HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Crl.R.C. No.2796 of 2017

ORDER:

Aggrieved by the dismissal of Crl.M.P.No.2835 of 2017 in C.C.No.78 of 2017, filed by the petitioner/accused seeking to send her signatures along with Ex.P.1—agreement to sell dated 30.08.2015, Ex.P.1/1—receipt dated 31.08.2015, Ex.P.1/2—cash receipt dated 14.09.2015 and Ex.P.5—cheque dated 05.10.2016 for comparison by handwriting expert, the accused filed the instant Crl.R.C.

2) Heard arguments of Sri K.Chidambaram, learned counsel for petitioner and Sri Prabhakar Sri Pada, learned counsel for 1st respondent.

3) C.C.No.78 of 2017 is a case under Section 138 of Negotiable Instruments Act (for short "N.I Act") filed by the respondent/ complainant on the allegations that the accused, who is the owner of house property bearing Plot No.71 entered into an agreement to sell dated 30.08.2015 (Ex.P.1) with the complainant and received Rs.6,00,000/- in cash i.e, Rs.3,50,000/- on 31.08.2015 and Rs.2,50,000/- on 14.09.2015 (vide Exs.P.1/1 and P.1/2) and also received Rs.1,50,000/- by way of cheque bearing No.672754 dated 31.08.2015, totaling Rs.7,50,000/- towards advance. However, the complainant having discovered that the accused has no valid title, expressed his desire not to purchase the property from the accused and sought for return of the advance amount of Rs.7,50,000/-. After several requests,

the accused issued a legal notice dated 28.09.2016 through her counsel (vide Ex.P.4) admitting the above facts and offered to return Rs.3,50,000/- i.e, 50% of amount received by her. The complainant refused to receive the said amount and on the intervention of the elders at last the accused agreed to return Rs.7,50,000/- and issued a cheque for the said amount dated 05.10.2016 drawn on HDFC bank. The said cheque on presentation was bounced back. Hence the complaint. The accused is contesting the case.

4) While-so the accused filed Crl.M.P.No.2835/2017 under Section 45 of Evidence Act to send Exs.P.1, P.1/1, P.1/2 and P.5 to the expert along with her signatures on the plea that she was denying the execution of those documents. However, the said petition was dismissed by the Trial Court on the observation that in Ex.P.4—notice dated 28.09.2016 got issued by her through her counsel and also in the cross-examination she admitted those documents and therefore, there was no requirement to send them to the expert.

5) I have given my anxious consideration to the issue. As observed by the Trial Court, in Ex.P.4—reply notice dated 28.09.2016 got issued by the accused through her Counsel Sri Godey Satish, she admitted to have entered into an agreement to sell dated 30.08.2015 and received cash of Rs.3,50,000/- and Rs.1,50,000/- and also an amount of Rs.2,50,00/- by way of cheque. Her version in reply notice was that she demanded the complainant to pay the balance amount and secure registration of the property but the complainant did not come forward

and on the other hand he was pressurising her through Kushaiguda Police. She ultimately stated that she was ready to pay Rs.3,50,000/- i.e, 50% of the advance amount and asked the complainant to express his willingness to receive the said amount. Thus in the aforesaid notice, the accused admitted agreement to sell and also the amounts received by her from the complainant. So far as Ex.P.5—cheque for Rs.7,50,000/- is concerned, the accused gave a suggestion to PW.1 in the cross-examination and the same was denied, which is as follows:

> *"It is not true to suggest that I influenced the police and through police I received the cheque leaf of the subject cheque Ex.P.5 duly signed from the accused, and that I obtained Ex.P.5 cheque from the accused under the threat of the police."*

6) Thus the admission made in Ex.P.4 coupled with the suggestions made in the cross-examination of PW.1, mirror the admission made by the accused with regard to the genuinety of Exs.P.1, P.1/1, P.1/2 and P.5. Therefore, as rightly observed by the Trial Court, the accused has been changing her stand from time to time with regard to the above documents and therefore, no useful purpose will be served by sending those documents to the expert. Ex.P.5 is concerned, it is her case that the said cheque was obtained from the accused under the threat of police. It is pertinent to note that the accused is not denying her signature on Ex.P.5 but only pleads that it was obtained under threat and coercion. That being so, even if Ex.P.5 is referred to an expert, he cannot say whether the said cheque was obtained by force or not. So at the outset, there is no point in referring the documents sought for by the

accused to the expert. Therefore, there is no illegality or perversity in the impugned order.

7) In the result, I find no merits in the Criminal Revision Case and accordingly, the same is dismissed.

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

U. DURGA PRASAD RAO, J

Date: 27.02.2018
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