as the first respondent and the learned Public Prosecutor appearing for second respondent-State.

The present criminal revision case is filed aggrieved by the orders passed in CrI.M.P.No.1595 of 2015 dated 18.12.2017 in C.C.No. 108 of 2014 on the file of the Court of the Special Judicial Magistrate of First Class, (Prohibition & Excise Cases) at Khammam, in dismissing the petition filed under Section 45 of the Indian Evidence Act for sending the Exs:P-1 and P-5 for expert opinion.

The brief facts of the case are that the petitioner and the first respondent are well acquainted with each other. Out of such acquaintance, the petitioner borrowed a sum of Rs.4 lakhs from the first respondent on 06.08.2011 for family and business necessities. After receipt of the said amount, the petitioner have executed a promissory note in favour of the first respondent as collateral security on the same day i.e. on 06.08.2011 agreeing to repay the same with interest at 24% per annum. As the petitioner failed to pay the said amount, he has issued a cheque bearing No. 014455 on 30.03.2013 for Rs.4,50,000/- in favour of the first respondent. On presentation of the said cheque in the bank on 30.04.2013, it was returned with an endorsement 'insufficient funds' through a cheque return memo dt.03.05.2013. After issuing notice, the first respondent filed a complaint vide C.C.No.108 of 2014 for the offence under Sections 138 and 142 of the Negotiable

Instruments Act against the petitioner on the file of the Court of the Special Judicial Magistrate of First Class, (Prohibition & Excise Cases) at Khammam.

Pending the above said calendar case, the petitioner being the accused filed a petition in CrI.M.P.No.1595 of 2015 under Section 45 of the Indian Evidence Act for sending Exs.P-1 and P-5 along with his admitted signatures for expert opinion. In the said petition, the petitioner has categorically stated that the signatures on Ex.P-1 cheque and also on Ex.P-5 promissory note do not belong to him. Both the signatures are forged and fabricated by the first respondent herein. First respondent filed a counter and contested the said petition. After hearing, the said petition was dismissed by orders dated 18.12.2017. Aggrieved by the same, the present criminal revision case is filed.

Learned counsel appearing for the petitioner, contended that the Court below dismissed the petition without giving any valid and legal reasons. The Court below committed an error in passing a cryptic order without even looking into the legal position for disposing of the petition filed under Section 45 of the Evidence Act. The Court below also came to a wrong conclusion that the signatures on Exs.P-1 and P-5 are one and the same without any expert opinion.

Per contra, the learned counsel appearing for the first respondent supported the impugned order.

Having heard the submissions made by both the counsel and having regard to the facts and circumstances of the case, more particularly, the cross-examination of PW-1 which is filed in the

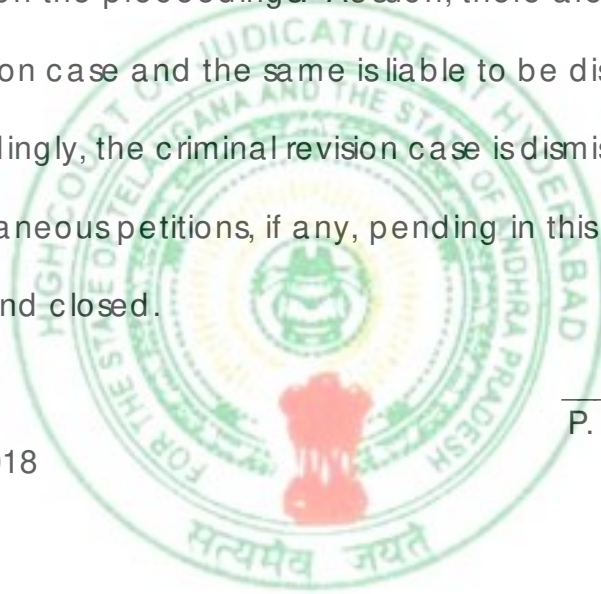
material papers, it is crystal clear that the first respondent used to sit in the counter of the shop of the petitioner during the year 2009 and in that connection, he has taken the signed cheque belonging to the petitioner herein from the shop. Thus, if the case of the petitioner is believed that the first respondent has taken away his signed cheque from his shop, the petition filed under Section 45 of the Indian Evidence Act, *prima facie*, is not maintainable, more particularly, when he himself admits that the cheque has been signed by him. From this it appears that the present petition is filed only to drag on the proceedings. As such, there are no merits in the criminal revision case and the same is liable to be dismissed.

Accordingly, the criminal revision case is dismissed.

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

Date:15.06.2018
Ccm

P. KESHA VA RAO,J



HONOURABLE SRI JUSTICE P. KESHA VA RAO



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