

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.1066 OF 2017

ORDER:

This Criminal Revision Case is filed questioning the orders passed in S.R.No.2088 of 2016 dated 06.01.2017 on the file of Court of I Additional Judicial Magistrate of First Class, Tadepalligudem.

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

The facts, in brief, are that the petitioner lodged a complaint against the respondents 2 to 4 herein and another for the offences under Sections 420, 465 and 120-B IPC r/w 156(3) of Cr.P.C. on the file of the above said Court. The learned Magistrate, after recording the statements of P.Ws.1 to 3 and after going through the contents of the complaint, dismissed the complaint under Section 203 of Cr.P.C. by orders dated 06.01.2017. Aggrieved by the same, the present Criminal Revision Case is filed.

The learned counsel appearing for the petitioner would contend that the Court below committed an error in passing the impugned order whereby dismissed the complaint itself at the stage of taking the case on file. The learned Magistrate ought not to have appreciated the evidence more particularly with reference to the contents of the memorandum of understanding *vis-à-vis* the statements recorded before the Court. At the stage of taking cognizance of the offence on its file, the learned Magistrate ought not to have appreciated the evidence on merits as to whether the

allegations levelled in the memorandum of understanding and the complaint are true and correct. At the stage of taking cognizance of the offence, what all the Court has to do is whether the material placed on record would make out any *prima facie* case for framing a charge against the accused-respondents herein. But however, the learned Magistrate proceeded in the manner as if a final verdict is being given by appreciating the evidence.

Per contra, the learned counsel appearing for the second respondent contended that there is inconsistency in the statements of P.Ws.1 and 2 recorded by the Court below. P.Ws.1 and 2 have not deposed as to who forged the signatures. He also contended that in the absence of any evidence regarding the compromise, the taking of the cheque book itself is in doubt. Therefore, no *prima facie* case is made out for the alleged offences.

Having heard both the counsel and a perusal of the material on record would reveal that the petitioner herein lodged a complaint for the offences under Sections 420, 465 and 120-B IPC against the respondents 2 to 4 herein and another. The basic contention of the petitioner herein is that his signature has been forged and Rs.40,000/- has been siphoned off from the bank by virtue of collusion and conspiracy among A.1 to A.4. A perusal of the complaint and the statements of P.Ws.1 to 3 recorded by the Court below, would disclose that there is a specific allegation with regard to the forgery as well as siphoning off Rs.40,000/- from the bank account. What all that is required while taking the cognizance of offence on record is whether, *prima facie* case is established for commission of the offences as alleged against the

accused. In the case on hand, a mere perusal of the complaint and the statements of witnesses, clinchingly establishes a *prima facie* case for the said offences. However, the Court below while passing the impugned orders, appreciated the evidence with regard to the forgery by going through the statements of P.Ws.1 to 3 and also the contents of the memorandum of understanding. The said act of the learned Magistrate in appreciating the evidence at the stage of taking cognizance, is not available under the provisions of Code of Criminal Procedure. Therefore, in the facts and circumstances of the case, this Court is of the opinion that the learned Magistrate has committed material irregularity in appreciating the evidence while taking the case on record. Therefore, acceding to the request made by the counsel for the petitioner and looking into the impugned orders, this Court feels that it is a fit case where interference is needed.

Accordingly, the Criminal Revision Case is allowed setting aside the orders passed in S.R.No.2088 of 2016 dated 06.01.2017 in dismissing the complaint. The learned Magistrate is directed to proceed further in the matter by following the procedure as contemplated under the provisions of the Code of Criminal Procedure.

Pending miscellaneous petitions, if any, shall also stand closed.

P.KESHAVA RAO,J

06th AUGUST 2018.
Tsr