

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.12169 OF 2017

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the order dated 13.10.2017 passed in CrI.M.P.No.2268 of 2017 in C.C.No.252 of 2015 by the Additional Judicial First Class Magistrate at Alamuru, East Godavari District, whereby the petition filed under Section 45 of Indian Evidence Act was dismissed.

The petitioners herein filed CrI.M.P.No.2268 of 2017 in C.C.No.252 of 2015 under Section 45 of Indian Evidence Act to refer the Exs.P.1 and P.2 for expert opinion along with admitted handwriting of accused No.1 and also the signature of accused No.1 on the alleged cheque i.e. on Ex.P.1 to the handwriting expert for comparison and identification.

Respondent No.1/complainant filed counter contending that the accused received statutory notice from the complainant and failed to issue any reply. Taking advantage of failure to issue reply, filed the present petition to refer Exs.P.1 and P.2 to handwriting expert. As there was no material alteration, the prayer cannot be granted and prayed to dismissal of the petition.

The trial Court recorded the following reasons and dismissed the petition.

"On perusal of the record, it was clear that no objection raised by the petitioner/accused claiming that the signatures on Exs.P.1 and P.2 did not belong to him and he was no way connected to the case and now when the matter is coming for Section 313 Cr.P.C. examination after closure of petitioner evidence and was posted as last chance for respondent evidence as the matter is identified, this petition is filed to drag on the proceedings. Hence, the facts and circumstances, I declined to allow the petition."

Aggrieved by the said order, the present petition is filed contending that at any stage of proceedings, the petition under Section 45 of the Indian Evidence Act can be filed. Therefore, the order passed by the trial Court is erroneous.

During hearing, learned counsel for the petitioners would draw the attention of this Court to the judgment of Full Bench of this Court rendered in “**Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash**”¹ to contend that petition under Section 45 of the Indian Evidence Act can be filed at any stage of the proceedings and on the ground of delay, the petition cannot be dismissed.

Learned Counsel for the respondent No.1 contended that when the accused did not deny the execution of cheques and signatures thereon, the petition cannot be allowed and the petition was filed at belated stage and supported the order passed by the trial Court in toto.

As seen from the Order passed by the Court below, the reason for dismissal of the petition is that the signatures on Exs.P.1 and P.2 were not denied by the petitioners and that there was abnormal delay. The delay itself is not a ground to dismiss the petition filed under Section 45 of the Indian Evidence Act in view of the law declared by the Full Bench of this Court in “**Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash**” (referred supra), whereby the law laid down by the Division Bench of this Court in “**Janachaitanya Housing Limited v. Divya**”² was upheld.

Coming to the other reason about the failure to deny the signatures on Exs.P.1 and P.2, learned counsel for the petitioners

¹ 2016 (2) ALD 1 (FB)

² 2008 (4) ALD 339 (DB)

drawn the attention of this Court to the specific sentence in the cross-examination of P.W.1, which is as follows:

“Accused issued cheque to me at my House at 7-30 to 8-00 A.M., A1 drafted the cheque and both of them executed and issued to me. It is true that the drafting and execution is with the same pen.”

The said fact elicited in the cross-examination clearly shows that the petitioner/accused No.1 has not denied Exs.P.1 and P.2 and their genuineness. Therefore, on the ground that the petitioner/accused No.1 did not deny execution of Exs.P.1 and P.2, the petition cannot be dismissed.

In view of my foregoing discussion, I find that the order 13.10.2017 passed in Crl.M.P.No.2268 of 2017 in C.C.No.252 of 2015 by the Additional Judicial First Class Magistrate at Alamuru, East Godavari District is erroneous. Consequently, the petition is liable to be allowed.

In the result, the criminal petition is allowed. The Magistrate concerned is directed to refer the disputed signatures on Exs.P.1 and P.2 along with contemporaneous signatures on authenticated documents of petitioner No.1 to the expert, subject to compliance of requirements like deposit etc. within 15 days from the date of receipt of a copy of this order, fixing time for return of the documents along with opinion. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

15.06.2018
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