

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.10765 OF 2018

ORDER:

This petition is filed under Section 482 Cr.P.C. questioning order dated 12.09.2018 in Crl.M.P.No.2049 of 2018 in C.C.No.196 of 2017 passed by the XXIV Special Magistrate, Erramanzil, Hyderabad.

The petitioner is the complainant in a private complaint filed under Section 138 of the Negotiable Instruments Act (for short 'the Act'). During trial, the petitioner wanted to introduce certain documents, filed petition under Section 254(2) read with 294 Cr.P.C.

At the stage of admission, this Court raised objection about maintainability of the petition. Section 254(2) Cr.P.C. deals with the power of the Magistrate to issue summons to any witness directing him to attend or to produce any document or other thing on the application of the prosecution. In the present case, the petitioner wanted to introduce certain documents, but not to summon any witness for his appearance and to produce any document or any other thing. Therefore, Section 254(2) has no application to claim such relief.

Section 294 Cr.P.C. deals with dispensing with formal proof of certain documents and thereby it is not applicable. However, learned counsel for the petitioner, during argument submitted that the Courts below are not entertaining petitions under any other provision except under Section 254(2) Cr.P.C and Section 294 C.P.C. The Courts below are not expected to adopt the practice, other than the permitted under the provisions of Cr.P.C. Section 254(1) Cr.P.C. deals with the power of the Magistrate when the accused is not convicted under Section 252 or Section 253 Cr.P.C, when the Magistrate proceed to hear the accused and take all such evidence as he produces in his defence. Even according to Section

254(2) Cr.P.C. the Magistrate is competent to receive the evidence i.e. documents, when the accused produced in his evidence. But the petitioner wanted to introduce the document under Section 254(2) Cr.P.C. which is impermissible under law. The practice followed by the Magistrate, if it is contrary to law, such practice can be ignored and the Magistrate is bound to strictly adhere to the procedure prescribed under the provisions in Cr.P.C. Merely because, the Magistrate is insisting for filing petitions under various specific provision, the advocate is not supposed to file such application and that he is expected to file application under appropriate provisions in Cr.P.C. with great sense of responsibility. Therefore, the petition filed before the Magistrate is not maintainable. However, liberty is given to the petitioner to file appropriate application under the provisions of Cr.P.C., for the relief he sought.

In the result, the criminal petition is dismissed. However, liberty is given to the petitioner to file appropriate application under the provisions of Cr.P.C.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

10.10.2018
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