

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.11996 OF 2018

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C'), is filed by the petitioner/accused seeking to quash the order, dated 22.10.2018, passed in CrI.M.P.No.1768 of 2018 in C.C.No.435 of 2017, on the file of XIX Additional Chief Metropolitan Magistrate, Secunderabad.

2. Heard the learned counsel for the petitioner/accused, Sri P.Bal Reddy, learned counsel for the 1st respondent-complainant, learned Additional Public Prosecutor appearing for the 2nd respondent-State and perused the record.

3. Learned counsel for the petitioner/accused would submit that summoning of documents i.e., Form No.26AS and Form 16 from the Commissioner of Income Tax Department are required for adjudication of the subject matter i.e., to establish the payment made under a document, dated 03.12.2016, but the Court below erroneously dismissed the application and ultimately, prayed to set aside the impugned order and allow the application as prayed for.

4. On the other hand, learned counsel for the 1st respondent/complainant would submit that the proceedings in the subject Calendar Case are only summary proceedings; that there is also presumption in favour of the 1st respondent-complainant that the disputed cheque was given towards

discharge of legally enforceable debt; that the Court below had rightly dismissed the application and there are no grounds to allow the application and ultimately, prayed to dismiss the application.

5. In view of the submissions made by both parties, the point that arises for determination is:

“Whether the impugned order, dated 22.10.2018, passed in CrI.M.P.No.1768 of 2018 in C.C.No.435 of 2017 is liable to be set aside?”

6. POINT:

It is pertinent to state that the 1st respondent-complainant is relying on a document written on 03.12.2016, wherein it is mentioned that the petitioner/accused had borrowed an amount of Rs.4,50,000/- from him. It is also contended that the petitioner/accused having received the said amount, gave the disputed cheque bearing No.000083, dated 20.03.2017, towards discharge of part payment of Rs.2,00,000/- and it was dishonoured.

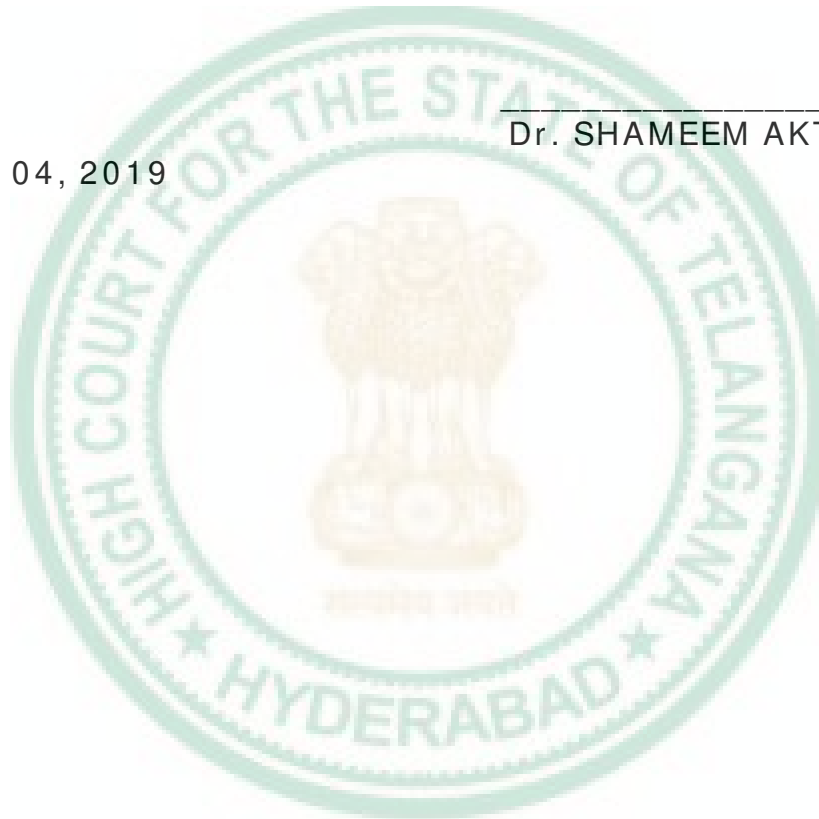
7. There is no dispute that the proceedings before the trial Court are summary in nature. However, as per language envisaged under Section 91 (1) Cr.P.C., if the Court is of the opinion that the documents to be summoned are essential for adjudication of the subject matter, may summon to produce those documents. In the instant case, the relevancy of Form 26 AS and Form 16 is not much significant. Therefore, summoning of documents i.e., Form No.16 and Form No.26 AS are not much

relevant for determination of *lis* pending between the parties. Under these circumstances, there is no illegality in the order passed by the Court below. Hence, the Criminal Petition is liable to be dismissed.

8. Accordingly, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending in this petition shall stand closed.

APRIL 04, 2019
YVL

Dr. SHAMEEM AKTHER, J



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Date:04.04.2019

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