

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

Criminal Petition No.141 of 2023

ORDER:

This Criminal Petition, under Section 482 CrPC, has been filed with a prayer to set aside the order, dated 26.12.2022, dismissing Crl.M.P.no.1027 of 2022 in C.C.No.261 of 2021 on the file of the Court of Additional Junior Civil Judge-cum-Additional Metropolitan Magistrate, Vijayawada, filed under Section 294 CrPC seeking to receive the proposed documents in order to mark the same on behalf of the petitioner/accused.

2. Heard *Ms. T.V.Sridevi*, learned counsel for the petitioner and the learned Assistant Public Prosecutor appearing for the respondent/State.

3. The facts, in brief, are that the 1st respondent filed private complaint under Section 138 of the Negotiable Instruments Act, 1881 alleging that the petitioner borrowed an amount of Rs.5,00,000/- on 21.02.2022 agreeing to repay with interest at the rate of 24% per annum and executed a pro-note. On 25.09.2020, on repeated requests, the petitioner gave a cheque bearing No.000007 drawn on Andhra Bank, Sitharampuram Branch, Vijayawada, for Rs.3,00,000/- and on presentation of the same by the 1st respondent, it was returned with an endorsement

'insufficient funds'. Thereafter, the 1st respondent filed private complaint which is numbered as C.C.No.261 of 2021 on the file of the Court of Additional Junior Civil Judge-cum-Additional Metropolitan Magistrate, Vijayawada. Prior to filing the complaint, the petitioner gave report also before S.N.Puram Police Station, who, in turn, referred the matter to PLC and numbered as PLCF No.119 of 2020 of S.N.Puram Police Station, Vijayawada. At this stage when C.C.No.261 of 2021 is coming up for evidence of the petitioner, the petitioner filed Crl.M.P.No.1027 of 2022 to receive the PLC proceedings for being marked on her behalf in support of her case.

4. The complaint filed counter opposing the petition and contending that the petitioner, without filing the copy of the complaint before the Court has only filed final order of PLC proceedings, dated 04.01.2022, and therefore, the said document cannot be received in evidence without filing the application of such PLC proceedings.

5. The trial Court, by the order impugned, refused to receive the proposed document observing that the said document does not contain signature, seal or stamp of the authority which issued it.

6. Learned counsel for the petitioner submitted that the document proposed to be received in evidence is material to prove the defence.

7. A perusal of the copy of the document which is enclosed to the petition and the observation of the trial Court shows that it is only a photostat copy and existence of its original is not established, and so, it cannot be treated as secondary evidence and admitted in evidence.

8. Moreover, though it is a continuous sheet of paper with two pages, it contains two separate portions regarding two separate understandings what transpired between the parties/signatories to it. Therefore, they shall be treated as two separate documents in the eye of law. Both the documents bear the same date, i.e., 04.01.2022. But the parties/signatories to both of them differ, in the sense that signatory No.1 & 3 in the 1st document are also signatories to the other documents. The document refers to C.C. number with some corrections by overwriting in the first numerical number and it is recorded as C.C.No.269 of 2021, whereas the present case pertains to C.C.No.261 of 2021. Therefore, it cannot be treated as a document related to the present case, i.e., C.C.No.261 of 2021, and therefore, it is not known how this document has a bearing on the present case.

9. The second document which is in continuation of the 1st and 2nd pages refers to an incident in relation to a cheque for an amount of Rs.3,80,000/- which is equal to the amount of cheque involved in this case. But, it does not bear the signature of the complainant in this case. It does not have any reference to the case number. It is also not the case of the petitioner that there was any award passed by the Lok Adalat in pursuance of any settlement of the dispute between the parties which covers the issue in the present case, viz., C.C.No.261 of 2021. Thus, the need to receive this document in evidence is also not apparent from the record.

10. Further, it is the cardinal principle that whatever transpired in the negotiations before Lok Adalat cannot be disclosed as evidence even before the Court of law and that cannot be called upon to be produced as evidence as well as it will affect the confidentiality of the things transpired in the process of mediation.

11. Unless the settlement before the Lok Adalat is culminated in passing of the award by the Lok Adalat, the same cannot be taken in evidence, as stated in Rule 18(2) of the National Legal Services Authority (Lok Adalat) Regulations, 2009 which reads as follows:

“18. Confidentiality—(1) xx xxx xx

(2) The views expressed and discussions made by parties during the proceedings of Lok Adalat in respect of the possible settlement of a dispute and the proposals made by the

members of Lok Adalat or admission made by any party or the conduct of the parties in the course of the proceeding before Lok Adalat shall not be brought in evidence or made use of in other court or arbitral proceedings.”

12. It is apt to mention here the observation of the Supreme Court in **B.P. Moideen sevamandir and another v. A.M Kutty Hasan**¹ which is as follows:

“14. Any admission made, any tentative agreement reached, or any concession made during the negotiation process before the Lok Adalat cannot be used either in favour of a party or against a party when the matter comes back to the court on failure of the settlement process....”

13. The court has to allow the parties to adduce evidence ignoring the agreement, if any recorded before the Lok Adalat, but has not reached finality by way of passing Award and dispose of the case on the basis of evidence adduced by parties as it should not be put in evidence. The document proposed to be filed in evidence is not copy of the award of the Lok Adalat. If at all, any award was passed in terms of the contents of the document stated above, appropriate steps can be taken, if permissible as per law, in relation to this case. That apart, the trial Court has also given sufficient reasons for dismissing the petition which are noted above. Since there is no illegality or irregularity in the order impugned, the same does not require any interference by this Court.

¹ (2009) 2 SCC 198

14. In the result, the Criminal Petition is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

B.S.BHANUMATHI, J

10.05.2023
RAR