

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL REVISION CASE No.374 OF 2013

ORDER:

This criminal revision case is filed by the petitioner/complainant aggrieved by the order dated 31.12.2012 in Criminal Revision Petition No.36 of 2012 on the file of III Additional Sessions Judge, Karimnagar, allowing the criminal revision petition by setting aside the order in Cr.M.P.No.14 of 2012 in C.C.No.125 of 2011 on the file of Special Magistrate Court, Karimnagar and directing to send the disputed document dated 19.11.2010 to the handwriting expert of FSL, Hyderabad.

2. When the matter came up for hearing, there is no representation for petitioner. Hence, perused the record.

3. (a) The case of petitioner/complainant is that the respondent/accused has taken a sum of Rs.60,000/- from him as hand-loan and executed a bond on non-judicial stamp paper worth of Rs.100/- before two witnesses by promising to repay the same on 21.11.2010. Subsequently, the accused approached the complainant and requested for additional loan of Rs.40,000/- with a promise to repay the said amount and the earlier amount totaling Rs.1,00,000/- within short period. Believing his version, the complainant has given the additional loan of Rs.40,000/-. In due discharge of the loan amount, it is alleged, the respondent/accused issued a

cheque for Rs.1,00,000/- and when it was presented by the complainant with his bank, the same was returned unpaid for the reason of insufficiency of funds. After following the procedure, the complainant filed the complaint under Section 138 of N.I.Act against the respondent/accused.

(b) The defence of the respondent/accused is that he did not avail any loan as alleged and he also did not execute any bond and indeed there was no legally enforceable debt existing between the parties. In order to establish his defence, the respondent/accused filed CrI.M.P.No.14 of 2012 under Section 45 of Indian Evidence Act requesting the trial court to refer the disputed document dated 19.11.2010 to handwriting expert along with his admitted handwritings for giving a report.

(c) The complainant opposed the petition and the trial court in its order dated 14.02.2012 dismissed the said petition on the observation that it is the burden of the complainant to file the said document to establish the same by calling the attestors of the said document and if the attestors deny the execution of the document, the petitioner/accused can get benefit out of the said evidence instead of taking the trouble of sending the document to the handwriting expert. On such observation, the trial court dismissed the petition.

(d) Aggrieved, the respondent/accused filed criminal revision petition No.36 of 2012. The learned III Additional District Judge, Karimnagar, held a different opinion. He was of the view that referring the document to expert will not cause prejudice to the parties and the accused shall be given an opportunity to establish his case. On such observation, the learned judge allowed the criminal revision petition. Hence, the instant criminal revision case at the instance of the petitioner/complainant.

4. As can be seen from the respective contentions, while the complainant claims that by receiving the hand-loan the accused executed the disputed document dated 19.11.2010, the accused denied receiving of the hand-loan and execution of the disputed document dated 19.11.2010. It is no doubt preliminary burden is on the complainant to prove his case. However, on that ground the right of the accused to shatter the prosecution case by referring the disputed document to the expert cannot be prevented. The very defence of the accused is that he has not taken hand-loan and he did not execute disputed document dated 19.11.2010. Since he has sown seeds in his defence, he has every right to request the court to give him an opportunity to establish his defence plea. Hence, the learned III Additional District Judge, Karimnagar, was right in allowing the revision and directing the trial court to refer the disputed document along with admitted

handwritings of the accused to the expert of FSL, Hyderabad.

I find no illegality or perversity in the order impugned.

5. Accordingly, the criminal revision case is dismissed by confirming the order dated 31.12.2012 in Criminal Revision Petition No.36 of 2012 on the file of III Additional Sessions Judge, Karimnagar.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

16.11.2018
SS

U.DURGA PRASAD RAO, J

